

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

Randi Earnest,

Appellant,

v.

Case No. 2012-REM-12-0256

Department of Rehabilitation and Correction, Belmont Correctional Institution,

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. The Board understands that Appellee's action in removing Appellant caused significant disruption to Appellant. The Board also understands that Appellant has suffered a considerable drop in her pay, when comparing her compensation for her promoted position with Appellee to her (now diminished) compensation for her current position with the Department of Mental Health (DMH). This is the case, even though Appellant's current position with DMH is the same or substantially similar to the position Appellant occupied before she applied and was awarded her promotion to her position with Appellee.

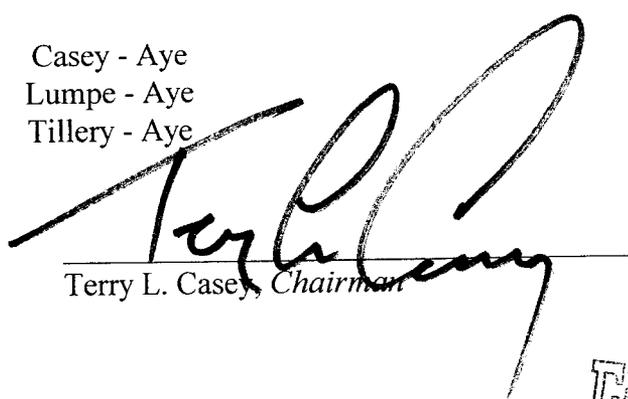
Yet, Appellant was removed while serving in a probationary period. The General Assembly has clearly indicated in R.C. 124.27 that a probationary employee removed or reduced for unsatisfactory service does not have a right to appeal the removal or reduction under R.C. 124.34. Thus, this Board lacks jurisdiction to consider Appellant's appeal of her probationary removal. Accordingly, this case must be dismissed.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to R.C. 124.27.

Casey - Aye

Lumpe - Aye

Tillery - Aye

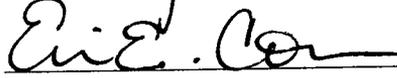

Terry L. Casey, *Chairman*

FILED
8/23/12

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, August 23, 2013.



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**

Randi Earnest

Case No. 12-REM-12-0256

Appellant

v.

May 30, 2013

Department of Rehabilitation & Correction,
Belmont Correctional Institution

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration on May 30, 2013, upon Appellee's Motion to Dismiss, filed on May 14, 2013. To date, Appellant Earnest has not filed a memorandum *contra*.

Appellee states in its Motion to Dismiss that Appellant Earnest began her employment with Appellee on July 29, 2012, in the position of Nurse Supervisor. That classification has been assigned a probationary period of 180 days. The probationary period would therefore have ended on January 25, 2013. Appellant Earnest was removed effective November 27, 2012, prior to the expiration of her probationary period. Also attached to the Motion to Dismiss was an affidavit of Warden Michele Miller, stating Appellant Earnest was removed during her probationary period. Additionally, Appellant Earnest signed a statement, dated July 30, 2012, acknowledging that she had to serve a 180 day probationary period.

Ohio Revised Code section 124.27(B) provides that an employee removed during his or her probationary period has no right of appeal to this Board. That statute states as follows, in pertinent part:

No appointment or promotion is final until the appointee has satisfactorily served the probationary period. If the service of the probationary employee is unsatisfactory, the employee may be removed or reduced at any time during the probationary period. If the appointing authority decides to remove a probationary employee in the service of the state, the appointing authority shall communicate

the removal to the director. **A probationary employee duly removed or reduced in position for unsatisfactory service does not have the right to appeal the removal or reduction under section 124.34 of the Revised Code.** (Emphasis added).

Since Appellant Earnest was probationarily removed from her position, this Board is divested of jurisdiction to hear her appeal. (See *Pawloski v. ODOT*, 10th Dist. No. 12AP-161, 2012-Ohio-4907).

Appellant Earnest filed a letter with this Board on January 30, 2013, wherein she stated she should not have been on probation "due to fact (sic) that I was an exempt employee demoting to another exempt position." As is stated in Appellee's Motion to Dismiss, Appellant Earnest was not demoted to another position as the position of Nurse Supervisor was the first position she held with Appellee. The fact that she was previously employed by another agency of the state does not negate the fact that the Nurse Supervisor position was an original appointment with Appellee and pursuant to section 124.27 of the Ohio Revised Code, all original appointments must serve a probationary period.

Appellant Earnest was removed during her probationary period. Because there is no right to appeal from a removal which occurs during the probationary period, I conclude that the State Personnel Board of Review does not have subject matter jurisdiction. Ohio Revised Code Section 124.27; *Walton v. Montgomery County Welfare Department* (1982), 69 Ohio St. 2d 58.

Therefore, I respectfully **RECOMMEND** this appeal be **DISMISSED** due to a lack of jurisdiction pursuant to section 124.27 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge

:mms