

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

Regina Macioce-Yodzis,

Appellant,

v.

Case No. 2013-SUS-05-0125

Department of Transportation,

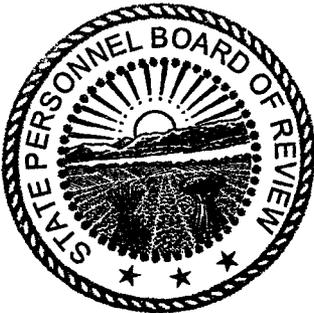
Appellee.

ORDER

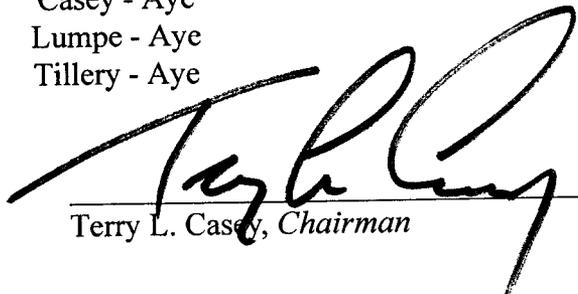
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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** for lack of jurisdiction.



Casey - Aye
Lumpe - Aye
Tillery - Aye

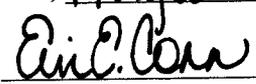


Terry L. Casey, *Chairman*

CERTIFICATION

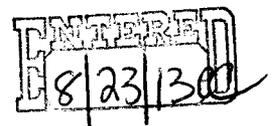
The State of Ohio, State Personnel Board of Review, ss:

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, August 23, 2013.



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**

Regina Macioce-Yodzis,

Case No. 13-SUS-05-0125

Appellant

v.

July 9, 2013

Dept. of Transportation,

Christopher R. Young

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellant's May 23, 2013 appeal of a one day (8 hour) working suspension which was imposed on her. On June 26, 2013, the Appellee filed a motion to dismiss this matter based on the fact that she is an overtime exempt employee, who does not have the right to file an appeal to this Board if she was given a one day (8 hour) working suspension. Appellant Macioce-Yodzis did not file a reply to Appellee's motion to dismiss.

Attached to the Appellee's motion to dismiss was a document establishing that Appellant Macioce-Yodzis is an overtime exempt employee in her position as an Administrative Assistant 3 (now known as Program Administrator 2). Attached as Exhibit A was an affidavit of Lizabeth J. Dible. The affidavit states Appellant Macioce-Yodzis is designated an overtime exempt employee.

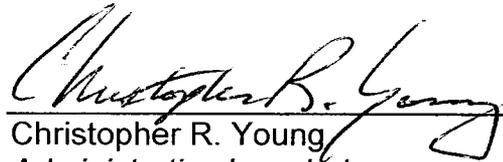
Section 124.34(B) of the Ohio Revised Code states as follows, in pertinent part:

(B) In case of a reduction, a suspension of more than forty work hours in the case of an employee exempt from the payment of overtime compensation, **a suspension of more than twenty-four work hours in the case of an employee required to be paid overtime compensation**, a fine of more than forty hours' pay in the case of an employee exempt from the payment of overtime compensation, a fine of more than twenty-four hours' pay in the case of an employee required to be paid overtime compensation, or removal, except for the reduction or removal of a probationary

employee, the appointing authority shall serve the employee with a copy of the order of reduction, fine, suspension, or removal, which order shall state the reasons for the action. (Emphasis added).

As can be seen from the above statute, there is no requirement to serve an order to an overtime exempt employee for a one day (8 hour) working suspension. Since there is no order required to be filed, then there is no right of appeal to this Board. Since Appellant Macioce-Yodzis's was issued a one day (8 hour) working suspension, this Board is without jurisdiction to hear her appeal.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** as the Board lacks jurisdiction over one day (8 hour) working suspension of an overtime exempt employee.


Christopher R. Young
Administrative Law Judge

CRY: