

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

KATRINA C. FARNAN,

Appellant,

v.

Case No. 06-FIN-03-0055

DEPARTMENT OF REHABILITATION AND CORRECTION,
NORTHEAST PRE-RELEASE CENTER,

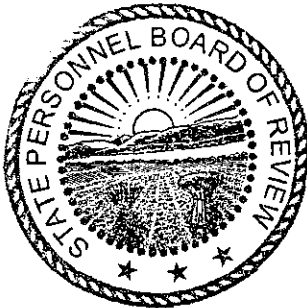
Appellee.

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 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Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** as moot since Appellee rescinded the O.R.C. 124.34 Order that imposed a five-day fine upon Appellant, pursuant to O.A.C. 124-3-03(C).



Tracy – Aye
Lumpe – Aye
Booth – Aye

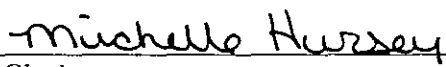


Roger W. Tracy, *Chairman*

CERTIFICATION

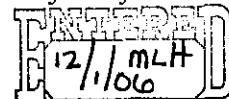
The State of Ohio, State Personnel Board of Review, ss:

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, DECEMBER 1, 2006.



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**

Katrina C. Farnan,

Case No. 06-FIN-03-0055

Appellant

v.

October 30, 2006

Department of Rehabilitation & Correction,
Northeast Pre-Release Center,

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon review of the information contained in the file. On March 6, 2006, Appellant timely filed an appeal of a five-day fine. The matter was scheduled for record hearing on September 21, 2006.

STATEMENT OF THE CASE

On September 19, 2006, Appellee contacted this Board and indicated its intent to rescind the R.C. 124.34 Order issued to Appellant on March 2, 2006, and requested that the September 21, 2006, record hearing date be vacated as a result. Appellee further indicated its intent to notify Appellant of its rescission. Because the rescission had not yet been effectuated, the record hearing date was continued in order to preserve Appellant's appeal.

On September 21, 2006, Appellant appeared at this Board's offices to proceed with the record hearing. Appellant asserted that she had received no notification of the cancellation of the record hearing, however, subsequent telephone conversations with Appellee revealed that notice had been provided to Appellant prior to September 21, 2006, with that notification being left at her place of residence. No record hearing was held on September 21, 2006.

On September 22, 2006, Appellant filed correspondence with this Board alleging that Appellee had improperly requested a continuance of the record hearing in an attempt to unfairly change its original administrative action to a lesser, non-

appealable sanction. Appellant further alleged that Appellee's actions constituted harassment as a reprisal for her veteran status.

On September 28, 2006, Appellee filed a Notice of Rescission with Board, verifying that the R.C. 124.34 Order that was the subject of appeal in the above-referenced case had been rescinded, and attaching a personnel action dated September 21, 2006, in support. The personnel action further indicated that the original five-day suspension had been reduced to a three-day suspension.

CONCLUSIONS OF LAW

O.A.C. Section 124-3-03 provides for the amendment or rescission of R.C. 124.34 orders by an appointing authority. O.A.C. 124-3-03(C) notes that upon written notice to the employee, an appointing authority may rescind a "section 124.34 order." Rescission of an R.C. 124.34 Order is not a bar to filing another order based upon the same allegations.

In the present matter, Appellee rescinded the R.C. 124.34 Order issued to Appellant that imposed a five-day fine on her. Appellee presumably filed a second order based upon the same allegations, imposing a three-day fine upon Appellant. Unlike a court, the State Personnel Board of Review has jurisdiction only when explicitly conferred upon it by the Ohio General Assembly. Ohio Revised Code Section 124.03 grants this Board authority to review fines and suspensions of more than three days, removals, reductions, layoffs and abolishments. Fines and suspensions of three days or less are not appealable to the State Personnel Board of Review, pursuant to Ohio Revised Code Section 124.34(B). Accordingly, Appellant has no right of appeal to this Board of the second R.C. 124.34 Order, which imposed a three-day fine upon Appellant.

The instant matter is based upon Appellant's appeal of the five-day fine imposed upon her by Appellee. Appellee's rescission of that five-day fine renders that appeal moot by giving Appellant the remedy she sought from this Board – invalidation of the original five-day fine. Appellee rescinded the original R.C. 124.34 Order on September 21, 2006; even assuming, *arguendo*, that the record hearing had taken place as scheduled on that date, Appellee could have taken the same action to rescind the five-day fine at any time prior to the issuance by the Board of a final order.

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Accordingly, I find that Appellee's actions were taken within the provisions of the Ohio Revised Code and Ohio Administrative Code. Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** as moot.



Jeannette E. Gunn
Administrative Law Judge

JEG: