STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Ricky C. Debarr,

Appellant,

v. Case Nos. 2014-RED-01-0030
2014-MIS-01-0031

Wood Haven Health Care,

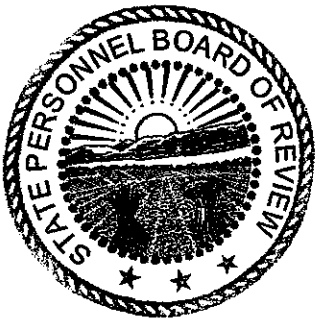
Appellee,

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.

Wherefore, it is hereby **ORDERED** that Appellee's Motion to Dismiss is **GRANTED** and the instant appeals are **DISMISSED** for lack of jurisdiction over the subject matter.



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 03, 2014.

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

Ricky C. Debarr,	Case Nos. 2014-RED-01-0030 2014-MIS-01-0031
Appellant	
v.	June 13, 2014
Wood Haven Health Care,	
Appellee	Jeannette E. Gunn *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on pursuant to an appeal filed by Appellant on January 31, 2014, of Appellee's alleged improper denial of retirement benefits. Appellee filed a Motion to Dismiss on May 22, 2014, asserting that the Board lacked jurisdiction to consider the appeal and that Appellant had no legal right to payment for his unused sick leave balance. Appellant filed no memorandum *contra*.

Upon an examination of the information contained in the record, I make the following findings of fact:

Appellant was employed by Appellee as a Licensed Social Worker. He voluntarily resigned from employment with an effective date of March 1, 2013.

Subsequent to his resignation, Appellant applied for disability retirement through the Ohio Public Employee Retirement System (OPERS); his disability retirement was approved with an effective date of April 1, 2013.

In January 2014, Appellant requested payment of his accumulated unused sick leave balance from Appellee. Wood County personnel indicated that he was not eligible for payment.

CONCLUSIONS OF LAW

Appellee asserts that this Board lacks jurisdiction to consider an appeal arising from a denial of retirement benefits, however, in certain instances, such a denial might arguably be considered a reduction. Appeals of an alleged reduction in pay where no R.C. 124.34 Order is issued by the employer must be filed with the Board within ninety days after either the receipt of notice of the reduction or the actual imposition of the reduction, if no notice is given. In the matter at hand, Appellant requested and was denied payment of his accumulated sick leave in January 2014 and filed within approximately two weeks of receiving Appellee's denial, therefore, I find that Appellant filed his appeals with the Board in a timely manner.

Appellee also asserted in its Motion to Dismiss that Appellant had no legal right to payment for his unused sick leave balance and, therefore, his appeal fails to state a claim for which relief can be granted. Wood County's policy for payment of accumulated sick leave mirrors the provisions of R.C. 124.39(B), which states that an employee with ten or more years of service with the state or any of its political subdivisions may elect to receive a cash payment for unused sick leave at the time he or she retires from active service. The requirement to retire from "active service" means that Appellant must have been employed by Appellee at the time he retired in order to be eligible to request a cash payment for his unused sick leave. See, Davenport v. Montgomery County, 109 Ohio St.3d 135.

Uncontroverted evidence contained in the record demonstrates that as of the effective date of his retirement, Appellant was not employed by Appellee and, therefore, was not in "active service." Accordingly, I find that Appellee was not obligated either by county policy or the Ohio Revised Code to compensate Appellant for accrued unused sick leave; Appellee did not act improperly in denying Appellant's request. Absent an obligation to compensate Appellant, Appellee's denial of payment for accrued unused sick leave does not constitute a reduction in pay.

Appellant's appeal does not allege a set of facts over which this Board may exercise jurisdiction. Therefore, I respectfully **RECOMMEND** that Appellee's Motion to Dismiss be **GRANTED** and the instant appeals be **DISMISSED** for lack of jurisdiction over the subject matter.

Jeannette E. Gunn
Administrative Law Judge