

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Laura Messer,

Appellant,

v.

Case No. 2015-REM-05-0059

Ohio Public Employees Retirement System,

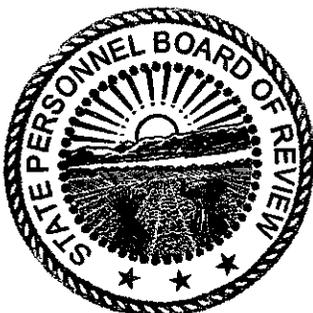
Appellee,

ORDER

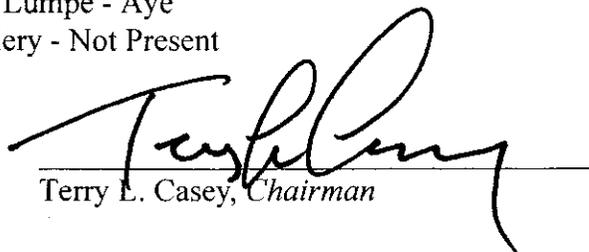
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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.

Wherefore, it is hereby **ORDERED** that the instant appeal is **DISMISSED** due to a lack of jurisdiction pursuant to R.C. 124.03.



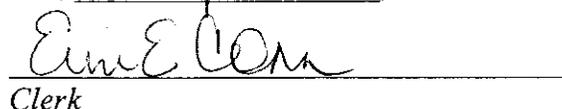
Casey - Aye
Lumpe - Aye
Tillery - Not Present


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, July 10, 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 July 17, 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 Number: 2015-REM-05-0059

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: July 27, 2015

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

Laura Messer,

Case No. 15-REM-05-0059

Appellant

v.

June 10, 2015

Ohio Public Employees
Retirement System,

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on pursuant to Appellee's Motion to Dismiss, filed with this Board on June 1, 2015. Appellee asserts that this Board lacks jurisdiction to consider personnel matters brought forward by current or former employees of Appellee Ohio Public Employees Retirement System (OPERS). Appellant filed no memorandum *contra*.

As noted by Appellee, OPERS is a retirement system for public employees of the state and several local authorities, created by Chapter 145 of the Ohio Revised Code; OPERS does not exercise statutory functions on behalf of the State of Ohio. See., R.C. 145.03, 145.11. R.C. 145.09 expressly provides that OPERS employees are not employees of the state and are not subject to Chapter 124. of the Ohio Revised Code. OPERS is not a political subdivision of the State of Ohio and does not receive public funds from the State. R.C. 145.26; *In re Appeal of Ford*, 3 Ohio App.3d 416 (10th Dist. 1982).

Unlike a court of general jurisdiction, the State Personnel Board of Review has authority only where it has been explicitly conferred upon it by the Ohio General Assembly. This Board's primary jurisdiction is derived from RC. 124.03(A), which provides that this Board shall:

(1) *Hear appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities or the*

director of administrative services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal of the director, or anybody authorized to perform the director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under division (D) of section 124.14 of the Revised Code. As used in this division, "discharge" includes disability separations. (emphasis added)

This Board has previously held that it lacks jurisdiction over appeals brought by OPERS employees, finding that OPERS does not exercise any function of state government and its employees are not employees in the "classified state service," as referenced by R.C. 124.03(A)(1) and defined by R.C. 124.01(B). See, *Martin v. OPERS* (Feb. 24, 2014), PBR Case No. 13-WHB-07-0184; *Murray v. OPERS* (Feb. 24, 2014), PBR Case No. 13-WHB-07-0177.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** due to a lack of jurisdiction pursuant to R.C. 124.03


Jeannette E. Gunn
Administrative Law Judge