STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

RaYah Blackshear,

Appellant,

v. Case No. 2016-REM-08-0175

Department of Developmental Disabilities,

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 Appellee's motions are **GRANTED** and the appeal is **DISMISSED** on alternative grounds for failure to appear, and lack of jurisdiction over the party.

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 November 14, 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 21, 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-REM-08-0175

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 29, 2016

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

RaYah Blackshear,	Case No. 2016-REM-08-0175
Appellant	
v.	October 6, 2016
Dept. of Developmental Disabilities	
Appellee.	Raymond M. Geis *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration due to Appellee's Motions to Dismiss for Failure to Appear and Lack of Jurisdiction over the party.

A telephone Pre-Hearing was set before this Board on October 6, 2016 at 10:00 am. Appellee appeared through Counsel by telephone. Appellant failed to appear and Appellee orally moved to dismiss this appeal.

FINDINGS OF FACT

1. Notice of the hearing was properly served on Appellant on September 20, 2016, by regular mail, and no good cause has been shown for Appellant's failure to appear.

2. Appellant was a Therapeutic Program Worker ("TPW") terminated during her probationary period. (Affidavit of Melinda Armstrong, Labor Relations Administrator)

3. TPW is a bargaining unit classification governed under the terms of the collective bargaining agreement between the State of Ohio and the Ohio Civil Service Employees Association ("OCSEA").

4. Art. 6.01 of the contract between the State of Ohio and OCSEA cover the matter of probationary periods and probationary employees.

CONCLUSIONS OF LAW

R.C. 124.27(C) deprives this Board of jurisdiction over probationary employees.

R.C. 4117.10 deprives this Board of jurisdiction over an employee where a collective bargaining agreement ("CBA") covers the subject matter of the dispute, and the CBA contains a grievance procedure that ends in final and binding arbitration.

Therefore, Appellant's Motion to Dismiss for lack of jurisdiction over the party pursuant to R.C. 4117.10 and/or R.C. 124.27 (C) is also well taken.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** the Appellee's motions be **GRANTED** and the appeal be **DISMISSED** on alternative grounds for failure to appear, and lack of jurisdiction over the party.

Raymond M. Geis
Administrative Law Judge