STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Cathy Miller,

Appellant,

v.

Case Nos. 2015-REM-07-0109
2015-MIS-07-0110

Department of Mental Health
Northwest Psychiatric Hospital,

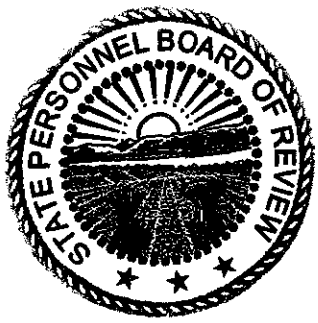
Appellee,

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 these appeals are **DISMISSED** due to a lack of subject matter jurisdiction pursuant to section 124.03 of the Ohio Revised Code.



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 21, 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 March 28, 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 Numbers: 2015-REM-07-0109 and 2015-MIS-07-0110

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 5, 2016

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Cathy Miller	Case Nos. 2015-REM-07-0109 2015-MIS-07-0110
Appellant	
v.	February 23, 2016
Northwest Psychiatric Hospital Department of Mental Health	
Appellee	Marcie M. Scholl *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellee's filing of a Motion to Dismiss, on October 13, 2015 and upon Appellant's Response, filed on November 9, 2015.

Appellee argues that this Board does not possess jurisdiction of this appeal because Appellant Miller was a member of a bargaining unit which is governed by a collective bargaining agreement that provides for final and binding arbitration and secondly, because Appellant Miller voluntarily resigned her position and this Board has no jurisdiction over voluntary resignations. Appellant, on the other hand, argues that Appellant did not voluntarily resign and that she could not file a grievance under the collective bargaining agreement, as she waived her right to do so.

Appellant Miller argues that she could not file a grievance, as the resignation letter she signed states "I also waive the grievance process set forth in the applicable OCSEA Collective Bargaining Agreement and hereby agree to waive any and all claims resulting from my employment and separation from employment with NOPH." Then, she also argues that her resignation was not voluntary. Those two arguments are incongruent. Appellant Miller cannot argue that the resignation letter is valid to stop her from filing a grievance under the collective bargaining agreement but not valid as a resignation.

The fact is clear that Appellant Miller, as a LPN, was covered by a collective agreement that contained a grievance procedure culminating in final and binding arbitration. (Exhibit 1 attached to Appellee's Motion to Dismiss). Pursuant to section 4117.10(A) of the Ohio Revised Code, this Board is divested of jurisdiction when there is a grievance procedure in place which results in final and binding arbitration for a covered member. Therefore, had Appellant Miller not executed a resignation letter, and had been removed from her position by the Appellee, then her only recourse would have been to file a grievance pursuant to the collective bargaining agreement governing her position. This Board would then have no jurisdiction over her removal.

What did happen, however, is that Appellant Miller voluntarily resigned from her position, thus divesting this Board of jurisdiction. In her affidavit attached to Appellant's Response to Appellee's Motion to Dismiss, Appellant Miller states she was called into the Human Resources office on June 23, 2015, and was told she was being removed from her position and was handed a letter of termination, effective June 24, 2015. (Appellee's Exhibit 2 attached to Appellee's Motion to Dismiss). The termination letter followed a pre-disciplinary hearing held on May 22, 2015, in which Appellant Miller was accompanied by her union representative. (Appellant Miller's affidavit). Therefore, Appellant Miller had notice of the reason why she was being terminated and she had been given an opportunity at the pre-disciplinary hearing to rebut the charges against her. (Appellant Miller's affidavit).

On June 23, 2015, when Appellant Miller was called into the Human Resources office, as she states in her affidavit, after she was given her letter of termination, she asked to speak to a union representative and was allowed to do so. In fact, she states in her affidavit that she was allowed to speak privately in another room with two union representatives and after they suggested she might like to resign instead of being terminated, one of the union representatives left the room and returned to tell Appellant Miller that she could resign rather than be fired. Appellant Miller states in her affidavit that she "thought about it for a few minutes and decided that since I needed to get another job, I'd better do it." One of the union representatives then left the room again and came back with a document for her to sign stating that she "voluntarily tender(s) my resignation as a LPN with the Ohio Department of Mental Health and Addiction Services, effective close of business June 23, 2015." There was also language stating she waived the grievance procedure and any and all other claims.

Those are the events that took place according to Appellant Miller in her affidavit in which she swore that the contents are true. In looking at those events, there is nothing to suggest that her resignation was forced. The court in *Kinney v. Department of Administrative Services*, 14 Ohio App.3d 33 (1984) held that when a resignation is the product of the appointing authority's wrongful overt acts of coercion or duress, the resignation is involuntary and ineffective. It further noted that where an employee is permitted to resign as an alternative to being removed on charges which are meritorious there is no coercion and the resignation is voluntary.

Appellant Miller's own account of what took place on June 23, 2015, is completely devoid of any hint of duress or coercion. She was not placed in a locked room alone and given a deadline. She was not kept in the dark as to why she was being removed. Instead, she had been given plenty of notice through her pre-disciplinary hearing as to why she was being removed and she was allowed to meet with two union representatives in a separate room to discuss her options. After being given time to discuss those options, Appellant Miller voluntarily chose resignation over removal and she executed a resignation letter. Those set of facts do not constitute a forced resignation.

Therefore, it is my **RECOMMENDATION** that this appeal be **DISMISSED** due to a lack of subject matter jurisdiction pursuant to section 124.03 of the Ohio Revised Code.

Marcie M. Scholl
Administrative Law Judge