

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

Dena Heyman,

Appellant,

v.

Case No. 2014-REM-05-0103

Erie County Human Resources Department,

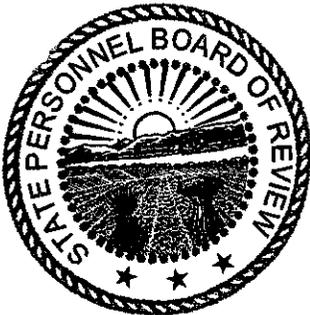
Appellee,

ORDER

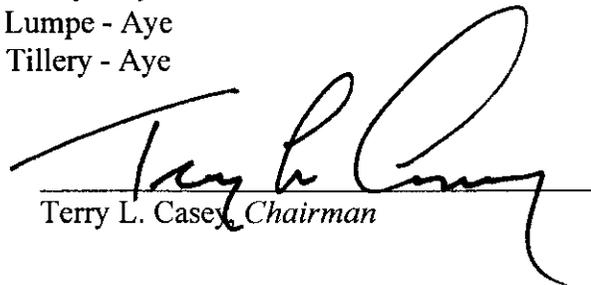
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the instant appeal is **DISMISSED**, as there remain no outstanding legal issues over which this Board may properly exercise jurisdiction.



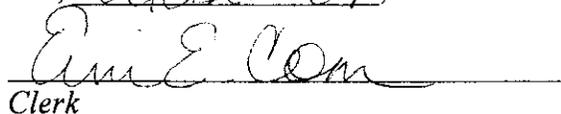
Casey - Aye
Lumpe - Aye
Tillery - Aye


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, October 09, 2014.


Ami E. Com
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**

Dena Heyman,

Case No. 2014-REM-05-0103

Appellant

v.

August 12, 2014

Erie County Human Resources Department,

Jeannette E. Gunn

Appellee

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 May 15, 2014. Appellee filed a Response to this Board's Procedural Order on June 26, 2014, requesting that the State Personnel Board of Review (SPBR) dismiss the instant appeal as premature. Appellant filed a Response on July 18, 2014.

Based upon the uncontroverted evidence contained in the record, I make the following findings of fact:

Appellant was employed by Appellee as a Wellness Coordinator. Charges of misconduct were brought against Appellant in April 2014, and Appellant was afforded a pre-disciplinary conference in order to respond to those charges. Appellee terminated Appellant's employment on May 8, 2014, but failed to provide her with an order of removal, as required by R.C. 124.34, informing her of her appeal rights. Appellant's counsel filed a notice of appeal with this Board on May 15, 2014.

On May 15, 2014, Appellee reinstated Appellant with back pay retroactive to May 8, 2014; Appellee subsequently removed Appellant from employment a second time, premised on the same charges, and properly completed an R.C. 124.34 removal order effective May 19, 2014. Appellant was served with a copy of the removal order by certified mail on May 17, 2014. Neither Appellant nor Appellant's counsel filed an appeal with this Board from Appellant's May 19, 2014 removal.

CONCLUSIONS OF LAW

In the instant matter there are two issues for this Board to address. The first issue arises from Appellee's May 8, 2014, termination of Appellant's employment. Appellee acknowledged that it failed to properly provide Appellant with an Order of Removal, as required by R.C. 124.34. Appellant filed an appeal of this action on May 15, 2014.

Where an appointing authority fails to procedurally comply with statutory requirements in effectuating an employee's removal, this Board is empowered to disaffirm the removal action and order the employee reinstated to his or her former position with full back pay. Upon recognizing its failure to provide the required Order of Removal, Appellee voluntarily rescinded Appellant's removal, reinstated her employment and paid her back wages retroactive to May 8, 2014, thereby rendering the instant appeal moot. There is no additional action which this Board may take with regard to Appellant's May 8, 2014, removal from employment.

The second issue to be addressed by the Board is whether or not the appeal filed by Appellant on May 15, 2014, was sufficient to invoke this Board's jurisdiction over her subsequent removal from employment effective May 19, 2014. For the reasons following, I find that it was not.

The parties do not dispute that Appellant did not file a second appeal with SPBR after being served with an R.C. 124.34 Order of Removal on May 17, 2014. Appellant's right to appeal her removal from employment with Appellee arises from the provisions of R.C. 124.34(B), which states in pertinent part:

(B) In case of a ... removal, except for the ... removal of a probationary employee, the appointing authority shall serve the employee with a copy of the order of ... removal, which order shall state the reasons for the action.

Within ten days following the date on which the order is served ..., the employee, except as otherwise provided in this section, may file an appeal of the order in writing with the state personnel board of review or the commission. For purposes of this section, the date on which an order is served is the date of hand delivery of the order or the date of

delivery of the order by certified United States mail, whichever occurs first (emphasis added)

It is well-settled law that, where the right of appeal is conferred by statute, an appeal may be perfected only in the manner prescribed by statute. *Zier v. Bur. of Unemployment Comp.* (1949), 151 Ohio St. 123; *CHS-Windsor, Inc. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 05AP-909, 2006-Ohio-2446; *Brush v. Licking Cty. Child Support Enforcement Agency*, 2011-Ohio-3999. Parties must strictly adhere to filing requirements in order to perfect an appeal and invoke jurisdiction. *Harrison v. Ohio State Med. Bd.* (1995), 103 Ohio App.3d 317; *Hughes v. Ohio Dept. of Commerce, Division of Financial Institutions*, Franklin App. No. 04AP-1386, 2005-Ohio-6368 and cases cited therein.

The R.C. 124.34 Order of Removal provided to Appellant by Appellee informs the employee that a written appeal must be filed with this Board "by the tenth calendar day from the date this Order was served," and provides examples illustrating proper filing procedures. The Order further provides the Board's telephone number and website address in the event that an individual needs to seek additional clarification. Additionally, I note that Appellant was represented by counsel in the matter of her removal from employment at the time she was served with the R.C. 124.34 Order of Removal. Appellant had ample resources from which to seek additional information regarding the manner in which she was required by statute to file her appeal.

The sole appeal filed with this Board by Appellant was filed on May 15, 2014, two days prior to the date on which she was served with a copy of the R.C. 124.34 Order effectuating her May 19, 2014, removal. While timely with regard to her initial removal from employment, Appellant's appeal was premature with regard to her subsequent removal from employment and not sufficient to constitute a properly perfected appeal over which this Board may exercise jurisdiction. See, *Winiarski v. Hamilton County Recorder*, Franklin App. Nos. 94APE12-1821, 1822 and 1823, 1995 Ohio App. LEXIS 2446 (June 15, 1995), *unreported, cert denied* 74 Ohio St.3d 1456, the state personnel board of review's jurisdiction may not be based on an appeal from a notice rendered ineffective by proper rescission.

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Accordingly, because there remain in the instant appeal no outstanding legal issues over which this Board may properly exercise jurisdiction, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED**.


Jeannette E. Gunn
Administrative Law Judge