

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

James Reynolds,

Appellant,

v.

Case No. 2016-INV-04-0073

Department of Rehabilitation & Correction,

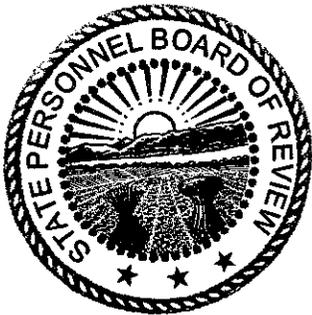
Appellee,

ORDER

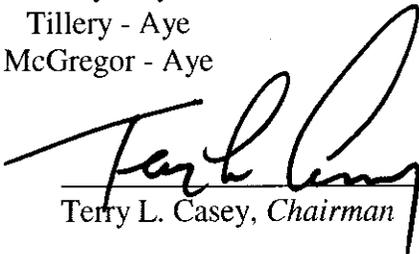
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellant's request for investigation is **DISMISSED** for lack of subject matter jurisdiction over Appellant's allegations



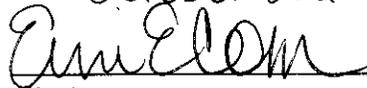
Casey - Aye
Tillery - Aye
McGregor - Aye


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, October 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 November 2, 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-INV-04-0073

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: November 10, 2016

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

James Reynolds

Case No. 16-INV-04-0073

Appellant

v.

August 1, 2016

Department of Rehabilitation &
Correction, Lorain Correctional Institution

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on pursuant to Appellee's Response to Appellant's Request for Investigation, filed with the Board on June 20, 2016. Appellant's initial request failed to allege with particularity any violation of the civil service laws of the State of Ohio; Appellant was subsequently ordered by this Board to specify by June 6, 2016, the civil service requirements which he believed had been violated by Appellee.

On June 3, 2016, Appellant responded, stating generally that he believed Appellee had misused its power by reassigning his position to a non-vacant spot and violating ODRC (Ohio Department of Rehabilitation & Correction) policies. Appellant failed to reference any specific ODRC policies that had been allegedly violated, but attached a copy of an incident report dated March 7, 2016, in which he complained that Appellee had delayed approval of a leave request he submitted in February 2016; he also attached several custody supervisor allocation rosters. Appellant referenced R.C. 124.341 in his response, however, he made no specific allegation that Appellee's alleged violations were taken in retaliation for whistleblowing activities.

On June 28, 2016, Appellant supplemented the record by providing the Board with a brief written statement containing additional, unrelated allegations not included in his June 3, 2016, response to this Board's correspondence. It is unclear whether or not Appellant provided this supplemental information to Appellee, as required by O.A.C. 124-11-10(A).

CONCLUSIONS OF LAW

Appellant requested that this Board examine a purported misuse of power by Appellee related to its alleged improper reassignment of his position to a non-vacant spot and violation of unspecified ODRC policies. I find that, absent any specific allegation that Appellee's actions were allegedly taken in retaliation for whistleblower activities engaged in by Appellant, Appellant's reference in his June 3, 2016, written response to R.C. 124.341 is insufficient to constitute grounds for an additional appeal. I further find that the additional, unrelated allegations made by Appellant in his June 28, 2016, correspondence with this Board were not made in a timely manner, as required by this Board's earlier order, and are therefore not properly made the subject of the instant appeal.

Unlike a court of general jurisdiction, the State Personnel Board of Review has authority only where it has been explicitly conferred upon it by the Ohio General Assembly. This Board's general investigatory jurisdiction is derived from R.C. 124.56, which provides that this Board shall conduct an investigation when it has reason to believe that:

. . . any officer, board, commission, head of a department, or person having the power of appointment, layoff, suspension, or removal, has abused such power by making an appointment, layoff, reduction, suspension, or removal of an employee under his or their jurisdiction in violation of [Chapter 124.] of the Revised Code

In order to invoke this Board's authority, Appellant must allege that Appellee has made an appointment, layoff, reduction, suspension, or removal in violation of R.C. Chapter 124. Where a request for investigation alleges none of the above-referenced triggering devices, the State Personnel Board of Review is without jurisdiction to proceed with an investigation. *State, ex rel. Carver v. Hull* (1994), 70 Ohio St.3d 570; *Okapal v. University of Toledo* (1982), PBR 82-INV-10-3019; *Reed v. Montgomery County Board of Mental Retardation* (1982), PBR 82-INV-09-2801; *Logsdon v. University of Cincinnati* (1982), PBR 82-INV-08-2690.

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The actions requested by Appellant to be investigated are insufficient to constitute one of the triggering devices found in R.C. 124.56. Accordingly, I find that this Board has no jurisdiction to proceed with an investigation of this matter and I respectfully **RECOMMEND** that Appellant's request for investigation be **DISMISSED** for lack of subject matter jurisdiction over Appellant's allegations.



Jeannette E. Gunn
Administrative Law Judge