

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

NICOLETTE CRAWFORD,

*Appellant,*

v.

Case No. 11-WHB-08-0304

CLARK COUNTY AUDITOR,

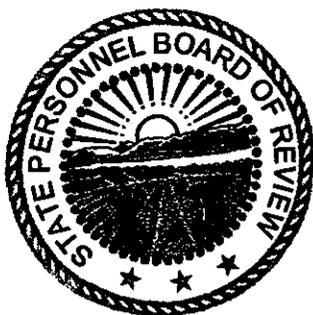
*Appellee*

**ORDER**

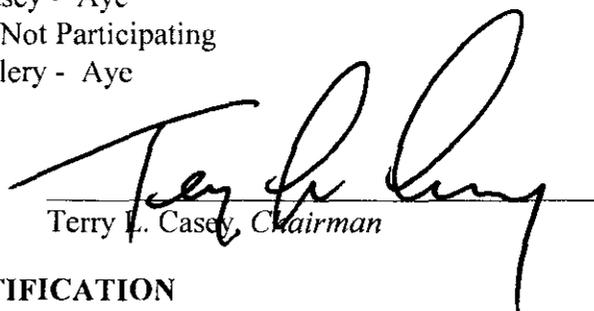
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellee's Motion to Dismiss is granted and the appeal is **DISMISSED** for lack of subject matter jurisdiction pursuant to Ohio Revised Code section 124.341.



Casey - Aye  
Lumpe - Not Participating  
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, January 05, 2012.



  
Erin E. Conn  
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**

Nicolette Crawford

Case No. 11-WHB-08-0304

*Appellant*

v.

December 7, 2011

Clark County Auditor

Marcie M. Scholl

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellee's Motion to Dismiss, filed on October 21, 2011. To date, Appellant Crawford has not filed a memorandum *contra*.

A Procedural Order and Questionnaire was issued by this Board on September 30, 2011, requesting Appellant Crawford to answer questions and provide documentation relating to her appeal. Appellant Crawford filed her response on October 17, 2011 and Appellee filed its Motion to Dismiss on October 21, 2011. In her response, Appellant Crawford attached documentation which she states to be her whistleblower documentation. Essentially the documentation is an affidavit which Appellant Crawford prepared upon being asked to do so by an Assistant Prosecutor and the Human Resources Director for the county, pursuant to an investigation they were conducting regarding Appellee. Appellee argues that because the affidavit does not allege any criminal offenses on the part of the Appellee, the affidavit does not meet the requirements of a filing under the whistleblower statute and her appeal should therefore be dismissed.

In looking at the statute governing "whistleblower" appeals, section 124.341 of the Ohio Revised Code, the pertinent part of the statute states as follows:

(A) If an employee in the classified or unclassified civil service becomes aware in the course of employment of a violation of state or federal statutes, rules, or regulations or the misuse of public resources, and the employee's supervisor or appointing authority has

authority to correct the violation or misuse, the employee may file a written report identifying the violation or misuse with the supervisor or appointing authority. In addition to or instead of filing a written report with the supervisor or appointing authority, the employee may file a written report with the office of internal auditing created under section 126.45 of the Revised Code.

**If the employee reasonably believes that a violation or misuse of public resources is a criminal offense, the employee**, in addition to or instead of filing a written report with the supervisor, appointing authority, or the office of internal auditing, **may report it to a prosecuting attorney**, director of law, village solicitor, or similar chief legal officer of a municipal corporation, to a peace officer, as defined in section 2935.01 of the Revised Code, or, if the violation or misuse of public resources is within the jurisdiction of the inspector general, to the inspector general in accordance with section 121.46 of the Revised Code. In addition to that report, if the employee reasonably believes the violation or misuse is also a violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code, the employee may report it to the appropriate ethics commission. (Emphasis added).

As can be seen from reading the provisions of R.C. 124.341(A), this statute protects an employee only if the following requirements have first been satisfied: (1) the employee filed a written report with either the employee's supervisor or appointing authority identifying a violation of state or federal statutes, rules, regulations or the misuse of public resources, or, in cases where the violation is believed to be a criminal offense, in addition to or instead of filing a written report with the employee's supervisor or appointing authority, the employee made a report with another official or entity named in the statute, and (2) after filing a report under division (A), the appointing authority took disciplinary or retaliatory action against the employee as a result of the employee's filings.

In *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, the Franklin County Court of Common Pleas restated these conditions as prerequisites to whistleblower jurisdiction under R.C. 124.341. The court in *Haddox* noted that "[j]urisdiction to invoke whistleblower protection requires that the whistleblower show that she 1) made a written report, 2) transmitted the written report to her supervisor, appointing authority, the state inspector general, or other

appropriate legal official; and 3) identified a violation of state or federal statute, rule, or regulation, or misuse of public resources in the report.” See *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, (citing *Wade v. Ohio Bureau of Worker’s Compensation*, 1999 Ohio App. LEXIS 2614, Franklin App. No. 98AP-997 (June 10, 1999) unreported citing to *State ex rel Cuyahoga Cty. SPBR*, 82 Ohio St. 3d 496, 696 N.E.2d 1054 (1998) and to *Chubb v. Ohio Bur. Of Worker’s Comp*, 81 Ohio St. 3d 275, 690 N.E.2d 1267 (1998)).

The *Haddox* court went on further to explain that “the requirement of a written communication, specifically addressed to an appropriate individual, is an essential element of whistleblower protection and will be strictly applied.” *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, (citing *Wade v. Ohio Bureau of Worker’s Compensation*, 1999 Ohio App. LEXIS 2614, Franklin App. No. 98AP-997 (June 10, 1999) unreported citing to *Kuch v. Structural Fibers, Inc.*, 78 Ohio St. 3d. 134, 141, 677 N.E.2d 308 (1997)). Therefore, in order to invoke this Board’s jurisdiction, an employee must first establish that he or she complied with the reporting requirements of R.C. 124.341.

Appellee is correct in its argument that the affidavit of Appellant Crawford filed with the Prosecutor’s office does not state a violation of any criminal offense, or for that matter, it does not allege a violation of any statute, rule or regulation. The affidavit states as follows:

Mr. Federer did not like my plant on my desk[,] he made several comments about my plant callin it ‘Seymour’ from the little shop of horrors. He made comments in directors (sic) meeting to this fact. I asked him several times if he wanted me to take the plant home, he would not answer me. One weekend I moved the plant[,] the (sic) following Monday, john came up to our office[,] I was making copies in the front office[,] John looked in my office[,] gave me a hug & kiss on the forehead. I was stunned & didn’t know what to say. At John’s cookout for the office before I left I went to shake John’s hand & thank him for the cookout. I got a partial hug from John.

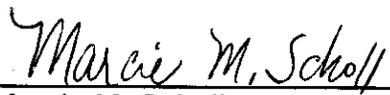
As can be seen from reading the above, Appellant Crawford makes no mention of the alleged violation of any criminal offense or any alleged violation of a statute, rule or regulation. Therefore, the requirement to do so as provided in the whistleblower statute is not met.

It can also be argued that Appellant Crawford's affidavit is not a report as required under the statute since it was a solicited affidavit from her in conjunction with an investigation being conducted by the Prosecutor's office. She did not file a report on her volition, but instead, responded to a request for information.

The record also indicates a transmission between Appellant Crawford and the Ohio Civil Rights Commission; however, that office is not a supervisor, appointing authority or other entity set forth in R.C. 124.341 which an employee is to send written communication to regarding the Appellee's alleged violation of law. Thus, such a filing does not meet the requirements of section 124.341 of the Ohio Revised Code.

In accordance with R.C. 124.341 and consistent with case law and similar state and federal procedures, an employee filing a whistleblower appeal is assigned both the burden of proof and the initial burden of production. The employee's initial burden of production includes demonstrating that the employee filed a report with the appropriate entity specifically fulfilling the requisite reporting requirements of the pertinent whistleblower statute and that thereafter disciplinary retaliatory action was taken against the employee as a result of the employee having filed a report pursuant to that statute.

Accordingly, Appellant Crawford has failed to demonstrate that she met the requisite reporting requirements set forth in R.C. 124.341, by failing to allege any specific violations of statute, rule, regulation or criminal offense. She also did not file the report on her own volition but instead responded to an on-going investigation request. Thus, since Appellant Crawford has failed to meet her prima facie burden it is my **RECOMMENDATION** that Appellee's Motion to Dismiss be granted and this appeal be **DISMISSED** for lack of subject matter jurisdiction pursuant to section 124.341 of the Ohio Revised Code.

  
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Marcie M. Scholl  
Administrative Law Judge