

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

Megan Miller,

Appellant,

v.

Case No. 2014-ABL-10-0262

Lucas County Department of Job & Family Services,

Appellee,

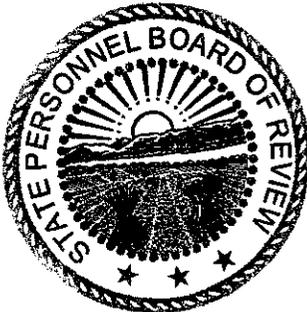
ORDER

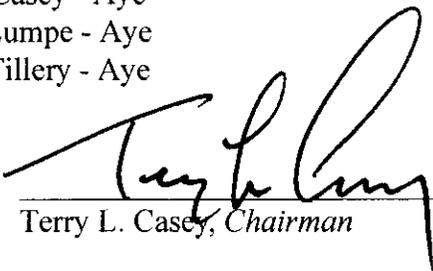
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellee's motion is **GRANTED** and the instant appeal is **DISMISSED** for untimely filing, pursuant to R.C. 124.328.

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 25, 2015.


Clerk

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

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE March 4, 2015. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

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Transcript Costs: N/A Administrative Costs: \$25.00

Total Deposit Required: * \$25.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: March 12, 2015

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

Megan Miller

Case No. 2014-ABL-10-0262

Appellant

v.

December 30, 2014

Lucas County Department
of Job and Family Services

Appellee

James R. Sprague
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration upon Appellant's October 8, 2014 filing of an appeal from the abolishment of her position of Director of Employee Services with Appellee. Appellant's appeal was mailed *via* Federal Express (FedEx) and the FedEx mailer send date is October 7, 2014.

It is uncontested that Appellant received her notice of abolishment no later than September 22, 2014. The certified notice of abolishment that Appellee sent to Appellant clearly indicated that Appellant's position was going to be abolished. It also clearly indicated that Appellant was going to be laid off, effective October 17, 2014 at the end of the work day. (Please see Appellant's "Notice of Job Abolishment" letter at paragraph 1., attached to Appellant's Notice of Appeal and to Appellant's Memorandum *Contra*).

R.C. 124.328 is entitled "Layoff, displacement appeals" and states:

A classified employee may appeal a layoff, or a displacement that is the result of a layoff, to the state personnel board of review. The appeal shall be filed or postmarked no later than ten days after receipt of the layoff notice or after the date the employee is displaced. In cases involving the laying off of classified employees, the affected employee or appointing authority may appeal the decision of the state personnel board of review to the court of common pleas in accordance with section 119.12 of the Revised Code.

O.A.C. 124-1-03 is entitled "Time limits for filing appeals." O.A.C. 124-1-03 amplifies and offers further explanation for the notice of appeal time limits that the General Assembly has established for Appellants coming before the Board. Ohio Administrative Code provisions can neither abridge nor enlarge pertinent Revised Code provisions to which those Ohio Administrative Code provisions apply.

O.A.C. 124-1-03 (B) reads, in its entirety:

(B) Appeals from layoffs, abolishments, and displacements shall be filed [sic] or postmarked, not more than ten calendar days after receipt of the notice of the action. A copy of the notice of layoff, abolishment or displacement shall be attached to the appeal.

Appellant received her abolishment notice on September 22, 2014. Thus, Appellant's appeal should have been filed with the Board or, alternatively, "postmarked" on or before October 2, 2014. Appellant's FedEx "postmark" date is October 7, 2014 and her appeal was time stamped by the Board on October 8, 2014. **Thus, Appellant's appeal is untimely filed, pursuant to R.C. 124.328 and O.A.C. 124-1-03 (B).**

Appellant argues she did not realize that she had a reason to appeal the abolishment of her position until October 2, 2014, when Appellee re-posted Appellant's former position under a different title. Appellant claims that Appellee hid its true intentions by refraining from posting Appellant's former position until the 11th day following the notice of the job elimination, effectively preventing her from timely filing her instant appeal with the Board.

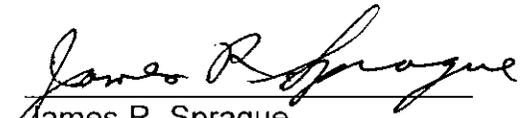
An Appellant's apparent (mis)perception of an Appellee's intentions at the time the Appellant received a Notice of Job Abolishment cannot override the strict time limits set forth in R.C. 124.328 and O.A.C. 124-1-03 (B). Moreover, unless an Appellant timely files an appeal from an abolishment, layoff, or displacement, this Board lacks authority to review any claim of bad faith offered by that same Appellant.

Accordingly, this Board lacks jurisdiction to hear the instant appeal since that appeal was not timely filed in accordance with the provisions set forth in R.C. 124.328.

RECOMMENDATION

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Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal for untimely filing, pursuant to R.C. 124.328.


James R. Sprague
Administrative Law Judge