

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Kecia Wallace,

*Appellant,*

v.

Case Nos. 2015-RED-01-0007  
2015-MIS-01-0008

Summit County Court of Common Pleas,

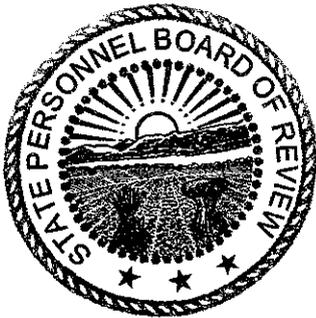
*Appellee,*

**ORDER**

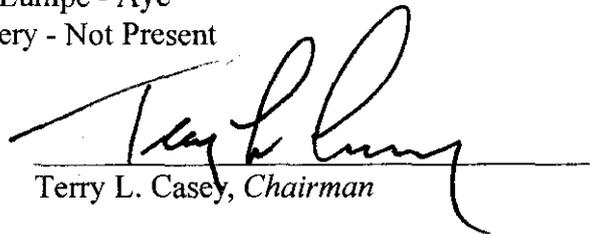
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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 instant appeals are **DISMISSED** due to a lack of subject matter jurisdiction.



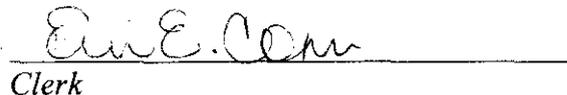
Casey - Aye  
Lumpe - Aye  
Tillery - Not Present

  
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 30, 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 November 6, 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: 2015-RED-01-0007 and 2015-MIS-01-0008

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: November 16, 2015

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

Kecia Wallace

*Appellant*

v.

Court of Common Pleas Summit County

*Appellee*

Case Nos. 2015-RED-01-0007  
2015-MIS-01-0008

September 10, 2015

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon a filing of a notice of appeal by Appellant Wallace. In her notice of appeal, Appellant Wallace alleges she has been discriminated against due to her race. Her notice of appeal states as follows, in pertinent part:

I am writing to request a hearing/appeal from the Personnel Board of Review for the disparate treatment I have suffered as an employee. Specifically, many of my co-workers have been give comp time (in lieu of overtime) when caseloads become high and/or case management becomes overwhelming. I am an African-American female who was denied comp time, while other similarly situated Caucasian employees were compensated with comp time, . . . In addition, as a result of not being able to accrue comp time, I have been forced to utilize other methods of leave and thereby depleting my vacation, sick and personal leave hours when my Caucasian colleagues were not put in that predicament.

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Pursuant to section 124.03 of the Ohio Revised Code, this Board has no jurisdiction over claims of discrimination. The Ohio Civil Rights Commission is the entity which oversees claims of discrimination in the state of Ohio. Appellee provided information to this Board, as a response to information requested by this Board, which documents that Appellant Wallace filed a complaint with the Ohio Civil Rights Commission regarding the same allegations as noted above in her appeal request and that Commission investigated and found no probable cause.

In her reply to the information sent by Appellee, Appellant Wallace argues that this Board has jurisdiction over her appeal because she is alleging "disparate

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treatment". Unfortunately, Appellant Wallace misunderstands the Board's jurisdiction and the term "disparate treatment" as it is used in administrative rule 124-9-11 of the Ohio Administrative Code. That rule states as follows:

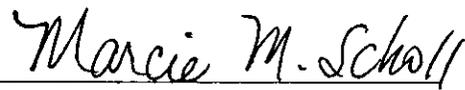
(A) The board may hear evidence of disparate treatment between the appellant and other similarly situated employees of the same appointing authority for the purpose of determining whether work rules or administrative policies are being selectively applied by the appointing authority or to determine whether the discipline of similarly situated employees is uniform. Requests for discovery under this rule shall be limited to information relating to specific incidents or persons known to the employee or his representative.

**(B) Evidence of disparate treatment will be considered in evaluating the appropriateness of the discipline which was imposed.** (Emphasis added).

(C) Evidence of disparity in the classification of co-workers is not admissible in reclassification appeals.

As can be seen from reading the above rule, disparate treatment comes into play only when the Board has jurisdiction over an appeal, namely a disciplinary appeal, as disparate treatment is only considered when determining if a certain discipline levied on an employee was or was not appropriate. In the instant case, Appellant Wallace does not allege she has been disciplined in any way (i.e., suspended, reduced or removed from her position). Instead, she alleges she has been discriminated against. Since this Board has no jurisdiction over claims of discrimination, the Board lacks subject matter jurisdiction and hence, there is no proper claim of disparate treatment.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** due to a lack of subject matter jurisdiction.



Marcie M. Scholl

Administrative Law Judge