

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

Pamela Shropshire-Matrunick,

*Appellant,*

v.

Case No. 07-SUS-01-0032

Department of Taxation,

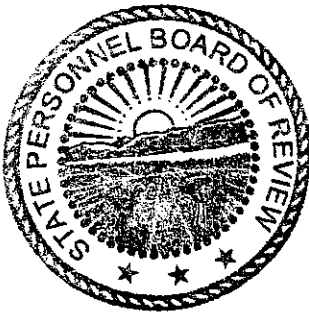
*Appellee.*

**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 lack of subject matter jurisdiction, pursuant to O.R.C. § 124.34(B).



Lumpe - Aye  
Booth - Aye  
Sfalcin - Aye

A handwritten signature in black ink, appearing to read "J. Richard Lumpe".

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J. Richard Lumpe, *Chairman*

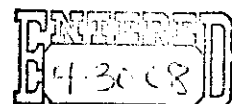
**CERTIFICATION**

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

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(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, April 30, 2008.

Michelle Hunsay  
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**

Pamela Shropshire-Matrunick,

Case No. 07-SUS-01-0032

*Appellant*

v.

March 21, 2008

Dept Of Taxation,

Christopher R. Young

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This matter comes on for consideration on February 21, 2008, upon the Appellant's Motion to Disaffirm filed on January 29, 2008, and upon the Appellee's Memorandum Contra to Appellant's Motion to Disaffirm filed on January 30, 2008. Further, the Appellee filed a Motion to Dismiss on February 4, 2008, followed by the Appellant's filing of the Appellant's Notice of Rejection of Appellee's Proposal, Reply and Supplemental Motion to Disaffirm on February 11, 2008, along with the Appellant's affidavit filed on February 12, 2008. Additionally, the Appellee filed Appellee's Supplement to Motion to Dismiss on February 29, 2008, followed by Appellee's Second Supplement to Motion Dismiss on March 3, 2008. Further, the Appellant filed Appellant's Memorandum Contra Appellee's Second Supplement on March 6, 2008 and on March 7, 2008. Next, the Appellee filed Appellee's Motion to Strike and Memorandum Contra Appellant's Notice of Rejection of Appellee's Proposal, Reply and Supplemental Motion to Disaffirm on March 7, 2008 and Appellee's Reply to Appellant's Memorandum Contra Appellee's Second Supplement filed on March 13, 2008.

For clarification, and for simplifying this matter, on January 25, 2008, this instant matter was set for a record hearing before the undersigned Administrative Law Judge, wherein the Appellant was contesting the Appellee's ten-day suspension that they had previously issued to the Appellant. After the record was opened and the parties introduced themselves on the record, the Appellee notified this Board that they intended to rescind the Appellant's ten-day suspension and issue a less than three-day suspension in its place. The Appellee's notice occurred prior to opening statements or any sworn evidence. As a result, the undersigned issue a Procedural Order continuing the matter pending the submission of a

rescission and reduction of suspension to be filed with this board on or before February 29, 2008, as this Board does not possess jurisdiction over appeals where there is a suspension of less than three days.

The Appellant contends that since the case was scheduled on January 25, 2008 at 10:00 a.m. and all the parties were in attendance, and since the Appellee failed to prosecute the case, the Appellee's Ohio Revised Code section 124.34 order of suspension issued to the Appellant should be disaffirmed.

On the other hand, the Appellee asserts that they under applicable law are allowed to rescind Ohio Revised Code section 124.34 orders prior to or at the record hearing, if they so desire.

O.A.C. section 124-3-03(C) states:

(C) Upon written notice to the employee, an appointing authority may rescind a "section 124.34 order" or an order of involuntary disability separation. Rescission of a "section 124.34 order" or an order of involuntary disability separation under this rule shall not be a bar to filing another order based upon the same allegations.

In Appellee's motion to dismiss, along with its other pleadings, have provided this board with evidence that they have rescinded the Appellant's ten-day suspension, along with imposing a two-day suspension relating to the same allegations. The Appellee has also provided evidence to this Board that they have restored to the Appellant all applicable leave balances, service credit, and/or wage progression that may have been impacted by the suspension, and at one point the Appellant has refused to accept the check issued to her by the Department. However, the evidence also reveals that the Department, as of March 14, 2008, direct deposited her reimbursement check into her account.

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

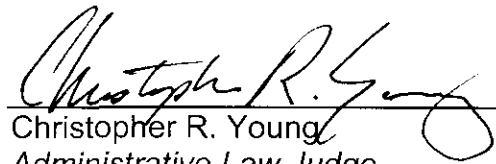
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three days are appealable, see *Gillard v. Norris* (1988), 857 F.2d 1095; *Rapier v. Darke County Board of Mental Retardation and Developmental Disabilities* (Mar. 10, 1993), Franklin Co., No. 92-CV-09-7589, unreported.

Thus, this Board does not possess jurisdiction to review suspensions of two days or less that are issued to Appellants. (See O.R.C Section 124.34(B)).

### RECOMMENDATION

Therefore, as a result of Appellee rescinding the Appellant's ten-day suspension to reflect a two-day suspension, and by providing evidence to this Board that the Appellant has been compensated for the same, I respectfully **RECOMMEND** that the Appellee's motion to dismiss be **GRANTED** and this appeal be **DISMISSED** for lack of subject matter jurisdiction.

  
Christopher R. Young  
Administrative Law Judge

CRY: