

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

Betty Jones,

Appellant,

v.

Case No. 2014-REM-04-0072

Department of Mental Health and Addiction Services,
Appalachian Behavioral Healthcare,

Appellee,

ORDER

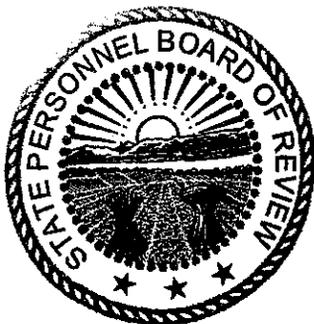
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

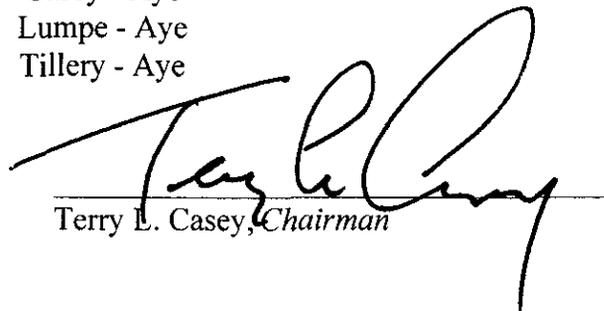
After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

In her objections, Appellant asserts that she has been the victim of harassment and unfair treatment. She also asserts that she did not receive complaints about her work, that she performed well in her job, and that she was frequently asked to work overtime and never refused such a request. Unfortunately, for Appellant, the collective bargaining agreement that governed her employment with Appellee does not provide a probationary employee with the ability to grieve a probationary removal. *We wish Appellant to know that we have carefully read her objections and that we are very much aware that she sees her situation as extremely unfair and unjust.* But, because Appellant's position is covered under that collective bargaining agreement and because that collective bargaining agreement *generally* provides a grievance procedure that culminates in binding arbitration, this Board is deprived of any jurisdiction to hear Appellant's removal appeal.

Wherefore, it is hereby **ORDERED** that the appeal is **DISMISSED** for lack of subject matter jurisdiction.

Casey - Aye
Lumpe - Aye
Tillery - Aye

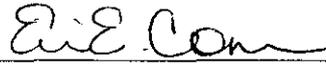



Terry L. Casey, *Chairman*

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, July 18, 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**

Betty Jones,

Case No. 2014-REM-04-0072

Appellant

v.

June 4, 2014

Department of Health, Appalachian
Behavioral Healthcare,

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration upon Appellee's Motion to Dismiss for lack of jurisdiction, filed with the Board on May 19, 2014. Appellant filed no memorandum *contra*.

Appellee contends that this Board lacks jurisdiction to consider the instant appeal because Appellant's position is included in a collective bargaining agreement and because Appellant was removed during her probationary period.

Uncontroverted evidence contained in the record indicates that Appellant's position was classified as a Therapeutic Program Worker, which is included in a bargaining unit represented by OCSEA/AFSCME, Local 11. Appellee and OCSEA/AFSCME, Local 11 have signed a collective bargaining agreement covering the Appellant's bargaining unit. That collective bargaining agreement provides a grievance procedure resulting in final and binding arbitration. Appellant appealed her removal, which is a grievable action.

O.R.C. Section 4117.10(A) states that where a bargaining agreement provides a grievance procedure which culminates in final and binding arbitration, the State Personnel Board of Review has no jurisdiction to consider an appeal from an employee subject to such collective bargaining agreement. Accordingly, this Board lacks jurisdiction over the subject matter of this appeal.

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Appellee also provided evidence to support its assertion that Appellant was removed for unsatisfactory service during the probationary period for her Therapeutic Program Worker position. Pursuant to Ohio Revised Code Section 124.27, an employee removed during the probationary period for unsatisfactory service has no right of appeal to this Board.

Therefore, based upon the foregoing analysis, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** this appeal for lack of subject matter jurisdiction.



Jeannette E. Gunn
Administrative Law Judge