

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Dianne Jackson,

Appellant,

v.

Case No. 2015-REM-06-0075

Montgomery County Board of Commissioners,

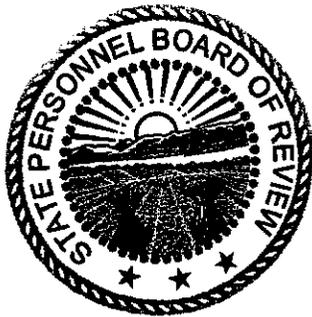
Appellee,

ORDER

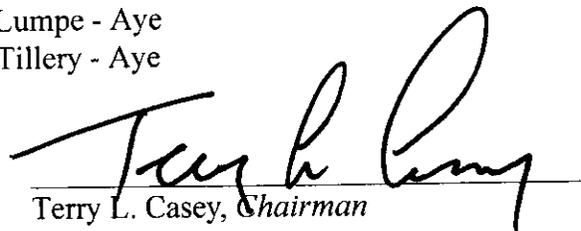
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 R.C. 124.34 Order of Removal is procedurally **DISAFFIRMED**, pursuant to R.C. 124.34 and O.A.C. 124-3-01. "Disaffirmance of an order under this rule shall not be a bar to filing another 'section 124.34 order' or an order of involuntary disability separation based upon the same allegations." (O.A.C. 124-3-01 (B))



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, March 30, 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 April 6, 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-REM-06-0075

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: April 14, 2016

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

Dianne Jackson

Case No. 2015-REM-06-0075

Appellant

v.

February 8, 2016

Montgomery County
Board of Commissioners

Appellee

James R. Sprague
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's June 4, 2015 filing of an appeal from her removal from the position of Nurse Supervisor with Appellee's Stillwater Center.

The then-extant record did not demonstrate that Appellant received her copy of the pertinent R.C. 124.34 Order of Removal. Therefore, this Board issued a Procedural Order that instructed Appellee to provide this Board and Appellant with a copy of that Order of Removal and to provide this Board and Appellant with the requisite proof demonstrating on what date Appellant received her copy of that Order of Removal. Appellee did thereafter timely file information regarding same.

Subsequently, Appellant filed Appellant's motion to disaffirm the instant Order of Removal, premised on the assertion that Appellee failed to comply with the procedural requirements set forth in O.A.C. 124-3-01 *et seq.* Appellee filed no memorandum *contra* to Appellant's motion to disaffirm.

R.C. 124.34 (B) states, in pertinent part:

Within ten days following the date on which the order is served or, in the case of an employee in the career professional service of the department of transportation, within ten days following the filing of a removal order, the employee, except as otherwise provided in this section, may file an appeal of the order in writing with the state

personnel board of review or the commission. For purposes of this section, the date on which an order is served is the date of hand delivery of the order or the date of delivery of the order by certified United States mail, whichever occurs first. ... (emphasis added)

O.A.C. 124-3-01 is entitled "124-3-01 Requirements of section 124.34 orders and orders of involuntary disability separation." and reads, in pertinent part:

(A) "Section 124.34 orders" and orders of involuntary disability separation may be affirmed only if each of the following criteria are satisfied:

(1) The copy of the order served on the employee shall bear the original signature of the appointing authority and the date of signature. If an appointing authority is a public body, the order must contain the signatures of a majority of the members, or in the alternative, a certified copy of the resolution adopting the order shall be attached to each copy of the order; and

(2) The employer shall serve the employee with a copy of the order on or before the effective date of the action; and

(3) The order shows, on its face, a list of particulars which form the basis for the order; and

(4) The appointing authority can, if challenged, demonstrate both the authority of the signer and the authenticity of the signature on a "section 124.34 order" or an order of involuntary disability separation.

(B) Disaffirmance of an order under this rule shall not be a bar to filing another "section 124.34 order" or an order of involuntary disability separation based upon the same allegations. (emphasis added)

In this case, Appellee has sufficiently demonstrated that a copy of the Order of Removal was left at Appellant's doorstep on or before the effective date of the Order of Removal. Further, Appellee has sufficiently demonstrated that it mailed by regular mail a copy of the Order of Removal to Appellant on or before the effective date of the Order of Removal.

Dianne Jackson
Case No. 2015-REM-06-0075
Page 3

Yet, Appellee has failed to demonstrate by a preponderance of the evidence that Appellant received her copy of her pertinent R.C. 124.34 Order of Removal on or before the effective date of the Order of Removal. Accordingly, the instant R.C. 124.34 Order of Removal should be procedurally disaffirmed.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review procedurally **DISAFFIRM** the instant R.C. 124.34 Order of Removal, pursuant to R.C. 124.34 and O.A.C. 124-3-01. "Disaffirmance of an order under this rule shall not be a bar to filing another 'section 124.34 order' or an order of involuntary disability separation based upon the same allegations." (O.A.C. 124-3-01 (B))


James R. Sprague
Administrative Law Judge