

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

April Cook,

Appellant,

v.

Case No. 2015-SUS-08-0161

Northwest Ohio Juvenile Detention Center,

Appellee,

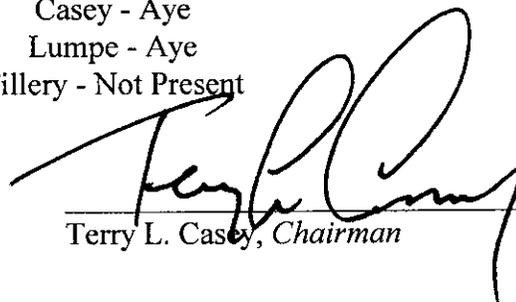
ORDER

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 subject matter jurisdiction pursuant to section 124.34 of the Ohio Revised Code.

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, December 18, 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 December 28, 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-SUS-08-0161

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: January 11, 2016

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

April Cook

Case No. 2015-SUS-08-0161

Appellant

v.

November 4, 2015

Northwest Ohio Juvenile Detention Center

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration on November 4, 2015, pursuant to Appellee's Motion to Dismiss, filed on September 14, 2015, and Appellee's Response to this Board's Procedural Order and Questionnaire, filed on September 15, 2015. Appellant Cook filed a notice of appeal of her one week suspension on August 20, 2015. To date, she has not filed an optional reply to Appellee's Response to the Questionnaire nor has she filed a memorandum *contra* to Appellee's Motion to Dismiss.

Appellee asserts in its Motion to Dismiss that Appellant Cook is an overtime exempt employee. An affidavit of Brian Patrick, Superintendent of Appellee, states Appellant Cook is the Assistant Superintendent of Appellee and, as such, is an overtime exempt employee. Appellant Cook did not file any response which negated this assertion.

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Section 124.34(B) of the Ohio Revised Code states as follows:

(B) In case of a reduction, **a suspension of more than forty work hours in the case of an employee exempt from the payment of overtime compensation**, a suspension of more than twenty-four work hours in the case of an employee required to be paid overtime compensation, a fine of more than forty hours' pay in the case of an

employee exempt from the payment of overtime compensation, a fine of more than twenty-four hours' pay in the case of an employee required to be paid overtime compensation, or removal, except for the reduction or removal of a probationary employee, the appointing authority shall serve the employee with a copy of the order of reduction, fine, suspension, or removal, which order shall state the reasons for the action.

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. If an appeal is filed, the board or commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, the appeal within thirty days from and after its filing with the board or commission. The board, commission, or trial board may affirm, disaffirm, or modify the judgment of the appointing authority. However, in an appeal of a removal order based upon a violation of a last chance agreement, the board, commission, or trial board may only determine if the employee violated the agreement and thus affirm or disaffirm the judgment of the appointing authority. (Emphasis added).

As can be seen from reading the above statute, an employee who is designated as "overtime exempt" can only appeal a suspension of **more** than forty work hours to this Board. Appellant Cook states in her notice of appeal that she was suspended for one week and Mr. Patrick's affidavit states Appellant Cook was suspended for forty (40) hours. Since her suspension was not for a time period greater than forty (40) hours, this Board is without jurisdiction to hear Appellant Cook's appeal.

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Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** due to a lack of subject matter jurisdiction pursuant to section 124.34 of the Ohio Revised Code.

A handwritten signature in cursive script that reads "Marcie M. Scholl". The signature is written in black ink and is positioned above a horizontal line.

Marcie M. Scholl
Administrative Law Judge