

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

Kevin Martin,

Appellant,

v.

Case No. 2013-REM-06-0155

Ohio Public Employees Retirement System,

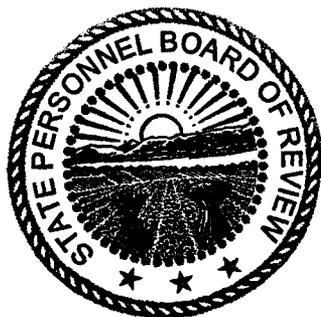
Appellee,

ORDER

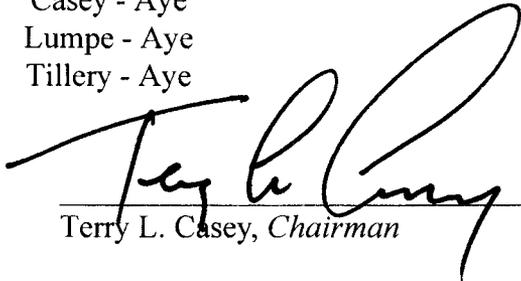
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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** due to a lack of jurisdiction pursuant to section 124.03 of the Ohio Revised Code.



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 24, 2014.



Erin E. Conner
Clerk

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

2/24/14ec

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

Kevin Martin,

Case No. 2013-REM-06-0155

Appellant

v.

January 9, 2014

Ohio Public Employees Retirement System

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter comes on for consideration on January 9, 2013. Appellant Martin filed an appeal of his removal from the Ohio Public Employees Retirement System (OPERS) on June 20, 2013.

This Board, unlike a court of general jurisdiction, only has the authority granted to it by statute. Therefore, this Board “possesses only such powers and duties as conferred on it by the provisions of the enabling statute...” *Ketron v. Ohio Dept. of Transportation* (1991), 61 Ohio App.3d 657, 659 (citing *Hansen v. State Personnel Board of Review* (1977), 51 Ohio App. 2d 7). As such, the board may only hear discharge appeals from employees in the “classified state service.” R.C. section 124.03(A)(1). The term “Classified service” is defined in section 124.01(C) of the Ohio Revised Code as:

. . . the competitive classified civil service of the state, the several counties, cities, city health districts, general health districts, and city school districts of the state, and civil service townships.

The term “State service” is defined in section 124.01(B) of the Ohio Revised Code as, in pertinent part:

. . . all offices and positions in the service of the state and the counties and general health districts of the state.

Lastly, the terms "Service of the state" or "civil service of the state" is defined in section 124.01(K) of the Ohio Revised Code as:

(K) "Service of the state" or "civil service of the state" includes all offices and positions of trust or employment with the government of the state. "Service of the state" and "civil service of the state" do not include offices and positions of trust or employment with state-supported colleges and universities, counties, cities, city health districts, city school districts, general health districts, or civil service townships of the state, or with the nonprofit corporation formed under section 187.01 of the Revised Code.

Thus, one can reasonably infer that a person who is not an employee of the government is not in the service of the state and is therefore not under the jurisdiction of this Board. Appellant Martin was employed by OPERS and that entity does not exercise any function of the state government. "As used in Title 1 of the Revised Code, 'state agency', except as otherwise provided in the Title, means every organized body, office, or agency established by the laws of the state for the exercise of any function of state government." Section 1.60 of the Ohio Revised Code.

OPERS does not perform any "function of state government". See *2004 Ohio Atty. Gen. Op. 2004-014, 2004 Ohio Ag Lexis 12, at 39-44*. Rather, OPERS functions on behalf of its stakeholders. The General Assembly expressly charged the OPERS board of trustees with the duty to administer the funds "solely in the interest of participants and beneficiaries; for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the public employees retirement system." Section 145.11(A) of the Ohio Revised Code. A trustee, whose duty is to act solely in the interest of the participants and beneficiaries, does not function as an agent of the state. See *1996 Ohio Atty. Gen. Op. No. 96-032, 1996 Ohio AG Lexis 34, at 8*. In this regard, OPERS is comparable to the State Teachers Retirement System of Ohio (STRS), and the Tenth District Court of Appeals has already recognized that employees of STRS are not in the service of the state. See *In re Appeal of Ford*, 3 Ohio App.3d 416, 420 (10th App. Dist. 1982).

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Because the retirement system has not been created to exercise functions of state government on behalf of the state, the relationship between the state of Ohio and OPERS is not one of agency. Hence, an employee of OPERS is not an employee of the government of the state. Therefore, this Board does not possess jurisdiction to hear the appeal of Appellant Martin, as he is not an employee in the classified service of the state.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** due to a lack of jurisdiction pursuant to section 124.03 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge

:mms