

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

JUDY N. SUMMERLIN,

Appellant,

v.

Case No. 12-SUS-03-0047

MONTGOMERY COUNTY DEPARTMENT
OF JOB AND FAMILY SERVICES,

Appellee

ORDER

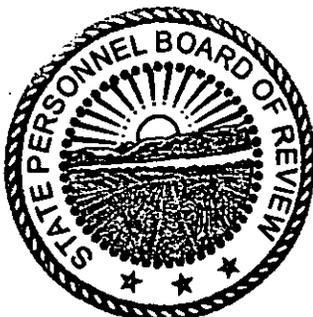
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

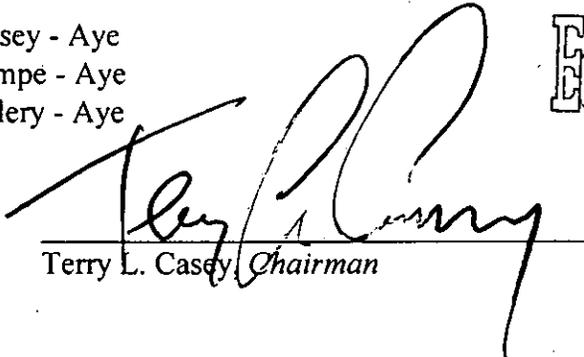
After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge. It is noted that, in Appellant's objections, Appellant asserts that the evidence presented at hearing failed to defeat Appellant's claim that she filed her appeal with this Board in a timely manner. Yet, neither Appellant nor any other witness was called to testify on her behalf in this matter. Moreover, even by the end of the hearing, the bulk of Appellee's rather persuasive evidence on this topic remained uncontroverted. Thus, after reviewing the record, this Board finds that the weight of the evidence is more than sufficient to demonstrate that Appellee has met its burden of proof. Therefore, we find that the final Order in this matter is supported by reliable, probative, and substantial evidence and is in accordance with law.

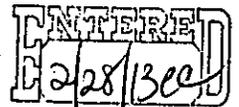
Further, in Appellant's objections, Appellant appears to raise original arguments regarding alleged whistleblower activities. This Board has jurisdiction over specified whistleblower appeals filed in accordance with R.C. 124.341, which sets forth the filing procedures and time limits for such filings with this Board. The record does not support a finding that Appellant complied with those procedures and time limits. Indeed, it is only now that Appellant appears to raise those arguments. Accordingly, this Board must find those arguments to be out of rule and, thus, beyond the scope of this Board's authority to further consider at this time.

Wherefore, it is hereby **ORDERED** that Appellant's appeal be **DISMISSED** for untimely filing, pursuant to 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, February 28 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**

Judy N. Summerlin,

Case No. 12-SUS-03-0047

Appellant

v.

January 9, 2013

Montgomery Co.,
Dept. of Job & Family Services,

Christopher R. Young
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to the Board's Order of Remand dated July 2, 2012, whereby the undersigned Administrative Law Judge was directed to further develop the record regarding what notice, if any, the Appellant received concerning the time limits for her to file this appeal from the 10 day suspension which she was issued.

As a result, a limited evidentiary hearing surrounding the notice requirement and the timeframe which she filed her appeal took place on January 7, 2012 at 10:00 a.m. Present at that limited evidentiary hearing was the Appellee, Montgomery Co., Dept. of Job & Family Services, who was present through their designee, Ms. Patty Baird, a Human Resources Coordinator who was represented by Ms. Julie A. Droessler, an Assistant Prosecuting Attorney and the Appellant, Judy N. Summerlin, a Child Welfare Caseworker Supervisor 2, who was represented by Ms. Robyn A. Traywick, Attorney at Law.

Prior to the start of the evidentiary hearing, the parties stipulated that the instant notice of appeal was filed by the Appellant, by herself, on March 9, 2012. Contained within this notice of appeal it was noted on said document, and stipulated to, that the Appellant received notice on February 14, 2012, of her suspension which was to be effective on February 20, 2012. Further, the parties stipulated that the Appellant received her letter of suspension which was dated February 14, 2012 (Appellee's Exhibit 1, page 3) on February 15, 2012 wherein she signed a receipt thereto. (Appellee's Exhibit 1, page 4).

The only witness to testify at this limited evidentiary hearing was Ms. Patty Baird, a Human Resources Coordinator, for the Montgomery County Department of Job and Family Services, Children's Services Division, who testified on behalf of the Appellee. However, it should be noted that when the Appellee rested on the presentation of their evidence, and upon cross-examination thereof, the Appellant, through counsel, chose not to testify in this matter, nor chose to have anyone to testify on her behalf.

Ms. Patty Baird, after duly having been sworn in, testified she is an employee for the Montgomery County Department of Job and Family Services, Children's Services Division, and currently holds a position of Human Resources Coordinator, and held the same position at the time of the incidents that occurred regarding the instant appeal. The witness, when questioned, identified Appellee's Exhibit 1, as a document containing four pages. First, the witness explained that pages 1 and 2, the disciplinary order at issue in this case were e-mailed to her in Adobe format from the Clerk of The Board of Commissioners, most likely on February 15, 2012. The witness testified that pages 3 and 4 of said document were also e-mailed to her at that same time as noted above but that the last page, the receipt form was left blank for her to obtain Ms. Summerlin's signature. Ms. Baird testified that on the morning of February 15, 2012, she met with Ms. Summerlin, to obtain her signature on the same and provide her copy. Present at the meeting as explained by the witness was Ms. Mary Ann Nelson, Ms. Summerlin's supervisor while she was in the Carehouse and Ms. Sandy Deweaver, her supervisor when she was going to be working in Adoptions.

When questioned, the witness testified that she did have Ms. Summerlin sign the above noted receipt form and that she copied the same and noted that she provided all four pages of the document evidenced by Appellee's Exhibit 1. Further, the witness testified that she did in fact have a discussion with Ms. Summerlin about the suspension which she received, when she was supposed to start the suspension and/or the effective date(s) of the suspension, along with telling her that the document had instructions for her to appeal the Board's decision. Further, when questioned, the witness testified that Ms. Summerlin did not ask her about filing an appeal. Furthermore, the witness testified when questioned, that she did not tell her about the time limits for filing an appeal as she does not know the time was for filing an appeal to the State Personnel Board of Review.

It should be noted that on page 2 of Appellee's Exhibit 1, Important Instructions To The Employee in bold letters states, "**Your appeal must actually be received and time-stamped by SPBR by the tenth calendar day from the date this Order was served.**" Additionally, it should be noted that on page 3 of Appellee's Exhibit 1, the letter of suspension it also states in the last paragraph, "You may appeal this suspension to the State Personnel Board of Review as outlined on the order form."

On cross examination, the witness again reiterated that she did not know about the time limits/deadlines for filing an appeal, nor did she tell Ms. Summerlin about filing an appeal after serving her with a copy of the Order. Specifically, when questioned, the witness explained that also did not state to Ms. Summerlin that she had 30 days in which to file an appeal. Additionally, when questioned, the witness testified that there was no separate paper or notice regarding the timeframe in which one is to file their appeal to the State Personnel Board of Review given to Ms. Summerlin, as well.

After the Appellee closed the presentation of their evidence, they moved for the submission of Appellee's Exhibit 1, which was admitted. The Appellant, through counsel, was asked if they had any witness(s) to testify on their own behalf, which she stated that did not. Thus, Appellee's witness testimony was uncontroverted.

The issue in this matter on remand was directed to further develop the record regarding what notice, if any, the Appellant received concerning the time limits for her to file this appeal from the 10 day suspension which she was issued. While the Appellant through counsel made reference to the Appellee's agent misinforming the Appellant by telling her an improper timeframe to file the instant appeal and not adequately giving her enough information on how to file an appeal to this Board, the evidence at the hearing did not bear this out. To the contrary, the evidence revealed that the Appellant received the instant 124.34 Order of Suspension which included the timeframe for filing an appeal to this Board on the second page thereof, along with a letter stating that she could file an appeal with the State Personnel Board of Review.

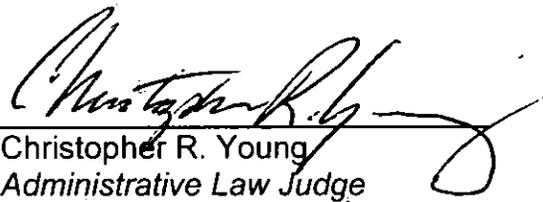
Thus, I conclude that the Appellant, Judy Summerlin, was suspended for 10 days effective February 20, 2012, for neglect of duty pursuant to Ohio Revised Code Section 124.34. I further conclude that the Appellant in her notice of appeal stated that she received notice of the suspension on February 14, 2012, which was

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to be effective on February 20, 2012. I also further conclude pursuant to the testimony of Ms. Patty Baird, that she on February 15, 2012, hand delivered the February 14, 2012 letter and suspension order to Ms. Summerlin.

Thus, I conclude that the State Personnel Board of Review is without jurisdiction to hear this appeal because the appeal was not filed within ten (10) calendar days following the date on which the order of suspension was served on the employee, as required by Ohio Revised Code Section 124.34.

Therefore, I respectfully **RECOMMEND** that this appeal be **DISMISSED**.


Christopher R. Young
Administrative Law Judge

CRY: