

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Brian Zielinski,

*Appellant,*

v.

Case No. 2015-INV-09-0184

Department of Rehabilitation & Correction,

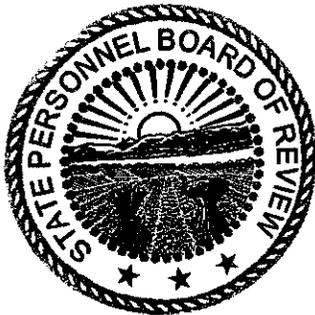
*Appellee,*

**ORDER**

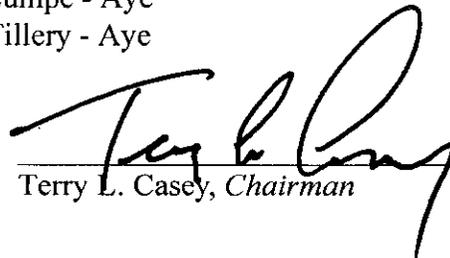
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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. It is noted that, while this Board does possess investigative authority under R.C. 124.56, that authority does not appear to extend to the concerns that Appellant raises in the instant request for an investigation.

Wherefore, it is hereby **ORDERED** that the instant request for an investigation is **DISMISSED** for lack of 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, May 11, 2016.

  
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 May 18, 2016.** 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 Number: 2015-INV-09-0184

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: May 26, 2016

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

Brian Zielinski

Case No. 2015-INV-09-0184

*Appellant*

v.

March 31, 2016

Lebanon Correctional Institution  
Department of Rehabilitation & Correction

*Appellee*

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

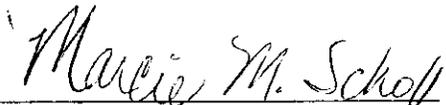
This matter came on for consideration upon Appellant's filing of an appeal to protest the filing of a vacancy.

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.

That being said, this Board has no jurisdiction to investigate an individual's failure to be promoted ( See *Ketron v. Ohio Dept. of Transportation* (1991), 61 Ohio App.3d 657; *Singh v. Ohio Dept. of Transportation* (1982), 7 Ohio App.3d 269), and will not substitute its judgment for that of Appellee in determining either the best candidate to fill a position or how best to examine applicants for a position. An appointing authority has discretion in whom it hires and may employ a variety of methods of competitive examination, including the review of an employment application, to determine an applicant's eligibility for appointment to a position. No requirement is made by any section of R.C. Chapter 124. that a written examination be administered to applicants; no requirement is made by any section of R.C. Chapter 124. that the same method of competitive examination be employed for each position within an agency. Also, there is nowhere in the Ohio Revised Code that requires the most qualified person be hired into a vacancy. Instead the law only requires that the person hired meets the minimal qualifications of the position.

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Therefore, I respectfully **RECOMMEND** that the instant request for an investigation be **DISMISSED** for lack of jurisdiction.

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**Marcie M. Scholl**  
*Administrative Law Judge*