

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Nancy Toliver,

*Appellant,*

v.

Case Nos. 2014-REM-10-0270  
2014-MIS-10-0271  
2014-MIS-10-0272

Montgomery County Department of Job & Family Services,

*Appellee,*

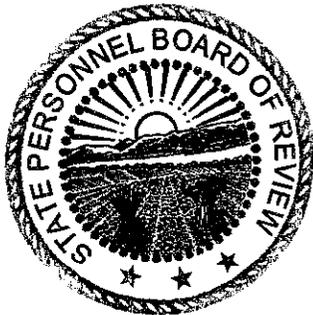
**ORDER**

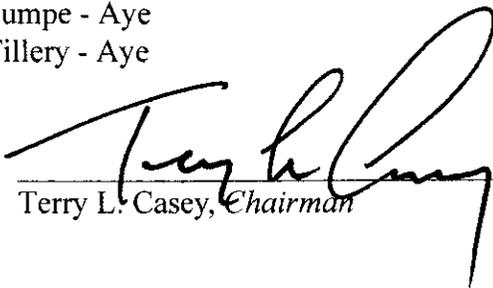
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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 the appeals are **DISMISSED** for lack of jurisdiction over the parties.

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.**

Case Numbers: 2014-REM-10-0270, 2014-MIS-10-0271, 2014-MIS-10-0272

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**

Nancy Toliver,

*Appellant*

v.

Montgomery County Department of  
Job & Family Services,

*Appellee*

Case Nos. 14-REM-10-0270  
14-MIS-10-0271  
14-MIS-10-0272

January 14, 2015

Jeannette E. Gunn  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

These causes came on for consideration pursuant to Appellee's Motion to Dismiss, filed with this Board on December 17, 2014. Appellant filed an Objection to Appellee's Motion to Dismiss on December 23, 2014. Appellee contends that this Board lacks jurisdiction over the above-referenced appeals because Appellant was not employed by Appellee at the time of the alleged actions.

In 2008, Appellant appealed her involuntary disability separation from employment with Appellee (SPBR Case No. 08-IDS-05-0206). That matter was closed following the issuance of a Board Order disaffirming Appellant's disability separation on procedural grounds and ordering Appellant's reinstatement to her position with Appellee. Appellee contends, and Appellant did not dispute, that Appellant subsequently ceased her employment with Appellee in 2008. No specific information regarding Appellant's final date of employment was provided to this Board by either party. Appellant filed no additional appeals of any employment actions following the conclusion of SPBR Case No. 08-IDS-05-0206 and prior to the October 2014 filing of the instant appeals.

Appellant filed the above-referenced appeals on October 21, 2014, alleging that on October 15, 2014, Appellee had improperly removed her from employment, that Appellee had engaged in retaliatory discipline, and "the public er..." [type obscured on appeal form]

### FINDINGS OF FACT

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

Appellant was an employee of Crown Personnel Services in September 2014, when she was placed on temporary assignment with Appellee pursuant to a contract existing between Appellee and Crown Personnel Services.

Appellant was notified on October 15, 2014, by Crown Personnel Services that her temporary assignment with Appellee had ended.

Appellant was paid by Crown Personnel Services for the work performed during her assignment with Appellee.

### CONCLUSIONS OF LAW

Unlike a court, the State Personnel Board of Review has jurisdiction only when it has been explicitly conferred upon it by the Ohio General Assembly. R.C. Section 124.03(A) provides that this Board shall hear appeals of employees in the classified state service. R.C. Section 124.01(B) defines "state service" as follows:

\* \* \*

(B) "State service" includes all offices and positions in the service of the state and the counties and general health districts of the state. "State service" does not include offices and positions in the service of the cities, city health districts, and city school districts of the state.

\* \* \*

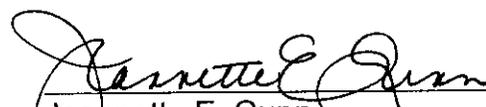
I find that Crown Personnel Services is a private sector employer not covered by the definitions set forth above. Accordingly, its employees are not in the classified state service and are not entitled to the statutory protections of R.C. Chapter 124.

Appellee was not Appellant's employer at the time of the actions appealed, and subsequently could not, as a matter of law, have taken employment action against her which this Board has the authority to review. *Stevens v. Ohio Dept. of Natural Resources* (Apr. 3, 2006), SPBR Case No. 05-TFR-08-0327 *et seq.*; *Balo v.*

Nancy Toliver  
Case Nos. 14-REM-10-0270, *et seq.*  
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Allen County Board of Commissioners (Jan. 22, 2010), SPBR Case No. 09-REM-09-0426.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** these appeals for lack of jurisdiction over the parties.

  
Jeannette E. Gunn  
Administrative Law Judge