STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Karen E. Woods,

Appellant,

v.

Department of Mental Health and Addiction Services,

Appellee,

Case Nos. 2014-REM-02-0020
2014-SUS-02-0021
2014-WHB-02-0022
2014-OSH-02-0023
2014-INV-02-0024

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.

Wherefore, it is hereby **ORDERED** that Appellee's motion is **GRANTED** and the four instant appeals and one instant request for an investigation are **DISMISSED** for lack of jurisdiction over their respective subject matter, pursuant to O.A.C. 124-11-07 (A) (2) and (C).

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, April 17, 2015.

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

Karen E. Woods	Case Nos. 2014-REM-02-0020 2014-SUS-02-0021 2014-WHB-02-0022 2014-OSH-02-0023 2014-INV-02-0024
Appellant	
v.	March 6, 2015
Department of Mental Health and Addiction Services	
Appellee	James R. Sprague *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes came on due to Appellant's filing of four appeals and one request for an investigation. The records in these appeals and this request were thereafter developed.

On May 2, 2014, Appellant filed the Submissions of Appellant, a large document with eight components. On May 7, 2014, this Board conducted a Status Conference. On June 23, 2014, Appellee filed Appellee's Notice of Intention to Assert Jurisdictional Bar. Due to the retirement of Christopher R. Young, the assigned Administrative Law Judge, these cases were reassigned.

On February 19, 2015, Appellee filed: Appellee's Motion to Dismiss Appellant's Appeals and Investigation Request; a seven-page Memorandum in Support; the Affidavit of Anne Thomson, Appellee's Bureau Chief of Human Resources; and three exhibits totaling 19 pages. Appellee's counsel attached a Certificate of Service to this pleading, indicating that the Motion to Dismiss was served on Appellant's counsel at her office in Columbus *via* ordinary US Mail on February 19, 2015. Appellant was then provided with the requisite time to file a

Memorandum *Contra* (and was provided with additional time to allow for mailing). Yet, to date, Appellant has not filed her *Memo* Contra.

In its motion to dismiss, Appellee separately addresses each of the appeal subject matter jurisdictions that Appellant invoked in her Notice of Appeal. At page 4 of its memorandum in support, Appellee offers a distilled version of its arguments and states:

> [Appellant's] appeals fail to invoke this Board's jurisdiction for the following reasons: (1) any removal or suspension appeals fail because she was an unclassified employee; (2) her whistleblower appeal is untimely; and (3) she failed to meet the statutory prerequisite for this Board to have jurisdiction over her "OSHA" appeal.

In regard to Appellant's request for an investigation, Appellee states at page 6 of its memorandum in support:

> Finally, [Appellant] has failed to allege any violation of R.C. Chapter 124 for which this Board could investigate her removal. Instead, [Appellant's] request for an investigation by this Board appears to be a thinly-veiled attempt to end-run the Board's lack of jurisdiction over the removal of unclassified employees.

O.A.C 124-7-11 governs the motions practice before this Board. O.A.C. 124-11-07 (A) (2) and (C) combine to require that, when a dispositive motion (such as a motion to dismiss) is properly filed and supported, then the opposing party must set forth specific facts showing there is a genuine issue in dispute. O.A.C. 124-1-07 (C) sets forth a 10-day time frame from service of a dispositive motion for the opposing party to file a memorandum *contra*.

In the instant cases, Appellant has not filed the required memorandum *contra*, in spite of receiving additional time to do so. Further, Appellant has not requested an extension of time to so file. Finally, it is noted that Appellant is represented by counsel in the instant matters.

Based, then, on the totality of the instant records, including Appellee's motion to dismiss and the absence of a required memorandum *contra* from Appellant, the instant matters should be dismissed.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the four instant appeals and one instant request for an investigation, for lack of jurisdiction over their respective subject matter and pursuant to O.A.C. 124-11-07 (A) (2) and (C).

James R. Sprague
Administrative Law Judge