

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

RICKY JOHNSON,

*Appellant,*

v.

Case No. 11-SUS-06-0198

DEPARTMENT OF MENTAL HEALTH,  
SUMMIT BEHAVIORAL HEALTHCARE,

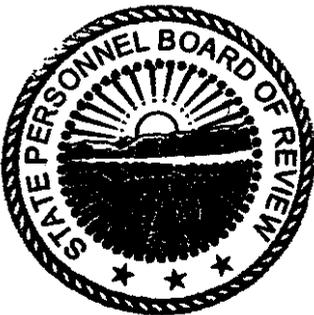
*Appellee*

**ORDER**

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to section R.C. 124.34.



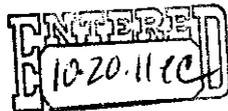
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
Terry L. Casey, Chairman

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, October 20, 2011.



  
Eric E. Conner  
Clerk

**NOTE:** Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Ricky Johnson

Case No. 11-SUS-06-0198

*Appellant*

v.

September 13, 2011

Department of Mental Health,  
Summit Behavioral Healthcare

*Appellee*

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for consideration on September 13, 2011. Appellant Johnson filed a notice of appeal of his five (5) day suspension on June 2, 2011. This Board issued a Procedural Order and Questionnaire on June 29, 2011. Appellee filed its Response to the Questionnaire on July 6, 2011. Appellant Johnson had ten (10) days to file an optional reply to Appellee's Response and to date, Appellant has not filed such reply.

The question was asked if Appellant Johnson was considered to be an overtime exempt employee and Appellee replied "Yes", that he was designated as overtime exempt, with his working hours being from 8:00 a.m. to 4:30 p.m. As stated above, Appellant Johnson did not file any rebuttal to Appellee's assertion.

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Section 124.34(B) of the Ohio Revised Code states as follows:

(B) In case of a reduction, **a suspension of more than forty work hours in the case of an employee exempt from the payment of overtime compensation**, a suspension of more than twenty-four work hours in the case of an employee required to be paid overtime compensation, a fine of more than forty hours' pay in the case of an employee exempt from the payment of overtime compensation, a fine of more than twenty-four hours' pay in the case of an employee required to be paid overtime compensation, or removal, except for the

reduction or removal of a probationary employee, the appointing authority shall serve the employee with a copy of the order of reduction, fine, suspension, or removal, which order shall state the reasons for the action.

Within ten days following the date on which the order is served or, in the case of an employee in the career professional service of the department of transportation, within ten days following the filing of a removal order, **the employee, except as otherwise provided in this section, may file an appeal of the order in writing with the state personnel board of review or the commission.** For purposes of this section, the date on which an order is served is the date of hand delivery of the order or the date of delivery of the order by certified United States mail, whichever occurs first. If an appeal is filed, the board or commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, the appeal within thirty days from and after its filing with the board or commission. The board, commission, or trial board may affirm, disaffirm, or modify the judgment of the appointing authority. However, in an appeal of a removal order based upon a violation of a last chance agreement, the board, commission, or trial board may only determine if the employee violated the agreement and thus affirm or disaffirm the judgment of the appointing authority. (Emphasis added).

As can be seen from reading the above statute, an employee who is designated as "overtime exempt" can only appeal a suspension of more than forty work hours to this Board. Appellant Johnson states in his notice of appeal that he was suspended for five (5) days, or forty (40) hours. Since his suspension was not for a time period greater than forty (40) hours, this Board is without jurisdiction to hear Appellant Johnson's appeal.

Ricky Johnson  
Case No. 11-SUS-06-0198  
Page 3

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** due to a lack of subject matter jurisdiction pursuant to section 124.34 of the Ohio Revised Code.

  
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Marcie M. Scholl  
Administrative Law Judge

:mms