

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

James Demyan,

Appellant,

v.

Case Nos. 2013-ABL-06-0157
2013-LAY-06-0158
2013-RED-06-0159

Department of Rehabilitation & Correction,
Grafton Correction Institution,

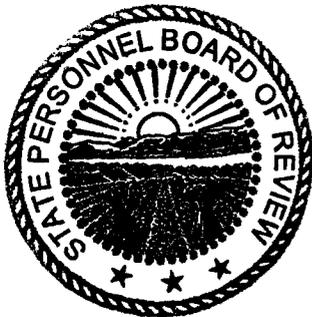
Appellee.

ORDER

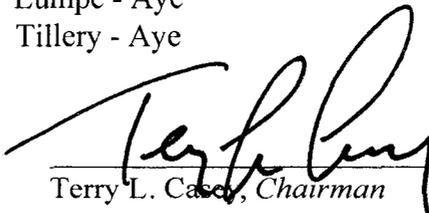
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, 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 appeals are **DISMISSED** for Appellant's failure to timely file the appeals as set forth in O.A.C. 124-1-03 (B) and (E) and for Appellant's failure to respond to a dispositive motion pursuant to O.A.C. 124-11-07 (A) (2) and (C).



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 13, 2014.



Clerk

2/13/14 ec

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**

James Demyan,

Case No. 2013-ABL-06-0157
Case No. 2013-LAY-06-0158
Case No. 2013-RED-06-0159

Appellant

v.

January 3, 2014

Department of Rehab. & Corr.,
Grafton Corr. Institution

Appellee

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration due to the Appellee's December 18, 2013, filing of motion to dismiss regarding the above-captioned case, and after a status conference was held on September 25, 2013. The motion to dismiss contained: a memorandum in support and the affidavit of Ms. Karen Maschmeier, a Labor Relations Officer 2 at the Department of Rehabilitation and Correction (DRC), Grafton Correctional Institution (GCI). Appellant was provided with the requisite amount of time to file a memorandum contra to Appellee's motion to dismiss, but, to date has not done so.

The Appellee in its motion to dismiss asserts that the Appellant herein simply did not file his appeals in a timely fashion. In order to invoke this Board's jurisdiction in both the abolishment and layoff appeals, one would have to file their appeal to this Board within ten (10) days, after having received notice of the action. Further, in order to invoke this Board's jurisdiction with respect to the reduction appeal one would have to file within ninety (90) days of the actual imposition of the reduction. In the case at hand, clearly the Appellant, Mr. Demyan, did not file his appeal until almost a year and a half after he had been notified of the action by the Appellee.

For clarification, the above noted appeals arose as result of Mr. Demyan filing the above noted appeals on June 20, 2013, after he was notified of the abolishment of his position as a Correctional Farm Assistant Supervisor and a resultant layoff on

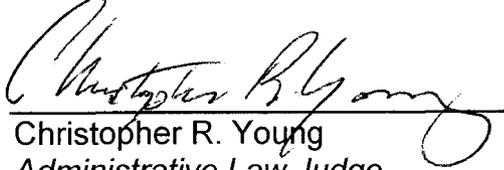
or about August 16, 2011. Further, it should be noted that on November 7, 2011, Mr. Demyan was notified that in accordance with Article 18 of the contract between the State of Ohio and the Ohio Civil Service Employees Association he was being displaced into a Corrections Officer's position at GCI. Information in the case file revealed that on January 1, 2012, Mr. Demyan was displaced into the Correction Officer's position, a position he still holds today. Moreover, it must be noted all of this arose as a result of the State of Ohio proposed sale of the GCI to a private entity, thus the DRC went forward with plans to abolish the farming operations, which ultimately fell through. Subsequently, as a result of the above noted all of the full-time farming positions at GCI were eliminated, with the proviso that some of the farming operations are occasionally overseen by full-time employees from the Mansfield Correctional Institution (MANCI). Additionally, as was stated at the status conference, as well as pointed out in Appellee's memorandum in support, in July 2013, Mr. Demyan was recalled into a vacant Correctional Farm Coordinator's position at MANCI, but he declined to take it.

Thus, I find that the State Personnel Board of Review is without jurisdiction to hear this appeal because the appeal was not filed within ten (10) days after the Appellant received notice of the abolishment and layoff, as required by Ohio Administrative Code Section 124-1-03(B), as well as the reduction appeal was not filed within ninety (90) days after actual imposition of the reduction as required by Ohio Administrative Code Section 124-1-03(E).

Additionally, O.A.C. 124-11-07 sets forth the motions practice before this Board. O.A.C. 124-11-07 (A)(2) indicates that when a party files a dispositive motion, then an adverse party must respond affirmatively and show that there is a genuine issue in dispute. O.A.C. 124-11-07 (C) sets forth a ten-day time frame to respond to dispositive motions, such as the instant motion to dismiss. Appellant has failed to file the required response to Appellee's motion to dismiss and thus, has failed to comply with O.A.C. 124-11-07.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the above captioned appeals for Appellant's failure to timely file the above noted appeals as set forth in O.A.C. 124-1-03 (B and (E). Further, I would also **RECOMMEND** that the State Personnel Board of Review **DISMISS** the above captioned appeal for failing to respond to a dispositive motion pursuant to O.A.C. 124-11-07 (A) (2) and (C).


Christopher R. Young
Administrative Law Judge