

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

SHELBA BRADLEY,

Appellant,

v.

Case Nos. 12-REM-05-0110
12-MIS-05-0111

DEPARTMENT OF TRANSPORTATION,

Appellee

ORDER

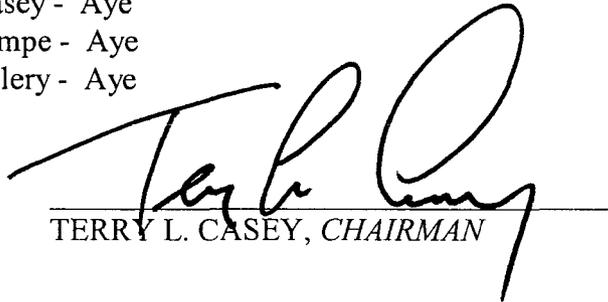
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the record and 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 Appellee's motions to dismiss be granted and Appellant's appeals **DISMISSED** due to her failure to appear, pursuant to Ohio Administrative Code § 124-11-19(A).



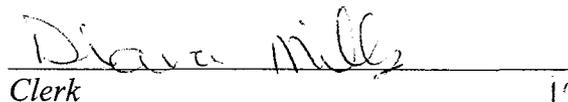
Casey - Aye
Lumpe - Aye
Tillery - Aye


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, December 20 2012.


Clerk

12-20-12

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**

Shelba Bradley,

Appellant,

v.

Department of Transportation,

Appellee.

Case Nos. 12-REM-05-0110
& 12-MIS-05-0111

October 11, 2012

BETH A. JEWELL
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

On August 10, 2012, Appellee filed a Motion to Dismiss for lack of jurisdiction, with supporting affidavits. Appellant did not file a response to the motion.

Ohio Adm. Code Rule 124-11-07 provides, in pertinent part, as follows (emphasis added):

(A) All motions shall state, with particularity, both the relief sought and the basis for such relief.

(1) All motions, and any supporting documentation shall be served on the opposing party.

(2) Motions to dismiss an appeal shall be supported by affidavits, made on personal knowledge, setting forth facts as would be admissible in evidence. Affidavits shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers referred to in an affidavit shall be attached thereto. *When a motion is made and supported as provided in this rule, an adverse party may not rest upon mere allegations or denials. An adverse party's response, by affidavit or otherwise, shall set forth specific facts showing there is a genuine issue in dispute.*

(C) Within ten calendar days of service of a non-procedural motion, a party shall serve a written response on the opposing party and file a copy of that response with the board. The board may rule on any

non-procedural motion once the time to respond has run. Upon motion of the affected party, the board may extend the time to reply to a non-procedural motion.

In the Motion to Dismiss, accompanied by the Affidavits of Megan Schenk, John Shore, and Kimberly Watson, Appellee avers that after a May 10, 2012 predisciplinary hearing, a meeting was held on May 16, 2012, with Appellant and two representatives of Appellee. Appellee avers that Labor Relations Officer (LRO) Megan Schenk informed Appellant at the meeting that she was being removed from her employment. Appellant then requested the opportunity to resign. LRO Schenk told Appellant that Appellant could resign in lieu of termination. LRO Schenk did not serve Appellant with the R.C. 124.34 Order of Removal that had been prepared. After LRO Schenk left the meeting, a human resources employee provided Appellant with a resignation form. Appellee's Chief Investigator, John Shore, was present when Appellant signed the resignation; Mr. Shore then escorted Appellant to her work area to collect her belongings and escorted her out of the building.

Because Appellant was proceeding *pro se*, rather than dismissing Appellant's appeal following her failure to submit a response to Appellee's motion to dismiss, the matter was scheduled for an oral argument/motion hearing before the Administrative Law Judge on Friday, October 5, 2012, at 10:00 a.m., to provide Appellant with one more opportunity to respond and submit evidence to support her constructive discharge allegation. Notice of the date and time was mailed to all parties, including Appellant, on August 29, 2012.

On October 4, 2012, Appellant telephoned this Board's offices, inquiring about a continuance of the October 5, 2012 hearing. Appellant faxed a request for continuance to this Board at 5:55 p.m. on October 4. The Administrative Law Judge denied the request for continuance in a Procedural Order issued on October 5, 2012. The hearing commenced on October 5, 2012 as scheduled. Appellant failed to appear. Appellee was present and represented by Timothy M. Miller and Brandon R. Gibbs, Assistant Ohio Attorneys General. Appellee moved to dismiss Appellant's appeal for failure to appear, in accordance with Ohio Adm. Code Rule 124-11-19(A), which provides as follows: "If neither the appellant nor appellant's authorized representative appears at a hearing, the board may dismiss the appeal."

Notice of the hearing was properly served on Appellant on August 29, 2012 by regular mail, and no good cause has been shown for Appellant's failure to appear. Based upon Appellant's failure, either to respond to Appellee's properly filed and supported Motion to Dismiss, or to appear at the oral argument/motion hearing, it is respectfully **RECOMMENDED** that Appellee's motions to dismiss,

SHELBA BRADLEY
Case No. 12-REM-05-0110
Page 3

submitted in accordance with Ohio Adm. Code Rules 124-11-07 and 124-11-19, be
GRANTED and this appeal be **DISMISSED**.



BETH A. JEWELL
Administrative Law Judge

BAJ:

cc: Shelba Bradley
Appellant

No Representative for Appellant

Dept of Transportation, Appellee

Timothy M. Miller
Brandon R. Gibbs
Assistant Ohio Attorneys General
Representing Appellee