

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

LISA GREENWALDT,

Appellant,

v.

Case No. 07-REM-02-0056

GREENE COUNTY BOARD OF COMMISSIONERS,

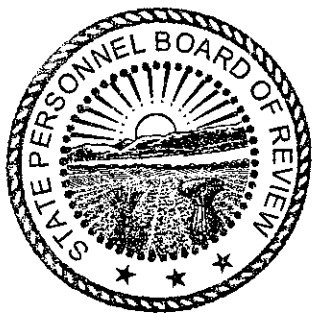
Appellee.

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** for lack of jurisdiction over its subject matter, pursuant to O.R.C. §§ 4117.10(A) and 124.34 (A) at (4).



Lumpe – Aye
Booth – Aye
Tracy – Aye

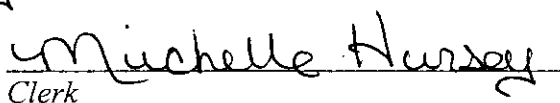


J. Richard Lumpe, *Chairman*

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, May 22, 2007.



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 provision of Chapter 124. and 119. Ohio Revised Code. A written Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board and the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the 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 number of magnetic tapes used to record your hearing, and the costs incurred by the Board in certifying your case to court. The number of tapes, costs incurred, and the corresponding amount of deposit required, as well as the final date that the Notice of Appeal and Deposit will be accepted by this Board, are listed at the bottom of this Notice. If a full or partial transcript of the hearing tapes has been prepared prior to the filing of an appeal, the cost 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 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 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's 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 May 29, 2007. The Board will then determine if you are indigent and, therefore, relieved of responsibility of paying the deposit at this time. You will be notified in writing of the Board's determination. Please note that if the Board determines you are NOT indigent, then YOU MUST FILE 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 07-REM-02-0056
Transcript Costs NA Administrative Costs \$25.00
Total Deposit Required* \$25.⁰⁰
Notice of Appeal and Deposit Must Be Received by SPBR On or Before June 6, 2007

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

LISA GREENWALDT,

Case No. 07-REM-02-0056

Appellant

v.

April 20, 2007

GREENE COUNTY BOARD OF COMMISSIONERS,

Appellee

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on due to Appellee's March 16, 2007 filing of Appellee's motion to dismiss for lack of subject matter jurisdiction. Appellee contends this matter is properly resolved through the grievance procedure pursuant to a collective bargaining agreement and that this Board lacks jurisdiction to consider the matter. Appellee further contends that, pursuant to R.C. 124.34 (A) at (4), this Board is divested of jurisdiction over any disciplinary action filed by Appellant. This is because Appellant was convicted of Identity Theft (R.C. 2913.49 (B)(1), a felony of the fifth degree). Appellant did not file a memorandum *contra* and, so, has essentially failed to contest the applicability of both of these statutory bars to this Board's jurisdiction in this matter.

I find that Appellant was classified as an Employment Services Worker. The Employment Services Worker classification is included in a bargaining unit that is represented by Local 957, International Brotherhood of Teamsters. Appellee and Local 957, International Brotherhood of Teamsters, have signed a collective bargaining contract that covers Appellant's bargaining unit.

That contract provides a grievance procedure resulting in final and binding arbitration. Appellant was removed. This action is covered by the contract grievance procedures. R.C. 4117.10(A) states that, where a bargaining agreement provides a grievance procedure that culminates in mandatory final and binding arbitration, the State Personnel Board of Review lacks jurisdiction to proceed.

Even if R.C. 4117.10 (A) had no applicability in the instant matter, Appellant's conviction for violating R.C. 2913.49 (B)(1) would still bar this Board from proceeding in this matter. This is because Appellant's conviction triggers provisions in R.C. 124.34 (A) at (4) that operate to change Appellant's civil service status from classified to unclassified and to bar Appellant from receiving any potential back pay in this matter, unless her Identity Theft conviction is subsequently reversed or annulled.

Finally, Appellant has failed to comply with the procedural prerequisites contained within O.A.C. 124-11-07 (A)(2) and (C), in that Appellant has failed to file a memorandum *contra* to Appellee's properly filed and supported motion to dismiss.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal for lack of jurisdiction over its subject matter, pursuant to R.C. 4117.10 (A) and R.C. 124.34 (A) at (4).



JAMES R. SPRAGUE
Administrative Law Judge

JRS: