STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Carol S. Hill,

Appellant,

v.

Case Nos. 2013-RED-07-0171
2013-WHB-07-0172
2013-MIS-07-0173
2013-MIS-09-0247

Department of Mental Health,
Northwest Psychiatric Hospital,

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.

Appellant should note that the Office of the Inspector General possesses jurisdiction to investigate allegations of wrongful acts or omissions by state agencies, officers, and employees as well as by those who do business with the state, in accordance with R.C. 121.41 *et seq.* Because Appellant's materials submitted into the records identify various issues that may fall under R.C. 121.41 *et seq.*, Appellant may wish to consider contacting the Office of the Inspector General for a potential review of those issues.

Wherefore, it is hereby **ORDERED** that Appellee's motion is **GRANTED** and Case Numbers 2013-RED-07-0171, 2013-WHB-07-0172, and 2013-MIS-07-0173 are **DISMISSED** as untimely filed, pursuant to R.C. 124.341 (D) and O.A.C. 124-1-03 (E) and (I), and further that Appellee's motion is **GRANTED** and Case Number 2013-MIS-09-0247 is **DISMISSED** for lack of jurisdiction over its asserted subject matter, pursuant to R.C. 124.03 and R.C. 4117.10 (A).

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, June 20, 2014.

Eric E. Cor

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

Carol S. Hill, *Appellant,*	Case Nos. 2013-RED-07-0171 2013-WHB-07-0172 2013-MIS-07-0173 2013-MIS-09-0247
v.	May 8, 2014
Department of Mental Health, Northwest Psychiatric Hospital, *Appellee,*	James R. Sprague *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes come on due to Appellant's July 8, 2013 filing of three appeals: 1.) "Retaliatory Discipline" "Whistleblower"; 2.) "Reduction in Pay or Position"; and 3.) "Other" "Harrassment" [sic]. On September 17, 2013, Appellant filed a fourth appeal, denominated as "Other" "Constructive Discharge".

The records in all four of these cases were thereafter developed. On September 30, 2013, an initial and lengthy Pre-Hearing was completed. On February 14, 2014, a second lengthy Pre-Hearing was completed.

On April 8, 2014, Appellee filed Appellee's Motion to Dismiss, Memorandum in Support, and the Affidavits of Christopher A. Harvey (Appellant's supervisor) and Lois Mason-Williams (Director of Human Resources). On May 6, 2014, Appellant filed, among other things, Appellant's Memorandum *Contra* to Appellee's Motion to Dismiss. It is noted that Appellant's May 6, 2014 filing contains extensive substantive documentation.

The records reflect that Appellant was promoted to the position of Acute Care Coordinator at Appellee's Northwest Psychiatric Hospital (NOPH) on or after December 3, 2012. Appellant served as that position until Appellee probationarily reduced Appellant back into a Social Worker 3 position; when Appellant came to the mid-point of her probationary period.

Appellant's Social Worker 3 position falls within the pertinent collective bargaining unit (BU) under a collective bargaining agreement with SEIU, District 1199. Appellant subsequently resigned from that BU position after suffering a heart attack (allegedly stress-induced) and, for a time, being out on disability.

Appellee alleges that, on May 6, 2013, Appellant was made aware of Appellant's impending probationary reduction but that Appellant did not file appeals from same until July 8, 2013. Appellee further alleges that Appellant then resigned from her BU position in August, 2013 and that Appellant's resignation was accepted and effective on August 30, 2013.

Appellant's first three appeals deal with Appellant's allegation that Appellee reduced her for apprising her supervisor (as well as the CCO, the CEO, and the Acting CCO) in oral and written form about alleged ethical challenges that were occurring at NOPH. These included the alleged unfulfilled statutory requirement that certain events be addressed within 24 hours after their occurrence.

These first three appeals also deal with an issue regarding two delays in processing Appellant's paycheck, which delays, she alleges, were retaliatory in nature. The actual paychecks themselves appear to have been by this point processed. Thus, that specific component of this claim now appears to be moot.

Appellant's fourth appeal deals with Appellant's resignation, which Appellant claims was prompted by a hostile work environment, claiming constructive discharge from her Social Worker 3 position.

Appellee claims, likely correctly, that each of Appellant's first three appeals is untimely filed. Further, Appellee is correct that [with two notable exceptions] this Board's jurisdiction does not extend to an employee's probationary reduction back into a BU position.

However, here, R.C. 124.341 (D) (which sets forth this Board's whistleblower appellate review authority) serves as the employee's sole and exclusive remedy, notwithstanding any other provision of law, thus overriding even a collective bargaining agreement's subject matter regarding probationary reductions. *Yet, whistleblower appeals, as do all other appeals to this Board, must be timely filed.*

Because Appellant failed to timely file her whistleblower appeal (Case Number 2013-WHB-07-0172), this Board cannot review her probationary reduction back into the Social Worker 3 bargaining unit position.

This Board may consider allegations of a forced resignation of either an exempt or a bargaining unit employee under this Board's *whistleblower appellate authority* (R.C. 124.341 (D)) or under this Board's *risk reduction appellate authority*

(R.C. 4167.13 (D) (1)). However, Appellant failed to invoke either of those two subject matter areas when she filed her fourth appeal on September 17, 2013.

This may seem to some to be an overly-technical interpretation of Appellant's alleged forced resignation appeal. Yet, we know Appellant was *already familiar with* this Board's Notice of Appeal form. In fact, Appellant had (only a few months previously) filled out this Board's Notice of Appeal form when she filed her first three appeals on July 8, 2013. Indeed, Appellant went so far as to select the "Whistleblower" box as the subject matter for one of her first three appeals (*i.e.* Case Number 2013-WHB-07-0172).

To summarize, Appellant's first three appeals were untimely filed. Appellant's fourth appeal fails to invoke any jurisdiction whereby this Board could consider Appellant's alleged forced resignation from her Social Worker 3 bargaining unit position. Thus, this Board should dismiss all four of Appellant's instant appeals.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** Case Numbers 2013-RED-07-0171, 2013-WHB-07-0172, and 2013-MIS-07-0173 as untimely filed, pursuant to R.C. 124.341 (D) and O.A.C. 124-1-03 (E) and (I) and further **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** Case Number 2013-MIS-09-0247 for lack of jurisdiction over its asserted subject matter, pursuant to R.C. 124.03 and R.C. 4117.10 (A).

James R. Sprague
Administrative Law Judge