STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Tammie Helton,

Appellant,

v.

Case Nos. 2014-REC-06-0152
2014-RED-06-0154
2014-WHB-06-0155

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 Appellee's motion is **GRANTED** and the three instant appeals are **DISMISSED** due to Appellant's non-compliance with the prerequisites set forth in O.A.C. 124-11-07 (A) (2) and (C).

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, April 17, 2015.

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

Tammie Helton	Case Nos. 2014-REC-06-0152 2014-RED-06-0154 2014-WHB-06-0155
Appellant	
v.	March 11, 2015
Department of Job and Family Services	
Appellee	James R. Sprague *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes came on due to Appellant's filing of three appeals concerning her apparent then-pending reclassification from Program Administrator 4 to Fiscal Specialist 2. Subsequently, Appellant's position was so classified. On August 7, 2014, this Board conducted a fairly extensive pre-hearing.

On February 23, 2015, Appellee filed Appellee's Motion to Dismiss Appellant's Appeals, a Memorandum in Support of Motion to Dismiss, three Affidavits, and two accompanying exhibits. 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 governs the motions practice before this Board. O.A.C. 124-11-07 (A) (2) and (C) combine to require that, when a dispositive motion (such as a motion to dismiss) is properly filed and supported, then the opposing party must set forth specific facts showing there is a genuine issue in dispute. O.A.C. 124-11-07 (C) sets forth a 10-day time frame from service of a dispositive motion for the opposing party to file a memorandum *contra*.

In the instant cases, Appellant has not filed the required memorandum *contra*, in spite of receiving additional time to so file. Further, it appears that Appellant's reclassification and reduction cases may have fallen under the jurisdictional bar that the General Assembly established in Am. Sub. S.B. 59 regarding the creation and effectuation of the then-new Ohio Department of Medicaid, which bar runs from July 1, 2013 to June 30, 2015 (*i.e.* the current

Biennium). Additionally, it is not entirely evident that Appellant filed a written report that would qualify under R.C. 124.341 as a "whistleblower" report.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the three instant appeals, due to Appellant's non-compliance with the prerequisites set forth in O.A.C. 124-11-07 (A) (2) and (C).

James R. Sprague
Administrative Law Judge