STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Susan Farver-Springer,

Appellant,

v.

Case Nos. 2015-REM-11-0217
2015-FRN-11-0218

Department of Transportation,

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 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 Numbers: 2015-REM-11-0217 and 2015-FRN-11-0218

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

Susan Farver-Springer	Case Nos. 2015-FRN-11-0218 2015-REM-11-0217
Appellant	
v.	March 2, 2016
Department of Transportation	
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 January 7, 2016. To date, Appellant Farver-Springer has not filed a memorandum *contra*.

Appellee argues that this Board does not possess jurisdiction of this appeal because Appellant Farver-Springer voluntarily resigned her position and this Board has no jurisdiction over voluntary resignations. Appellee also argues that there is not a removal present in the instant case because Appellant Farver-Springer resigned her position.

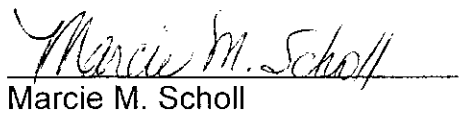
Appellee's argument is persuasive. Appellant Farver-Springer voluntarily resigned from her position, thus divesting this Board of jurisdiction. In the affidavits attached to Appellee's Motion to Dismiss, Michael Brown (acting Labor Relations Officer, District 8 at the time of Appellant Farver-Springer's resignation) and Shananne Middleton (Human Capital Management Analyst Senior, District 8) state Appellant Farver-Springer attended a pre-disciplinary conference on October 19, 2015, along with her attorney. The pre-disciplinary hearing report by Gail Lindeman was also attached to Michael Brown's affidavit and it evidences that Appellant Farver-Springer attended the hearing with her attorney. She presented her procedural issues and stated her position. On November 6, 2015, Mr. Brown and Ms. Middleton met with Appellant Farver-Springer to inform her she was being removed from her position for misuse of state time and falsification of documents, the same subjects that were discussed at the pre-disciplinary hearing. Mr. Brown

then gave Appellant Farver-Springer the opportunity to resign her position in lieu of termination. She was given time to consult with her advocate as well as her attorney. After doing so, Appellant Farver-Springer told Mr. Brown and Ms. Middleton that she would like to resign her position and she completed a letter of resignation and other paperwork related to her resignation.

Those are the events that took place according to the two affidavits discussed above. Appellant Farver-Springer did not submit a memorandum *contra* disputing any of those assertions; therefore, I find that the facts as presented in Mr. Brown and Ms. Middleton's affidavits are factual. In reviewing those facts, there is nothing to suggest that Appellant Farver-Springer's 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.

The accounts of Appellant Farver-Springer's resignation are 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 confer with both her advocate and her attorney prior to making her decision to resign. After being given time to discuss her options with her advisors, Appellant Farver-Springer voluntarily chose resignation over removal and she executed a resignation letter. Those set of facts do not constitute a forced resignation. Inasmuch as Appellant Farver-Springer voluntarily resigned her position, she was not removed and as such, that appeal is moot.

Therefore, it is my **RECOMMENDATION** that these appeals 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