

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

Cheryl B. Lee,

Appellant,

v.

Case No. 2013-OSH-06-0152

Cuyahoga Metro Housing Authority,

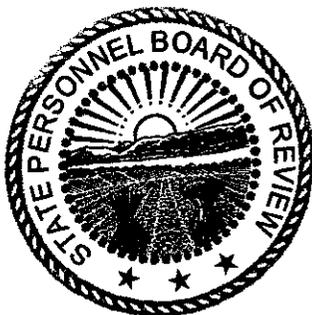
Appellee,

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.

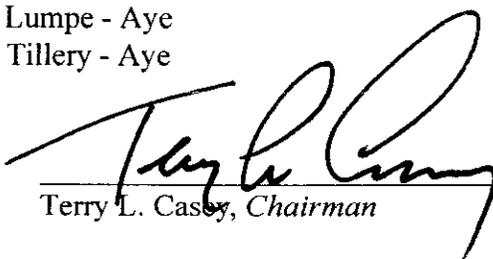
Wherefore, it is hereby **ORDERED** that the instant appeal is **DISMISSED** based upon the Appellant's failure to prosecute her appeal pursuant to O.A.C. 124-11-07 (A) (2) and (C), and 124-9-05 (C).



Casey - Aye

Lumpe - Aye

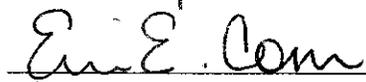
Tillery - Aye


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, July 17, 2014.


Erin E. Com
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**

Cheryl B. Lee

Case No. 2013-OSH-06-0152

Appellant

v.

May 30, 2014

Cuyahoga Metro Housing Authority

Christopher R. Young

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration on May 30, 2014, and after a Procedural Order and Questionnaire regarding an alleged OSHA claim was mailed to the Appellant with the direction that the questionnaire was to be completed and filed with the State Personnel Board of Review on or before August 16, 2013. That Procedural Order also stated in bold letters:

. . . . If the questionnaire is not completed and returned by the date due, then this Board may take whatever action is appropriate.

Additionally, it should be noted that on August 9, 2013, the Appellee, Cuyahoga Metro Housing Authority, filed a Motion to Dismiss in the instant OSHA claim, as well as in a companion whistleblower claim, under case number 2013-WHB-06-0151. On August 15, 2013, the Appellant filed a request for an extension of time to file a reply to the Procedural Order, as well as the Motion to Dismiss. On August 16, 2013, the undersigned Administrative Law Judge granted a 30 day extension of time to the Appellant to file her response to the Procedural Order and to file a Memorandum *Contra* to the Motion to Dismiss, which was due on or before September 16, 2013. On September 11, 2013, the Appellant filed an additional request for an extension of time to file a response to the Procedural Order and the Motion to Dismiss. Thereafter, on September 12, 2013, the Appellant was granted an additional extension of time to file her response to the Procedural Order and the Motion to Dismiss, due on or before September 23, 2013.

The Procedural Order and the Questionnaire was mailed to the Appellant at her address located at 5977 Bear Creek Dr. # 319, Bedford Heights, OH 44146, by certified mail, return receipt requested; and a receipt return to the Personnel Board of Review reflects that the order and questionnaire was delivered to Ms. Cheryl Lee, and the date stamp by the United States Postal Service as having been delivered on August 14, 2013, at that address.

Further, Ohio Administrative Code Section 124-9-05 (C) states:

* * *

Questionnaire may be used as the sole basis for deciding any appeal. Failure to respond to a questionnaire may result in dismissal of the case.

* * *

Appellant has not returned the completed questionnaire as of this date. Consequently, I **RECOMMEND** that this appeal be **DISMISSED** for failure to comply with the Procedural Order and to complete and file the questionnaire. (See, *Edison v. Franklin County Children Services Board* (July 20, 1992), Franklin County, case number 91CVF-07-5921, unreported, and *Adamasek V. Ohio Department of Administrative Services* (January 31, 1994), Franklin County, case number 93CVF-08-6104, unreported.

Additionally, the Appellant had to file its response to the motion to dismiss on or before September 23, 2013, as well. Appellant was provided the requisite timeframe in which to respond to Appellee's motion to dismiss, but, to date, she has not done so.

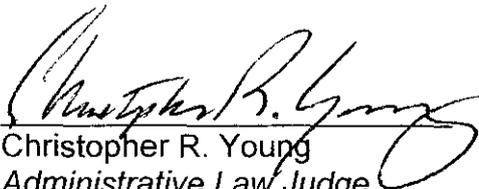
O.A.C. 124-11-07 (A) (2) and (C) combine to require an opposing party to file a memorandum *contra* to properly filed and support of motion to dismiss within 10 days of service of the motion to dismiss. Appellant has not complied with these filing requirements.

To summarize, Appellant has not complied with the filing requirements set forth in O.A.C.124-11-07 (A) (2) and (C), regarding the filing of a memorandum in

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opposition to a motion to dismiss, as well as filing a response to the procedural order and questionnaire.

Therefore, I respectfully **RECOMMEND** that this Board **GRANT** Appellee's Motion to Dismiss and **DISMISS** the instant appeal based upon the Appellant's failure to prosecute her appeal pursuant to O.A.C. 124-11-07 (A) (2) and (C), and 124-9-05 (C) .


Christopher R. Young
Administrative Law Judge