STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Brad Kidwell,

Appellant,

v. Case Nos. 2013-REM-10-0283
2013-RED-10-0284
2013-MIS-10-0285

Clermont County Department of Job & Family Services,

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 Appellee's motion is **GRANTED** and the three instant appeals are **DISMISSED** for lack of jurisdiction over their respective subject matter, pursuant to R.C. 124.27 and 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, March 13, 2014.

Clerk

NOTE: *Please see the reverse side of this Order* ***or*** *the attachment to this Order for information regarding your appeal rights.*

3/14/14

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Brad Kidwell	Case Nos. 2013-REM-10-0283 2013-RED-10-0284 2013-MIS-10-0285
Appellant	
v.	February 13, 2014
Clermont County Department of Job & Family Services	
Appellee	James R. Sprague *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes come on due to Appellant's October 28, 2013 filing of appeals from his probationary reduction from the position of Deputy Director back to his most recently held former position of Case Manager Supervisor 2. On or about July 31, 2013, Appellant received a communication informing him of this reduction and his return to his former position. The effective date of the reduction was August 7, 2013.

Following this Board's receipt of Appellant's appeals, the records for these appeals were developed through Procedural Order/Questionnaire and a pre-hearing was scheduled. The pre-hearing was subsequently continued pursuant to a joint motion filed by the parties to pursue settlement negotiations, which ultimately proved unsuccessful.

Accordingly, on January 27, 2014, Appellee filed Appellee's Motion to Dismiss Appeal and accompanying pertinent documents. On February 11, 2014, Appellant filed Appellant's Memorandum in Opposition to Appellee's Motion to Dismiss, the Affidavit of Appellant, and accompanying pertinent documents.

The principal argument advanced by Appellee is that this Board lacks jurisdiction over the subject matter of the instant appeals. Appellee asserts this lack of jurisdiction because Appellant's appeals all involve Appellant pursing a remedy

for his reduction from his Deputy Director position in which Appellant was serving a 120-day probation period.

R.C. 124.27 (B.) provides that an employee who is duly removed or reduced for "unsatisfactory service" during the employee's probationary period lacks standing to appeal the matter pursuant to R.C. 124.34.

However, Appellant argues that Appellant was not removed or reduced for "unsatisfactory service" and that Appellee has not provided any materials into the records to substantiate any argument to that effect. Appellant raises an interesting question, although not one of first impression.

Here, Appellee does not appear to have made a finding of "unsatisfactory service" concerning Appellant's service in his short duration as Deputy Director. Unfortunately, however, for Appellant and all those employees similarly situated, the Revised Code does not set forth any jurisdiction for this Board to consider whether Appellant was or was not reduced for "unsatisfactory service". Since Appellant Board cannot overcome this initial threshold to potentially establish jurisdiction over these matters, this Board must grant Appellee's motion to dismiss.

There is certainly nothing in the records to suggest that Appellee is contemplating any discipline of Appellant. However, if Appellee does provide Appellant with discipline (that would otherwise come within the jurisdiction of this Board), then Appellant may timely file an appeal from same and this Board could then review that matter.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the three instant appeals for lack of jurisdiction over their respective subject matter, pursuant to R.C. 124.27 and R.C. 124.34.

James R. Sprague
Administrative Law Judge