

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

Deborah A. Vandeborne,

Case Nos. 08-REM-03-0052

08-WHB-03-0053

Appellant,

v.

Carroll County,
Department of Job and Family Services,

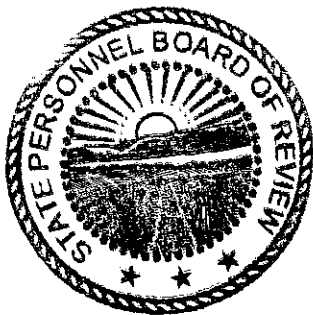
Appellee.

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 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 appeals be **DISMISSED** for lack of jurisdiction, pursuant to O.R.C. §§ 124.27(C) and 124.341 and O.A.C. §§ 124-1-03(G) and 124-1-03(I).



Lumpe - Aye

Booth - Aye

Sfalcin - Aye

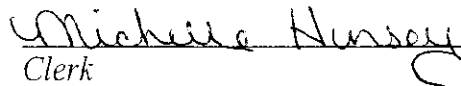


J. Richard Lumpe, *Chairman*

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 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, June 13, 2008.



Michelle Hussey
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**

Deborah A. Vandeborne,

Case Nos.: 08-REM-03-0052
08-WHB-03-0053

Appellant

v.

May 5, 2008

Carroll County Department of
Job and Family Services,

Appellee

Elaine K. Stevenson
Hearing Officer

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration due to Appellant's filings of a notice appeal from her removal pursuant to R.C. 124.34 and a notice of appeal from an alleged violation of the whistleblower provisions under R.C. 124.341. On April 4, 2008, Appellee filed a Motion to Dismiss and Memorandum in Support. On April 18, 2008, Appellant filed her response to Appellee's Motion to Dismiss.

The information contained in the records of the above-captioned appeals indicates that Appellant was in her probationary period at the time of her termination and was removed for unsatisfactory service. On October 29, 2007, Appellee notified Appellant via oral communication and a letter that her employment was terminated effective October 29, 2007. Appellant filed her appeals with this Board on March 10, 2008.

O.A.C. 124-1-03(A) provides that:

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.

O.A.C. 124-1-03(G) provides that:

Appeals from disciplinary or retaliatory actions taken as a result of an employee having filed a report under section 124.341(A) of the Revised Code shall be filed, in writing, within thirty days after receiving actual notice of the disciplinary or retaliatory action.

O.A.C. 124-1-03(I) provides that:

Appeals from all other actions, including denials of reinstatement from disability separations, shall be filed, in writing, with the state personnel board of review not more than thirty calendar days after the time the appellant receives actual notice of the action.

* * * *

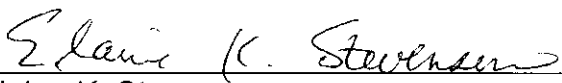
Appellant was removed during her probationary period and therefore was not served with a "section 124.34 order." Since Appellant did not receive a "section 124.34 order," the time limit for Appellant to file an appeal from her removal falls under O.A.C. 124-1-03(I). O.A.C. 124-1-03(I) provides that an appellant has thirty days after the appellant receives actual notice of the action to file an appeal with this Board. The information contained in the records indicates that Appellant received actual notice on October 29, 2007, via oral communication. Appellee also mailed a letter of termination to Appellant that was dated October 29, 2007. Appellant filed her appeal from her removal on March 10, 2008. Clearly, Appellant's appeal from her removal was untimely filed.

With respect to Appellant's whistleblower appeal, it is noted O.A.C. 124-1-03(G) provides that appeals from disciplinary or retaliatory actions taken as a result of an employee having filed a report under R.C. 124.341(A) shall be filed in writing thirty days after the employee receives actual notice of the disciplinary or retaliatory action. As noted above, Appellant received notice of the disciplinary action on October 29, 2007. Appellant filed her appeal from an alleged violation of R.C. 124.341 on March 10, 2008. Clearly, Appellant's whistleblower appeal also was untimely filed.

In addition to the untimeliness of Appellant's appeals, I note that R.C.124.27(C) provides that a probationary employee removed or reduced for unsatisfactory service during the employee's probationary period has no right to appeal the removal or reduction under R.C. 124.34. Also, this Board lacks jurisdiction to consider an employee's claim of whistleblower protection under R.C. 124.341 when the employee has not filed a written report with an official named in this statute prior to the date of the alleged retaliatory or disciplinary action.

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Based on the foregoing, I respectfully **RECOMMEND** that Appellee's Motion to Dismiss be **GRANTED** and the instant appeals be **DISMISSED** for lack of jurisdiction, pursuant to sections 124.27(C) and 124.341 of the Ohio Revised Code and sections 124-1-03(G) and 124-1-03(I) of the Ohio Administrative Code.



Elaine K. Stevenson
Hearing Officer

EKS:/