

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

Eugene DiSanto,

Appellant,

v.

Case No. 2016-ABL-06-0116

Cuyahoga Community College,

Appellee,

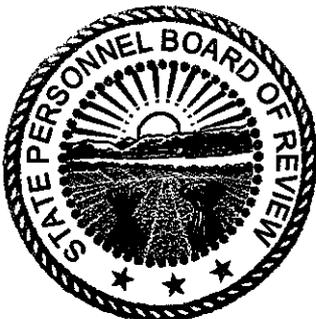
ORDER

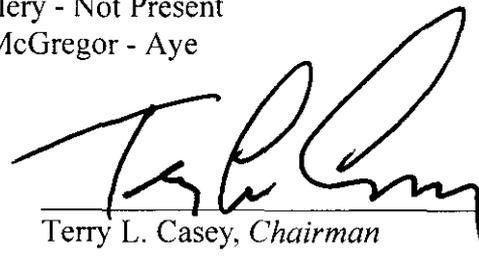
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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. *It is entirely understandable that Appellant was at some point directed to this Board as a potential avenue of remedy for his situation. Unfortunately for Appellant, the General Assembly has not yet provided this Board with authority to hear appeals from employees of state technical colleges (or similar entities); even when those employees are allegedly retaliated against or when those employees are laid off, removed, or are facing other severely challenging employment circumstances. This is no doubt particularly troubling to such employees who, had they simply worked for a legally designated state community college, could have had this Board review the actions taken against them.*

Wherefore, it is hereby **ORDERED** that the instant appeal is **DISMISSED** for untimely filing, pursuant to R.C. 124.328.

Casey - Aye
Tillery - Not Present
McGregor - 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 23, 2016.

Erin E Com
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 30, 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: 2016-ABL-06-0116

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 7, 2016

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

Eugene DiSanto

Case No. 2016-ABL-06-0116

Appellant

v.

July 6, 2016

Cuyahoga Community College

James R. Sprague

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration due to Appellant's June 17, 2016 email filing of a notice of appeal with this Board from the abolishment of his position with Appellee. Based on the documentation that Appellant supplied with his notice of appeal, it appears that Appellant was served with notice of this action on June 3, 2016 and that the abolishment of Appellant's position was also effective on June 3, 2016.

R.C. 124.328 sets forth the appeal time for an employee in the classified service of a covered agency whose position has been abolished. R.C. 124.328 states:

A classified employee may appeal a layoff, or a displacement that is the result of a layoff, to the state personnel board of review. The appeal shall be filed or postmarked no later than ten days after receipt of the layoff notice or after the date the employee is displaced. In cases involving the laying off of classified employees, the affected employee or appointing authority may appeal the decision of the state personnel board of review to the court of common pleas in accordance with section 119.12 of the Revised Code. (emphasis added)

In order to have timely perfected his appeal, Appellant was required *either* to file his notice of appeal with this Board on or before June 13, 2016 *or* to have it postmarked on or before June 13, 2016. Since Appellant's notice of appeal was both emailed to and received by this Board on June 17, 2016, Appellant did not timely perfect his appeal.

Thus, the State Personnel Board of Review is without jurisdiction to hear this appeal and it should be dismissed.

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Additionally, and for the sake of argument only, it appears that Appellee is a "community college" established under the authority and parameters of R.C. Chapter 3354. ("Community Colleges"). Under the provisions of R.C. 3354.03, a "community college district" is organized as a political subdivision with the pertinent associated powers and obligations. Because of this, it appears that "community colleges" like Appellee do not fall under the State Personnel Board of Review's subject matter jurisdiction, as that jurisdiction is established in R.C. Chapter 124.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant appeal for untimely filing, pursuant to R.C. 124.328.



James R. Sprague
Administrative Law Judge