

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Buffy Andrews,

Appellant,

v.

Case Nos. 2014-REM-02-0032
2014-WHB-02-0054

Department of Veterans Services,

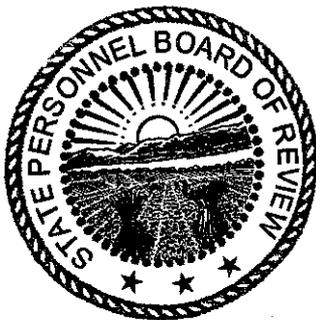
Appellee,

ORDER

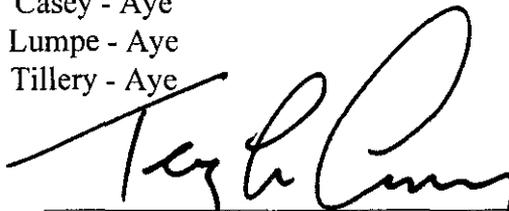
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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 Appellee's motion is **GRANTED**. It is further **ORDERED** that Case No. 14-WHB-02-0054 is **DISMISSED**, pursuant to R.C. 124.03, R.C. 124.341, and O.A.C. 124-11-07 (A) (2) and (C), and Case No. 14-REM-02-0032 is **DISMISSED**, pursuant to R.C. 124.03, R.C. 124.11, and R.C. 124.34.



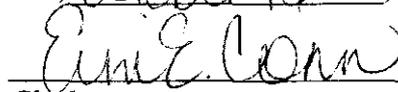
Casey - Aye
Lumpe - Aye
Tillery - Aye


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 16, 2014.


Erin E. Conn
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**

Buffy Andrews

Case Nos. 2014-REM-02-0032
2014-WHB-02-0054

Appellant

v.

August 11, 2014

Department of Veterans Services

James R. Sprague
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes come on due to Appellant's filing of the above-captioned appeals. (In a separate but related matter, Appellant also filed a request for an investigation in Case No. 14-INV-02-0034.)

On May 21, 2014, a pre-hearing was held in all three of Appellant's matters pending before this Board. Further, on May 21, 2014, this Board issued a Procedural Order in Case No. 14-WHB-02-0054. On June 30, 2014, Appellant timely filed her response to that Procedural Order. As a consequence of Appellant's June 30, 2014 filing; on July 14, 2014, Appellee filed Appellee's Motion to Dismiss Whistleblower Appeal, the affidavit of Jacqueline Leisenheimer, Appellee's Human Resources Director, and other accompanying documents in support of its motion. Appellant was provided with the requisite time to file a Memorandum *Contra*, but, to date, has not done so.

O.A.C 124-11-07 (A) (2) and (C) combine to require an opposing party to file a response to a properly filed and supported motion to dismiss and to do so within a 10-day time frame. Appellant has not filed her requisite Memorandum *Contra*. **Accordingly, Case No. 14-WHB-02-0054 should be dismissed.**

Further, in its motion to dismiss, Appellee appears to present an essentially un rebutted argument that Appellant knowingly accepted an appointment to an unclassified position and garnered a pay raise as a result of choosing to encumber

Buffy Andrews

Case Nos. 2014-REM-02-0032 and 2014-WHB-02-0054

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that position. **Accordingly, Case No. 14-REM-02-0032 should also be dismissed.**

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** Case No. 14-WHB-02-0054, pursuant to R.C. 124.03, R.C. 124.341, and O.A.C. 124-11-07 (A) (2) and (C). I further **RECOMMEND** that the State Personnel Board of Review **DISMISS** Case No. 14-REM-02-0032, pursuant to R.C. 124.03, R.C. 124.11, and R.C. 124.34. *Case No. 14-INV-02-0034 should proceed for further processing of Appellant's request for an investigation, pursuant to R.C. 124.56.*



James R. Sprague
Administrative Law Judge