

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

BRIAN CAIN,

*Appellant*

v.

Case No. 05-RED-02-0073

DEPARTMENT OF REHABILITATION AND CORRECTION,  
RICHLAND CORRECTIONAL INSTITUTION,

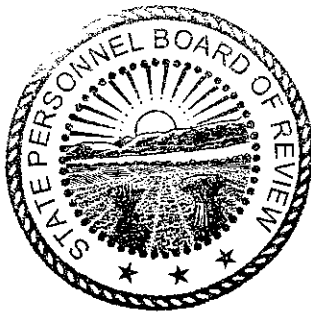
*Appellee*

**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 record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to this 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 the instant appeal be **DISMISSED** for lack of jurisdiction, pursuant to O.R.C. 124.34.



Tracy – Aye  
Lumpe – Aye  
Booth – Aye

  
\_\_\_\_\_  
Roger W. Tracy, *Chairman*

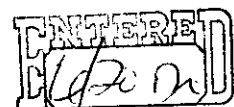
**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that the foregoing is ~~(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 20, 2006.

  
\_\_\_\_\_  
Diara Mills  
*Clerk*

**NOTE:** Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.



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

Brian Cain,

Case No. 05-RED-02-0073

*Appellant*

v.

April 11, 2006

Dept.Of Rehab. & Corr.,  
Richland Corr. Institution,

*Appellee*

Christopher R. Young  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This matter came on for consideration on April 11, 2006, upon the Appellee's motion to dismiss filed on April 4, 2006. To date, the Appellant has not filed any memorandum in opposition to Appellee's motion to dismiss.

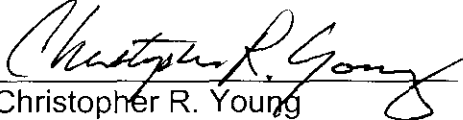
I find that Appellant originally filed his appeal to protest his (40) forty hour vacation debit. However, on the October 19, 2005, at the scheduled record hearing it was agreed that the (40) vacation debit would be rescinded, and the Appellee would reissue discipline in the form of a (3) three-day suspension. On November 21, 2005 and on January 11, 2006, the Appellee provided the necessary paperwork to reflect the above noted change, as was noted in its motion to dismiss.

Unlike a court, the State Personnel Board of Review has jurisdiction only when it has been explicitly conferred upon it by the Ohio General Assembly. Ohio Revised Code Section 124.03 grants this Board authority to review suspensions of **more than three days**, removals, reductions, layoffs and abolishments.

Suspensions of three days or less are not appealable to the State Personnel Board of Review, pursuant to Ohio Revised Code Section 124.34. Only suspensions in excess of three days are appealable, see *Gillard v. Norris* (1988), 857 F.2d 1095; *Rapier v. Darke County Board of Mental Retardation and Developmental Disabilities* (Mar. 10, 1993), Franklin Co., No. 92-CV-09-7589, unreported.

Brian Cain  
Case No. 05-RED-02-0073  
Page 2

Therefore, I respectfully **RECOMMEND** that this appeal be **DISMISSED** for lack of subject matter jurisdiction.

  
Christopher R. Young  
Administrative Law Judge

CRY: