

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Jon L. Austin,

Appellant,

v.

Case No. 2013-SUS-06-0156

Department of Developmental Disabilities,

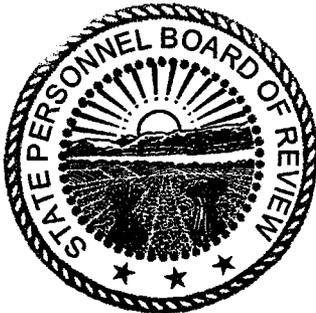
Appellee.

ORDER

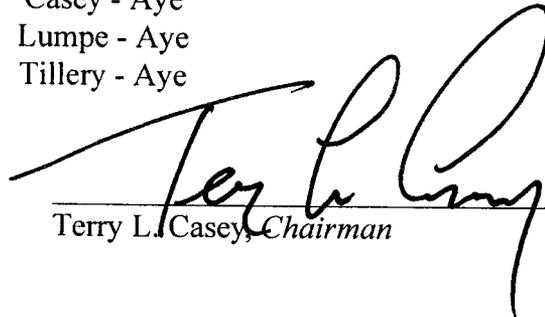
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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** the appeal is **DISMISSED** for lack of subject matter jurisdiction, pursuant to Section 124.34(B) of the Ohio Revised Code.



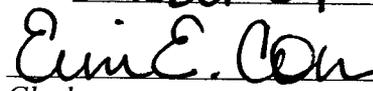
Casey - Aye
Lumpe - Aye
Tillery - Aye


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, October 09, 2013.


Erin E. Con
Clerk

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

10/9/13cc

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

Jon L. Austin

Case No. 2013-SUS-06-0156

Appellant

v.

September 3, 2013

Department of Developmental Disabilities

Appellee

Marcie M. Scholl

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration on September 3, 2013. I find that Appellant has filed this appeal to protest his five day suspension.

Unlike a court, the State Personnel Board of Review has jurisdiction only when it has been explicitly conferred upon it by the Ohio General Assembly. Ohio Revised Code Section 124.34(B) states the following with regard to appeals to this Board:

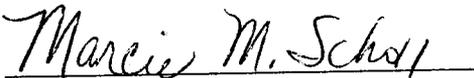
(B) In case of a reduction, **a suspension of more than forty work hours in the case of an employee exempt from the payment of overtime compensation**, a suspension of more than twenty-four work hours in the case of an employee required to be paid overtime compensation, a fine of more than forty hours'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

Within ten days following the date on which the order is served or, in the case of an employee in the career professional service of the department of transportation, within ten days following the filing of a removal order, the employee, except as otherwise provided in this

section, may file an appeal of the order in writing with the state personnel board of review or the commission.

As can be seen from reading the above statute, there is no requirement for an order to be served on an overtime exempt employee who is being suspended for forty work hours or less. In both of the responses to this Board's Procedural Order and Questionnaire, dated August 8, 2013, Appellee and Appellant indicated Appellant Austin was exempt from overtime compensation. Therefore, his suspension of five working days or forty hours is not appealable to this Board since the suspension was not for *more* than forty hours.

Therefore, I respectfully **RECOMMEND** that this appeal be **DISMISSED** for lack of subject matter jurisdiction pursuant to section 124.34(B) of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge

:mms