

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Vanessa R. Cosby,

*Appellant,*

v.

Case No. 2013-WHB-07-0183

Ohio State University,

*Appellee.*

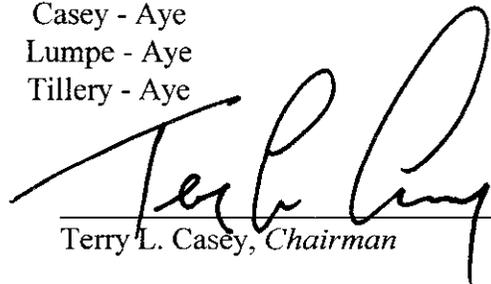
**ORDER**

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. *The Board wishes to reiterate the statement in the Administrative Law Judge's Report and Recommendation that, if Appellant believes she has been the victim of racial discrimination, then Appellant may wish to file with the Ohio Civil Rights Commission, which possesses jurisdiction to consider such claims pursuant to Ohio Revised Code Chapter 4112.*

Wherefore, it is hereby **ORDERED** that Appellee's Motion to Dismiss is **GRANTED** and the appeal is **DISMISSED** for Appellant Cosby's failure to demonstrate that she met the requisite reporting requirements set forth in Ohio Revised Code Section 124.341, by failing to allege any specific violations of statute, rule or regulation.

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, November 13, 2013.

  
\_\_\_\_\_  
Aimee Conn  
Clerk

115130

**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**

Vanessa R. Cosby,

Case No. 2013-WHB-07-0183

*Appellant*

v.

September 26, 2013

Ohio State University

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 September 26, 2013, upon the filing of an appeal by Appellant Cosby on July 11, 2013; Appellant Cosby's response to this Board's questionnaire, filed on August 15, 2013; and Appellee's Motion to Dismiss, filed on September 12, 2013. To date, Appellant Cosby has not filed a memorandum *contra* to Appellee's Motion to Dismiss.

In looking at the statute governing "whistleblower" appeals, section 124.341 of the Ohio Revised Code, the pertinent part of the statute states as follows:

- (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. In addition to or instead of filing a written report with the supervisor or appointing authority, the employee may file a written report with the office of internal auditing created under section 126.45 of the Revised Code or file a complaint with the auditor of state's fraud-reporting system under section 117.103 of the Revised Code.**

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 or complaint with the supervisor, appointing authority, the office of internal auditing, or the auditor of state's fraud-reporting system, 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. (Emphasis added).

As can be seen from reading the provisions of R.C. 124.341(A), this statute protects an employee only if the following requirements have first been satisfied: (1) the employee filed a written report with either the employee's supervisor or appointing authority **identifying a violation of state or federal statutes, rules, regulations or the misuse of public resources**, or, in cases where the violation is believed to be a criminal offense, in addition to or instead of filing a written report with the employee's supervisor or appointing authority, the employee made a report with another official or entity named in the statute, and (2) after filing a report under division (A), the appointing authority took disciplinary or retaliatory action against the employee as a result of the employee's filings.

In *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, the Franklin County Court of Common Pleas restated these conditions as prerequisites to whistleblower jurisdiction under R.C. 124.341. The court in *Haddox* noted that "[j]urisdiction to invoke whistleblower protection requires that the whistleblower show that she 1) made a written report, 2) transmitted the written report to her supervisor, appointing authority, the state inspector general, or other appropriate legal official; and 3) **identified a violation of state or federal statute, rule, or regulation, or misuse of public resources in the report.**" See *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, (citing *Wade v. Ohio Bureau of Worker's Compensation*, 1999 Ohio App. LEXIS 2614, Franklin App. No. 98AP-997 (June 10, 1999) unreported citing to *State ex rel Cuyahoga Cty.*

*SPBR*, 82 Ohio St. 3d 496, 696 N.E.2d 1054 (1998) and to *Chubb v. Ohio Bur. Of Worker's Comp*, 81 Ohio St. 3d 275, 690 N.E.2d 1267 (1998)). (Emphasis added).

Therefore, in order to invoke this Board's jurisdiction, an employee must first establish that he or she complied with the reporting requirements of R.C. 124.341. Appellee correctly argues that Appellant Cosby did not comply with the reporting requirements, as her email to her supervisors fails to identify a violation of state or federal statute, rule or regulation or a misuse of public resources. In Appellant Cosby's response to this Board's questionnaire, she attached an email which she sent to her supervisors on April 27, 2013. That email does not suffice to meet the requirements of a written report. Appellant Cosby only stated that she was complaining about an "inappropriate and offensive incident" and nowhere in that email does she allege any violation of a specific state or federal statute, rule, or regulation or the misuse of public resources. Therefore, it cannot be considered as a proper written report under the whistleblower statute.

The record indicates transmissions between Appellant Cosby and the Ohio Civil Rights Commission; however, that office is not a "supervisor, appointing authority, or other entity set forth in R.C. 124.341 which an employee is to send written communication to regarding the Appellee's alleged violation of law. Therefore such filing does not fall within the parameters outlined by the whistleblower statute.

In accordance with R.C. 124.341 and consistent with case law and similar state and federal procedures, an employee filing a whistleblower appeal is assigned both the burden of proof and the initial burden of production. The employee's initial burden of production includes demonstrating that the employee filed a report with the appropriate entity specifically fulfilling the requisite reporting requirements of the pertinent whistleblower statute and that thereafter disciplinary retaliatory action was taken against the employee as a result of the employee having filed a report pursuant to that statute.

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Accordingly, Appellant Cosby has failed to demonstrate that she met the requisite reporting requirements set forth in R.C 124.341, by failing to allege any specific violations of statute, rule or regulation. Thus, she has failed to meet her prima facie burden and it is my **RECOMMENDATION** that Appellee's Motion to Dismiss be **GRANTED** and this appeal be **DISMISSED**.

  
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Marcie M. Scholl  
Administrative Law Judge

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