

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

Krisa Rhodes,

*Appellant,*

v.

Case No. 2013-WHB-05-0122

Fairfield County Job & Family Services,

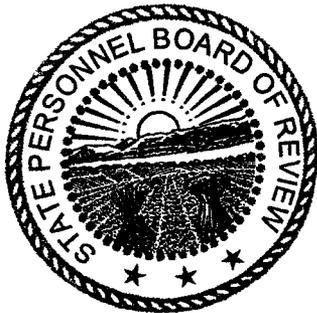
*Appellee.*

**ORDER**

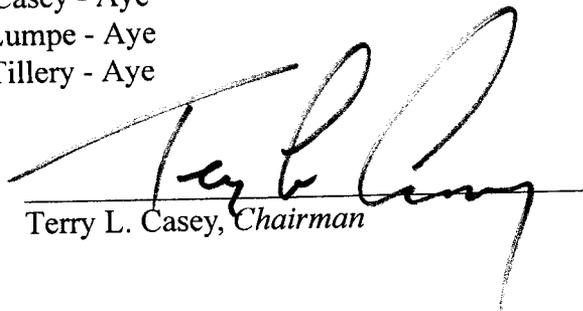
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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.



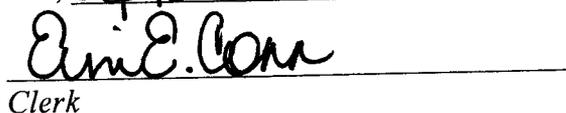
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
Terry L. Casey, *Chairman*

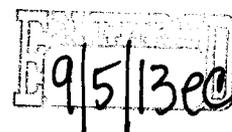
**CERTIFICATION**

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, September 05, 2013.

  
Erin E. Bonn  
*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**

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| Krisa Rhodes,                          | Case No. 2013-WHB-05-0122                            |
| <i>Appellant</i>                       |  |
| v.                                     | August 7, 2013                                       |
| Fairfield County Job & Family Services |  |
| <i>Appellee</i>                        | Jeannette E. Gunn<br><i>Administrative Law Judge</i> |

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on pursuant to Appellant's Response to this Board's Procedural Order and Questionnaire, filed with the Board on June 24, 2013, and Appellee's subsequent Motion to Dismiss, filed with the Board on June 27, 2013. Appellant was instructed by the Board to indicate whether or not she had filed a written report with her supervisor or other pertinent official named in Ohio Revised Code Section 124.341 concerning alleged violations of State or federal statutes, rules, or regulations, or concerning the misuse of public resources. Appellant indicated in her response that a public record was created by a stenographer keeping a record of the Fairfield County Commissioner's April 23, 2013, meeting, at which her husband spoke on her behalf to report an "abuse of power" by Appellant's supervisor; she asserted that the public record constituted her written report, and that she believed that her supervisor's actions violated R.C. 124.56.

Appellee argued in its Motion to Dismiss that the meeting minutes created by the recording stenographer or her husband's oral comments was insufficient to constitute the "written report" required by R.C. 124.341.

**CONCLUSIONS OF LAW**

This Board has jurisdiction to consider retaliatory discipline arising pursuant to the report of violations of state or federal statutes, rules, or regulations, or the misuse of public resources. See, R.C. 124.341.

In a “whistleblower” appeal, the employee bears the burden to prove, by a preponderance of the evidence, that the disciplinary or retaliatory action taken by the employee’s appointing authority was the result of the employee making a report under the pertinent statute. Case law has established that the framework for the order and presentation of evidence first articulated by the United States Supreme Court in *McDonnell Douglas v. Green* (1973), 411 U.S. 792, is appropriate in a whistleblower appeal brought under O.R.C. 124.341. See, *Mark Leslie v. Ohio Department of Development* (2006), Franklin County No. 05CVF-05-4401, unreported.

An employee must first establish a *prima facie* case to support his or her claim under O.R.C. 124.341. The burden of production then shifts to the appointing authority to rebut the employee's evidence by articulating a legitimate, non-retaliatory reason for its employment decision. If the appointing authority satisfies that burden of production, the burden of persuasion shifts to the employee to prove that the appointing authority's stated reason is a pretext for retaliation.

R.C. 124.341 states, in pertinent part:

(A) If an employee in the classified or unclassified civil service becomes aware in the course of employment of a violation of state or federal statutes, rules, or regulations or the misuse of public resources, and the employee’s supervisor or appointing authority has authority to correct the violation or misuse, the employee may file a written report identifying the violation or misuse with the supervisor or appointing authority.

If the employee reasonably believes that a violation or misuse of public resources is a criminal offense, the employee, in addition to or instead of filing a written report with the supervisor or appointing authority, may report it to a prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation, to a peace officer, as defined in section 2935.01 of the Revised Code, or, if the violation or misuse of public resources is within the jurisdiction of the inspector general, to the inspector general in accordance with section 121.46 of the Revised Code. In addition to that report, if the employee reasonably believes the violation or misuse is also a violation of Chapter 102., section 2921.42, or section

2921.43 of the Revised Code, the employee may report it to the appropriate ethics commission.

(B) Except as otherwise provided in division (C) of this section, no officer or employee in the classified or unclassified civil service shall take any disciplinary action against an employee in the classified or unclassified civil service for making any report authorized by division (A) of this section, including, without limitation, doing any of the following:

- (1) Removing or suspending the employee from employment;
- (2) Withholding from the employee salary increases or employee benefits to which the employee is otherwise entitled;
- (3) Transferring or reassigning the employee;
- (4) Denying the employee promotion that otherwise would have been received;
- (5) Reducing the employee in pay or position.

In order to establish a *prima facie* case, thereby invoking the jurisdiction of this Board and the protection of R.C. 124.341, an employee in the classified or unclassified civil service must demonstrate that he or she properly reported an alleged violation or violations of state or federal statutes, rules, or regulations, or misuse of public resources that he or she became aware of during the course of his or her employment. The employee must show that he or she (1) made a written report, (2) that was transmitted to his/her supervisor, appointing authority, the state inspector general, or other appropriate legal official, (3) which identified a violation of a state or federal statute, rule, or regulation, or a misuse of public resources. *Vivo v. Ohio Bur. of Workers' Comp.* (Dec. 8, 2009), 10<sup>th</sup> Dist. No. 09AP-110, citing *Wade v. Ohio Bur. of Workers' Comp.* (June 10, 1999), 10th Dist. No. 98AP-997. The employee must also demonstrate that one or more prohibited retaliatory actions were taken by Appellee subsequent to his or her protected reporting.

Upon a review of the document referenced and provided in support of Appellant's response to this Board's June 7, 2013, Procedural Order and

Questionnaire, I find that Appellant has failed to establish her compliance with the reporting requirements of R.C. 124.341. The document submitted by Appellant was created not by Appellant, but by a third party, and memorializes oral comments made by an individual (Appellant's husband) who was not employed by Appellee, was not disciplined by Appellee, and is not a party to the instant appeal. Case law requires that an employee personally comply with the requirements of R.C. 124.341 in order to claim the protections of the statute. *Harlow v. Dept. of Youth Services* (Sept. 18, 2009), SPBR Case No. 09-WHB-02-0050. Even assuming, *arguendo*, that the document provided by Appellant was sufficient to constitute a written report, I note that there is no indication that Appellant provided the document to one of the appropriate individuals identified by R.C. 124.341, and that the document contains no information to identify a specific violation or violations of state or federal statutes, rules, or regulations, or misuse of public resources.

Therefore, because Appellant's response is insufficient to establish a *prima facie* case, I find that this Board lacks jurisdiction to consider the instant appeal and I respectfully **RECOMMEND** that this appeal be **DISMISSED**. I note that Appellant has filed a timely appeal of the merits of her alleged retaliatory removal from employment (SPBR Case 13-REM-05-0121); this matter shall go forward independent of the conclusion of the instant appeal.

  
Jeannette E. Gunn  
Administrative Law Judge

JEG: