STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Angela Lawrence,

Appellant,

v.

Case Nos. 2015-REM-05-0065
2015-SUS-05-0066

Wright State University,

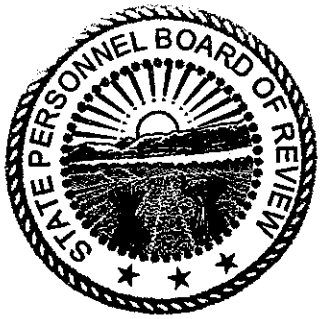
Appellee,

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** 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, August 17, 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 August 24, 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-REM-05-0065 and 2015-SUS-05-0066

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: September 1, 2015

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Angela Lawrence	Case Nos. 15-REM-05-0065 15-SUS-05-0066
Appellant	
v.	July 6, 2015
Wright State University	
Appellee	Jeannette E. Gunn *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes come on due to Appellant's May 18, 2015, filing of a notice of appeal form and accompanying appeal letter concerning her 2013 suspension and 2013 removal from employment with Appellee.

Information contained in the record indicates that Appellant originally filed appeals of her 2013 suspension and 2013 removal with this Board in June 2013; those appeals were designated as SPBR Case No. 13-SUS-06-0134 and 13-REM-06-0135, respectively. Both SPBR Case No. 13-SUS-06-0134 and 13-REM-06-0135 were the subject of a Report and Recommendation issued by Administrative Law Judge James R. Sprague on May 4, 2015. ALJ Sprague recommended that SPBR Case No. 13-SUS-06-0134 be dismissed for lack of jurisdiction, pursuant to R.C. 124.03 and R.C. 124.34, and Case No. 13-REM-06-0135 be dismissed based upon Appellant's failure to prosecute, pursuant to R.C. 124.03 and O.A.C. 124-11-19(A).

Appellant filed no objections to ALJ Sprague's Report and Recommendation and the Board subsequently adopted ALJ Sprague's recommendation to dismiss the matters. A final Board Order was issued on June 4, 2015, dismissing the 2013 appeals filed by Appellant. Appellant filed no appeal thereafter with the Court of Common Pleas.

CONCLUSIONS OF LAW

I find that the State Personnel Board of Review is without jurisdiction to hear the present appeals because they were not filed in a timely manner. O.A.C. 124-1-

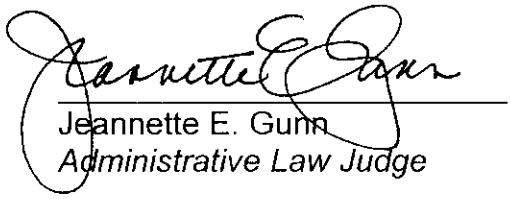
03 sets forth for the timelines to be followed when appealing an employment action to this Board. The present appeals were filed with this Board on May 18, 2015, approximately two years after the employment actions were effective. Appellant's appeals were filed well outside any time period provided for by O.A.C. 124-1-03.

I further find that Appellant may not "reopen" SPBR Case No. 13-SUS-06-0134 and 13-REM-06-0135 by filing new appeals of the 2013 employment actions with the Board. See *Kitchen v. Ohio Dept. of Health* (June 26, 2012), SPBR Case No. 11-WHB-08-0268.

Rule 1 of the Ohio Rules of Civil Procedure provides that the Civil Rules are to be followed in all courts in Ohio in the exercise of civil jurisdiction at law or in equity. Civil Rule 1(C), however, notes that the Civil Rules "to the extent that they would by their nature be clearly inapplicable, shall not apply . . . (7) in all other special statutory proceedings . . . ." An administrative appeal, such as an appeal before this Board, is a special statutory proceeding; Ohio Administrative Code Section 124 sets forth the Board's administrative rules and outlines procedures required for processing an appeal. See *Transky v. Ohio Civ. Rights Comm.*, 193 Ohio App.3d 354, 2011-Ohio-1865.

Once the Board has issued a final order pursuant to O.A.C. 124-15-04 dismissing an action, the only avenue for "reopening" an appeal is through a Motion for Reconsideration, as referenced in O.A.C. 124-15-05. In this instance, Appellant filed no Motion for Reconsideration.

Based upon the above analysis, I find that this Board has no jurisdiction to consider the instant appeals. Appellant's current appeals were untimely filed, and Appellant may not "reopen" a previous appeal which was the subject of a final Board order. Therefore, I respectfully **RECOMMEND** that the instant appeals be **DISMISSED** for lack of jurisdiction.



Jeannette E. Gunn
Administrative Law Judge