STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Thomas R. Staup,

Appellant,

v.

Case Nos. 2013-REM-07-0186
2013-SUS-07-0187
2013-FIN-07-0188
2013-MIS-07-0189

Department of Rehabilitation & Correction,
Toledo Correctional 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 four instant appeals are **DISMISSED** for lack of jurisdiction over their respective subject matters, pursuant to Ohio Revised Code Sections 124.03 and 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, November 07, 2013.

Clerk

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

ENTERED 11-7-13

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Thomas R. Staup,	Case Nos. 2013-REM-07-0186 2013-SUS-07-0187 2013-FIN-07-0188 2013-MIS-07-0189
Appellant	
v.	October 1, 2013
Department of Rehabilitation and Correction, Toledo Correctional Institution,	
Appellee	James R. Sprague *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These matters came on for consideration on September 30, 2013, upon the occurrence of a Pre-Hearing. Based upon the extant records and upon the parties' presentations at Pre-Hearing, I find that Appellant has filed these appeals to protest his five-day fine, five-day suspension, and pre-disciplinary conference.

It is useful to set forth several facts that bear upon these matters. Appellant serves as a Correctional Lieutenant (an FLSA-overtime exempt position) at Appellee's Toledo Correctional Institution (TCI). During the course of his duties, Appellant became injured. Appellant then was approved for Occupational Injury Leave (OIL) running from approximately July 5, 2013 to December 12, 2013.

Effective with the pay period ending April 20, 2013, Appellant received a five-day suspension. Effective with the pay period ending July 6, 2013, Appellant received a five-day fine. Appellant had an additional pre-disciplinary conference on or about July 19, 2013. However, until Appellant comes off OIL, Appellee will likely withhold its decision regarding possible discipline concerning the subject matter of that conference.

Unlike a court, the State Personnel Board of Review has jurisdiction only where it has been explicitly conferred by the Ohio General Assembly. R.C. 124.03 grants this Board authority to review various disciplinary actions of appointing

authorities. However, that jurisdiction does not extend to five-day fines or five-day suspensions given to FLSA-overtime exempt employees such as Appellant. Further, as noted, Appellee is withholding its decision concerning Appellant's most recent pre-disciplinary conference pending Appellant's completion of his time on OIL. Thus, there is nothing in Appellee's actions at this point that would invoke this Board's disciplinary jurisdiction.

Should Appellant receive discipline of greater than a five-day fine or a five-day suspension, including a reduction in rank, a suspension and a reduction in rank, or a removal, then Appellant may timely file an additional appeal with this Board, should he so choose. That appeal, if forthcoming, should be filed within 10 days of Appellant's receiving the pertinent R.C. 124.34 disciplinary Order from Appellee.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the four instant appeals for lack of jurisdiction over their respective subject matter, pursuant to R.C. 124.03 and R.C. 124.34.

James R. Sprague
Administrative Law Judge

JRS: