STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Tammy Brown,

Appellant,

v. Case No. 2016-WHB-01-0007

Department of Administrative Services,

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 this appeal is **DISMISSED** pursuant to section 124.341 of the Ohio Revised Code.

Casey - Aye
McGregor - Aye
Tillery - 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, June 24, 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 July 1, 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-WHB-01-0007

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: July 11, 2016

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Tammy Brown

Appellant

v.

Department of Administrative Services
Human Resource Division/Compensation
and Workforce Planning

Appellee

Case No. 2016-WHB-01-0007

May 10, 2016

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellant's Response to this Board's Procedural Order/Questionnaire, filed on February 16, 2016; Appellant's Motion to Take Depositions, filed on February 25, 2016; Appellee's Motion to Dismiss, filed on February 26, 2016; and Appellant's Memorandum in Opposition to Appellee's Motion to Dismiss, filed on March 4, 2016.

Appellant's Motion to Take Depositions, filed on February 25, 2016, is hereby **DENIED.**

In response to this Board's Procedural Order and Questionnaire, Appellant Brown stated she filed a written report, in the form of an email, with her supervisor on December 8, 2015. She attached a copy of that particular email and offered it as the written report she filed to meet the requirements of the "whistleblower" statute. Appellee filed a Motion to Dismiss, stating that the email does not meet the requirements of the statute.

Section 124.341 of the Ohio Revised Code sets out the requirements that must be met in order for a writing to be considered a "whistleblower" document. That statute states as follows, in pertinent part:

> (A)If an employee in the classified or unclassified civil service becomes aware in the course of employment of a violation of state or federal statutes, rules, or regulations or the misuse of public resources, and the employee's supervisor or appointing authority has authority to correct the violation or misuse, **the employee may file a written report identifying the violation or misuse**

In *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, the Franklin County Court of Common Pleas restated these conditions as prerequisites to whistleblower jurisdiction under R.C. 124.341. The court in *Haddox* noted that "[j]urisdiction to invoke whistleblower protection requires that the whistleblower show that she 1) made a written report, 2) transmitted the written report to her supervisor, appointing authority, the state inspector general, or other appropriate legal official; and 3) identified a violation of state or federal statute, rule, or regulation, or misuse of public resources in the report." *See Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, (citing *Wade v. Ohio Bureau of Worker's Compensation*, 1999 Ohio App. LEXIS 2614, Franklin App. No. 98AP-997 (June 10, 1999) unreported citing to *State ex rel Cuyahoga Cty. SPBR*, 82 Ohio St. 3d 496, 696 N.E.2d 1054 (1998) and to *Chubb v. Ohio Bur. Of Worker's Comp*, 81 Ohio St. 3d 275, 690 N.E.2d 1267 (1998)).

The *Haddox* court went on further to explain that "'the requirement of a written communication, specifically addressed to an appropriate individual, is an essential element of whistleblower protection and will be strictly applied.'" *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, (citing *Wade v. Ohio Bureau of Worker's Compensation*, 1999 Ohio App. LEXIS 2614, Franklin App. No. 98AP-997 (June 10, 1999) unreported citing to *Kuch v. Structural Fibers, Inc.*, 78 Ohio St. 3d. 134, 141, 677 N.E.2d 308 (1997)). Therefore, in order to invoke this Board's jurisdiction, an employee must first establish that he or she complied with the reporting requirements of R.C. 124.341.

Inspecting the first necessary component for whistleblower jurisdiction as set forth in *Haddox*, the requirement that the written communication identify a violation of state or federal statute, rule, or regulation, or misuse of public resources has not been met by Appellant Brown.

In her email to her supervisor, Appellant Brown did not allege any specific violations of a statute, rule or policy. In fact, in reading her email and without knowing any of the background, it is hard to discern what she is talking about. The subject matter of the email is "Mediation". Appellant Brown mentions "practices" of the State Surplus section and mentions "falsifying state documents", but then apologizes for using that term as she says she should have said "allegedly" in front of that phrase since the "disposition of documents have not been determined." The email seems more like an apology than an allegation of wrongdoing and, again, the subject matter is "mediation". There is not enough specificity in the email to determine what violation has occurred and as such, it does not meet the threshold requirement of a "written report" as that term is used in section 124.341 of the Ohio Revised Code.

Accordingly, Appellant Brown has failed to demonstrate that she met the requisite reporting requirements set forth in R.C 124.341, by failing to allege any specific violations of statute, rule or regulation. Additionally, it was within her job duties to report any alleged violation of statutes, rules or policies in the sale of surplus property. Thus, she has failed to meet her prima facie burden and it is my **RECOMMENDATION** that Appellee's Motion to Dismiss be **GRANTED** and this appeal be **DISMISSED** pursuant to section 124.341 of the Ohio Revised Code.

Marcie M. Scholl

Marcie M. Scholl
Administrative Law Judge