STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Lori Sheets,

Appellant,

v.

Stark County Veterans Service Commission,

Appellee,

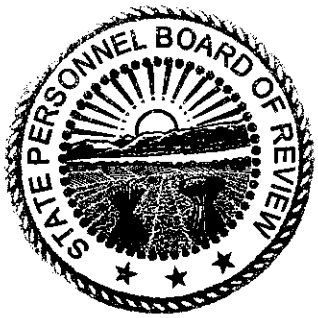
Case Nos. 2016-SUS-07-0130
2016-RED-07-0131
2016-WHB-07-0132

ORDER

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, 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 whistleblower and reduction appeals are **DISMISSED** as moot.



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 19, 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 October 26, 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-07-0130, 0131, 0132

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 3, 2016

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Lori Sheets	Case No. 2016-SUS-07-0130 2016-RED-07-0131 2016-WHB-07-0132
Appellant	
v.	August 29, 2016
Stark Co. Veterans Service Commission,	
Appellee	Raymond M. Geis *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These matters arise from Appellant's suspension, reduction and whistleblower appeals filed July 11, 2016 and Appellee's responses to my Procedural Orders of July 21 and August 18, 2016.

Appellee's responses conclusively establish that Appellee did not substantially comply with the requirements of R.C. 124.34. For reasons discussed below, I recommend that Appellee's Order should be disaffirmed on procedural grounds, and Appellant's companion claims should be contemporaneously dismissed as moot.

Additionally, Appellee's Motion to Dismiss Appellant's suspension appeal as untimely is hereby **DENIED.** Appellant's suspension appeal is treated as a miscellaneous appeal under O.A.C. 124-1-03 (I), due to the fact that her notice does not constitute a valid R.C. 124.34 Order. This extends her filing deadline to 30 days instead of 10 days.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

The pertinent 124.34 Order issued June 23, 2016 states:

> Written Reprimand and Fourth Offense Employee Lori Sheets Group 1 Offense: Item #21. Unsatisfactory work or failure to maintain required standards of

> performance. Ongoing problem of incorrectly scheduling clients on the bus schedule which could cause them to not make their medical appointments. This is unacceptable work performance. This constitutes a 4th offense requiring 10 days off without pay.

1. Appellee Stark Co. Veterans' Service Commission ("SCVSC") is organized under R.C. 5901.03.

2. Appellant is a receptionist for Appellee in the classified civil service. R.C. 5901.07.

3. This Board has jurisdiction over the instant appeals pursuant to R.C. 124.03 and 124.01(A), (B) and (C).

4. SCVSC is a five member ***board*** appointed by a Judge of the Stark County Court of Common Pleas. R.C. 5901.03.

5. SCVSC employs Gary Ickes ("Ickes") as its Executive Director.

6. Ickes responded to a questionnaire indicating more or less that he was authorized to suspend Appellant by virtue of his job description showing that his duties include supervision and discipline of staff.

7. Ickes did <u>not</u> provide any resolution from the appointing authority delegating the authority to hire, discipline or discharge employees of the SCVSC.

8. R.C. 5901.01 et. seq. is silent with regard to the powers of the executive director.

CONCLUSIONS OF LAW

"If an appointing authority is a public body, the order must contain the signatures of a majority of the members, or in the alternative, a certified copy of the resolution adopting the order shall be attached to each copy of the order." OAC 124-3-01. Though given ample opportunity, none of Appellee's questionnaire responses adduced sufficient evidence demonstrating compliance with this section.

Instead, Ickes offers that he is authorized to discipline because it states this

in his position description. Unfortunately, a job description does not carry the force of a resolution or lawful delegation of authority by SCVSC. Moreover, nothing in the SCVSC statute expressly or impliedly gives Ickes this authority.

There are other problems with Appellee's order. It is very confusing because it is titled "Written Reprimand" but also recites "10 days without pay". Which is it? A written reprimand is a distinct form of discipline recognized by this Board. So too is suspension. The awkward construction of the order seems to blend the two together by reciting both terms. Are these two actions merged or was the document intended to be two separate disciplines arising from the same misconduct?

Appellee's order also lacks information about the right to appeal the action, and fails to mention the effective dates of suspension. (Note: Appellee is already advised of its right to rescind its order and replace it, but thus far declined this opportunity in its responses.) For persuasive value, it is worthy of noting that the Director of Administrative Services requires suspended employees to be notified of their appeal rights, and that this information must be in written form at least equivalent to the form prescribed by the State Personnel Board of Review. O.A.C. 123:1-31-01.

Should Appellee object to this report and recommendation on grounds of timeliness of appeal, I urge this Board to overrule its objection. Because Appellee's order is defective and Appellant suffered pecuniary loss, this Board should treat Appellant's suspension as a miscellaneous appeal under O.A.C. 124-1-03 (I), which has a 30-day filing limit.

I emphasize that SCVSC can cure the defects of future orders by: distinguishing between a reprimand and suspension within its progressive discipline system; fully utilizing the R.C. 124.34 Order form online at SPBR's website (or equivalent) to issue discipline beyond a reprimand or 3-day (24-hour) suspension; and by fulfilling the requirements of the O.A.C. regarding the signature of the appointing authority by resolution.[1]

Appellant's suspension, reduction and whistleblower claims all arise from the instant order. This Board may observe the doctrine of the moot case. Simply put, if

---

[1] SCVSC is encouraged to contact the staff of this Board for guidance regarding procedure at 614-644-8573. However, this Board cannot provide legal advice. SCVSC may contact the Stark County Prosecutor's office regarding an instrument of delegation from the SCVSC to its Executive Director for purposes of discipline administration.

the matter in dispute ceases to exist, there is no need to render a decision on the merits. *See "moot case" Black's Law Dictionary, 6th Edition, Deluxe (1990) at p. 1008.* Here, if the Board disaffirms Appellee's order, it should concurrently dismiss Appellant's appeals as moot.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the instant suspension be **DISAFFIRMED** on procedural grounds. Nothing in this recommendation should be construed to limit Appellee's ability to issue a new 124.34 Order based on the same grounds in accordance with O.A.C. 124-3-03 (C) and which uses or is equivalent to the form prescribed by this Board, found at:

http://pbr.ohio.gov/Portals/0/pdf/Forms%20&%20Publications/124-34OrderFillin.pdf

Furthermore, I respectfully **RECOMMEND** that Appellant's whistleblower and reduction appeals be **DISMISSED** as moot. Nothing in this recommendation should be construed to limit Appellant's ability to file new appeals on these same matters, in the event that SCVSC reissues the suspension.

Raymond M. Geis
Administrative Law Judge