

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

COLLEEN STUCKY,

Appellant,

v.

Case Nos.: 06-RED-02-0043
06-MIS-02-0044

CLARK COUNTY
DEPARTMENT OF JOB & FAMILY SERVICES,

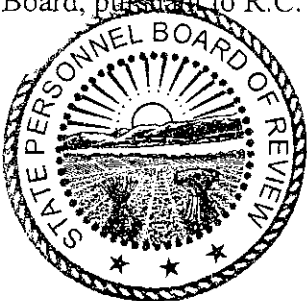
Appellee.

ORDER

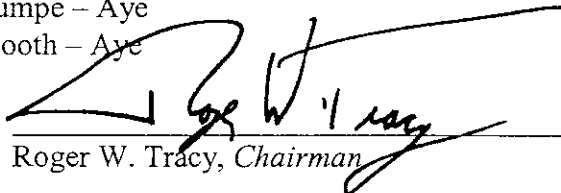
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the 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 Case Number 06-RED-02-0043 be **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to O.A.C. 124-1-02(Y). It is further **ORDERED** that Case Number 06-MIS-02-0044 be **DISMISSED** for Appellant's failure to demonstrate that Appellee retaliated against Appellant for Appellant's filing of several previous appeals with this Board, pursuant to R.C. 124.03.



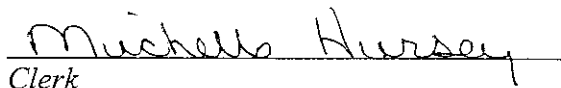
Tracy – Aye
Lumpe – Aye
Booth – Aye


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, August 7, 2006.


Michelle Hursey
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**

COLLEEN STUCKY,

Appellant

v.

CLARK COUNTY DEPARTMENT OF
JOB AND FAMILY SERVICES,

Appellee

Case Nos. 06-RED-02-0043
06-MIS-02-0044

June 27, 2006

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's February 22, 2006 filing of two appeals. The first (Case No. 06-RED-02-0043) is based on an allegation that Appellant has been denied the opportunity to work in Appellee's after hours program and has suffered a commensurate loss of pay. The second (Case No. 06-MIS-02-0044) is based on an allegation that Appellee has retaliated against Appellant for Appellant's filing of several previous appeals with this Board.

On May 23, 2006, this Board issued a Procedural Order and accompanying questionnaire in the above-captioned reduction appeal and issued a questionnaire in the above-captioned miscellaneous appeal. The questionnaire contained both of the above case numbers and its caption referenced the subject matter of these two appeals. The Procedural Order and questionnaire provided Appellee with a mandatory time frame in which to respond to these inquiries and provided Appellant with an opportunity to file an optional reply. On June 9, 2006, Appellee timely filed its mandatory response but, to date, Appellant has not chosen to file a reply.

Based on the respective records, to date, it appears that Appellant at one time was selected to work in an after hours program for Appellee and was compensated accordingly. It further appears that, at some point, Appellee chose to eliminate Appellant's opportunity to participate in that after hours program. Since Appellant is no longer allowed to so participate, she has suffered an inchoate loss of compensation that she would have garnered, had she theoretically continued to participate in that after hours program.

COLLEEN STUCKY

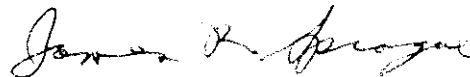
Case Nos. 06-RED-02-0043 and 06-MIS-02-0044

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O.A.C. 124-1-02 (Y) defines "reduction in pay" to mean: "... an action which diminishes an employee's pay. *When the conditions entitling an employee to supplemental pay end, the ending of supplemental pay shall not be considered a reduction.*" (emphasis added).

In the instant cases, it appears that Appellant's participation in the after hours program provided Appellant an opportunity to earn supplemental pay. It further appears that the cessation of that opportunity (resulting in the commensurate cessation of that additional compensation) fell within the discretion of Appellee. More importantly for our purposes here, since this situation appears to involve the ending of supplemental pay, it is not a situation that is appealable to this Board (see O.A.C. 124-1-02 (Y), noted above). Additionally, Appellant has not demonstrated in the record in Case No. 06-MIS-02-0044 that Appellant's previous filings with this Board were the proximate cause of Appellee's termination of Appellant's participation in the after hours program. Should Appellant possess such objectively demonstrable evidence, then Appellant may so indicate, if Appellant files Objections with this Board regarding the instant Report and Recommendation.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** Case No. 06-RED-02-0043 for lack of jurisdiction over its subject matter pursuant to O.A.C. 124-1-02 (Y) and further **RECOMMEND** that the State Personnel Board of Review **DISMISS** Case No. 06-MIS-02-0044 for Appellant's failure to demonstrate that Appellee retaliated against Appellant for Appellant's filing of several previous appeals with this Board, pursuant to R.C. 124.03.



JAMES R. SPRAGUE
Administrative Law Judge

JRS: