

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

James Reynolds,

Appellant,

v.

Case No. 2016-SUS-04-0072

Department of Rehabilitation & Correction,

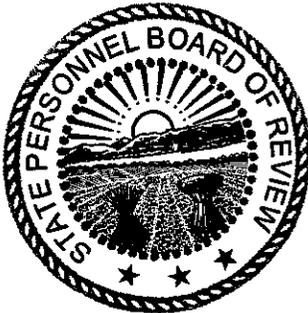
Appellee,

ORDER

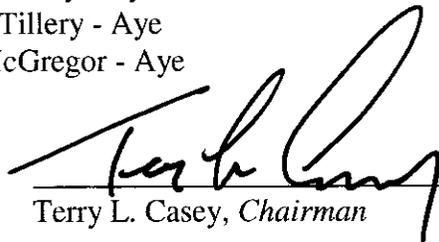
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellee's Motion to Dismiss is **GRANTED** and the appeal is **DISMISSED** for lack of jurisdiction, pursuant to R.C. 124.03 and 124.34.



Casey - Aye
Tillery - Aye
McGregor - Aye

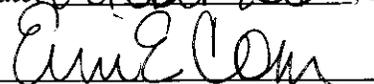


Terry L. Casey, *Chairman*

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 26, 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-SUS-04-0072

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-SUS-04-0072

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 for consideration pursuant to Appellee's Motion to Dismiss, filed with this Board on June 3, 2016. Appellee asserted in its Motion that Appellant was serving in an overtime-exempt position (Corrections Captain) at the time the forty-hour fine which is the subject of this appeal was imposed upon him. Appellee argued that this Board is without jurisdiction to consider the instant appeal pursuant to R.C. 124.03 and 124.34(B).

In response to Appellee's Motion to Dismiss, Appellant provided this Board with a copy of DAS Directive HR-D-06 and DRC policies 35-PAY-02 and 35-PAY-03 to support his contention that his position was overtime eligible. Appellant also attached a copy of his bi-weekly payroll information sheet for the Board's consideration.

CONCLUSIONS OF LAW

Pursuant to O.A.C. 124-11-07(A)(2), when a properly supported Motion to Dismiss is filed with the Board, an adverse party may not rest upon mere allegations or denials in his or her response. The response must set forth specific facts showing there is a genuine issue in dispute. Appellee's June 3, 2016, Motion to Dismiss was properly supported by the affidavit of Joseph Cornish.

Because Appellant in the instant matter appears *pro se*, some leeway was given to him in the form and content of his response. However, despite such consideration, the information submitted by Appellant remains insufficient to refute Appellee's assertion that Appellant's position as a Corrections Captain was overtime-exempt.

Appellant's payroll information sheet indicates that he received compensation for "Exempt Overtime Earned." Both the directive and the policies submitted by Appellant acknowledge that, under certain circumstances, overtime-exempt employees who encumber overtime-exempt positions may be granted overtime compensation. DRC Policy 35-PAY-02(VI)(A)(2) specifically recognizes that corrections captains are among those overtime-exempt employees who may receive overtime for operational reasons. I find that the information submitted by Appellant in response to Appellee's Motion to Dismiss is not adequate to establish that there is a genuine issue in dispute.

Pursuant to R.C. 124.34(B), this Board has jurisdiction to consider an appeal of "a fine of more than forty hours' pay in the case of an employee exempt from the payment of overtime compensation." Appellant is an employee generally exempt from the payment of overtime compensation and the fine imposed upon Appellant did not exceed forty hours' pay, therefore this Board is without jurisdiction to hear the instant appeal.

Accordingly, I respectfully **RECOMMEND** that Appellee's Motion to Dismiss be **GRANTED** and the appeal be **DISMISSED** for lack of jurisdiction, pursuant to R.C. 124.03 and 124.34.


Jeannette E. Gunn
Administrative Law Judge