

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

JOHNNY MARKS,

*Appellant,*

v.

Case No. 07-IDS-03-0079

DEPARTMENT OF ADMINISTRATIVE SERVICES,  
OFFICE OF EMPLOYEE SERVICES,

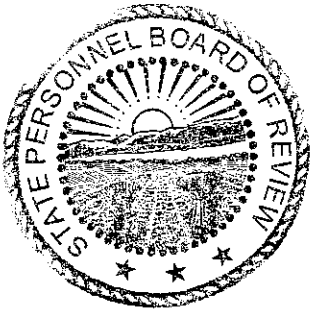
*Appellee.*

**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 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** due to premature filing, divesting this Board of subject matter jurisdiction, pursuant to O.A.C. § 123:1-30-01(F).



Lumpe – Aye  
Booth – Aye  
Tracy – Aye

A handwritten signature in cursive script, appearing to read "J. Richard Lumpe".

J. Richard Lumpe, *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 25, 2007.

A handwritten signature in cursive script, appearing to read "Michelle Hursey".  
Clerk

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

10/1/07  
L. Tolson (M)

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

Johnny Marks

Case No. 07-IDS-03-0079

*Appellant*

v.

May 17, 2007

Department of Administrative Services,  
Office of Employee Services

*Appellee*

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for consideration on May 17, 2007. Appellant Marks filed an appeal of his involuntary disability separation on March 6, 2007. On May 4, 2007, Appellee submitted an Affidavit of Monica L. Rausch, Labor Relations Manager, in response to a Procedural Order issued by this Board on April 25, 2007.

The Affidavit of Ms. Rausch and the documents contained in the file establish the following facts:

1. The Order of Involuntary Disability Separation was signed by Appellee Director Hugh Quill on March 7, 2007.
2. Appellant Marks received the Order of Involuntary Disability Separation on March 8, 2007.
3. The effective date of Appellant Marks' involuntary disability separation was March 15, 2007.
4. Appellant Marks filed his appeal with this Board on March 6, 2007.

**CONCLUSIONS OF LAW**

The Ohio Administrative Code provision which governs involuntary disability separations is administrative rule 123:1-30-01. Paragraph (F) of that rule governs the appeals from an involuntary disability separation and states as follows:

(F) An employee so separated shall have the right to appeal in writing to the personnel board of review **within ten days following the date the order is served**. (Emphasis added).

This Board's administrative rule 124-1-03(A) establishes the time line for an appeal from an involuntary disability separation and concurs with the above rule. This Board's rule states as follows:

(A) Except as set forth below, appeals from "section 124.34 orders," including disability separations, shall be filed, in writing, **within ten calendar days following the date the order is served on the employee**. (Emphasis added).

According to the above administrative rules, Appellant Marks' appeal time began to run after he was served with the order of involuntary disability separation, not before. Therefore, when Appellant Marks filed his appeal on March 6, 2007, he had not yet been involuntarily disability separated, as no order had yet been signed by the Appellee's director. Thus, Appellant Marks' appeal is premature.

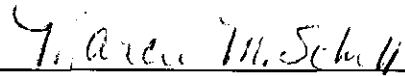
In the case of *Winiarski v. Hamilton County Recorder*, (June 15, 1995) Franklin App. Nos. 94APE12-1821, 1822 and 1823, unreported; 1995 WL 360235; cert denied (Nov. 15, 1995), 74 Ohio St.3d 1456, the Appellee abolished an employee's position, but because of procedural defects, rescinded two notices of abolishment which the employee received, but had already appealed to this Board. Appellee abolished the employee's position a third time and the employee did not timely appeal from notice of that abolishment. The court in *Winiarski* held "An appeal from a job abolishment notice may not be filed before receipt of the notice; a premature filing is in direct contravention to R.C. 123.328 (sic) and O.A.C. 124-1-03(B)." *Supra*, pg. 3.

The instant case falls directly under the *Winiarski* holding. Appellant Marks' premature filing of his appeal of his involuntary disability separation is in direct contravention to O.A.C. 123:1-30-01 and 124-1-03. Since his notice of appeal is

Johnny Marks  
Case No. 07-IDS-03-0079  
Page 3

premature, this Board has no jurisdiction to hear the appeal. If Appellant Marks' applies for reinstatement from his involuntary disability separation and is denied, then he can file an appeal of that denial with this Board.

Therefore, it is my **RECOMMENDATION** that this appeal be **DISMISSED** due to premature filing, divesting this Board of subject matter jurisdiction.

  
\_\_\_\_\_  
Marcie M. Scholl  
*Administrative Law Judge*

:mms