

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

Tayba Tahir,

Appellant,

v.

Case No. 2013-SUS-09-0257

University of Akron,

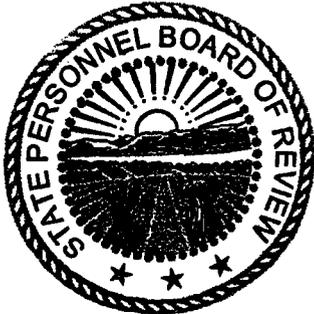
Appellee.

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.

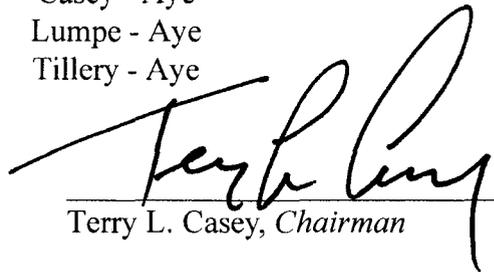
Wherefore, it is hereby **ORDERED** that the appeal is **DISMISSED** for lack of subject matter jurisdiction pursuant to section 124.34(B) of the Ohio Revised Code.



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, February 13, 2014.



Erin E. Con
Clerk

2/13/14

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**

Tayba Tahir,

Case No. 2013-SUS-09-0257

Appellant

v.

January 9, 2014

University of Akron

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration on January 8, 2014, upon Appellee's Motion to Dismiss, filed on November 21, 2013. To date, Appellant has not filed a memorandum *contra*. I find that Appellant has filed this appeal to protest her five day, forty hour 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. Thus, this Board does not possess jurisdiction over an overtime exempt employee suspended for a period of forty or less work hours. In the response to this Board's Procedural Order and Questionnaire, dated November 21, 2013, Appellee indicated Appellant Tahir was exempt from overtime compensation. Attached to the questionnaire response was the job posting for Appellant Tahir, which indicates the position she holds, Director, Polymer Training Center, is exempt under the FLSA. In the affidavit of Mark G. Stasitis, Director of Labor Relations and Immigration Services for Appellee, which was attached to Appellee's Motion to Dismiss, Mr. Stasitis confirms Appellant Tahir was an overtime exempt employee. Therefore, her 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