

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Jeana Deletra,

Appellant,

v.

Case No. 08-WHB-08-0480

Ohio Consumers' Counsel,

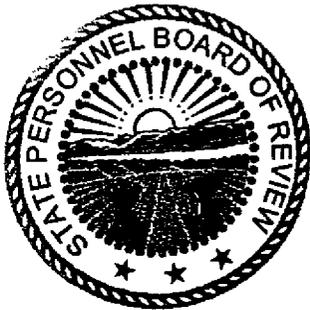
Appellee.

ORDER

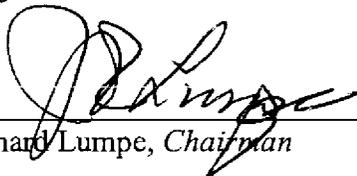
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellant's failure to comply with the reporting requirements to invoke the whistleblower protection contained in O.R.C. § 124.341.



Lumpe - Aye
Booth - Aye
Sfalcin - Aye

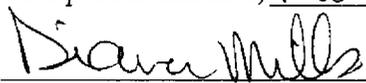


J. Richard Lumpe, *Chairman*

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, November 20, 2008.



Clerk

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

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

Jeana Deletra,

Case No. 08-WHB-08-0480

Appellant

v.

October 14, 2008

Ohio Consumers' Counsel,

Elaine K. Stevenson

Appellee

Hearing Officer

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on pursuant to a review of the information contained in the record of the above-referenced appeal. On August 15, 2008, Appellant filed a notice of appeal from an alleged retaliatory action taken by Appellee. In her notice of appeal, Appellant alleges that Appellee's August 15, 2008 memorandum to her regarding her insubordination was issued because of her "whistle blowing" activities under R.C. 124.341. On September 19, 2008, this Board issued a Procedural Order, instructing Appellant to file a copy of her "whistleblower" report with this Board. On October 10, 2008, Appellant filed a two-page summary regarding various work conversations and events and a witness list. Appellant also filed copies of several e-mails regarding various work subjects, including Appellant's work cubicle, employee work schedules, and attendance at a mandatory staff meeting.

R.C. 124.341 reads, in pertinent part:

(A) If an employee in the classified or unclassified civil service becomes aware in the course of employment of a violation of state or federal statutes, rules, or regulations or the misuse of public resources, and the employee's supervisor or appointing authority has authority to correct the violation or misuse, the employee may file a written report identifying the violation or misuse with the supervisor or appointing authority. In addition to or instead of filing a written report with the supervisor or appointing authority, the employee may file a written report with the office of internal auditing created under section 126.45 of the Revised Code.

If the employee reasonably believes that a violation or misuse of public resources is a criminal offense, the employee, in addition to or instead of filing a written report with the

supervisor, appointing authority, or the office of internal auditing, may report it to a prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation, to a peace officer, as defined in section 2935.01 of the Revised Code, or, if the violation or misuse of public resources is within the jurisdiction of the inspector general, to the inspector general in accordance with section 121.46 of the Revised Code. In addition to that report, if the employee reasonably believes the violation or misuse is also a violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code, report it to the appropriate ethics commission.

(B) Except as other provided in division (C) of this section, no officer or employee in the classified or unclassified civil service shall take any disciplinary action against an employee in the classified or unclassified civil service for making any report authorized by division (A) of this section . . .

. . .

(D) If an appointing authority takes any disciplinary or retaliatory action against a classified or unclassified employee *as a result of the employee's having filed a report under division (A) of this section*, the employee's sole and exclusive remedy, notwithstanding any other provision of law, is to file an appeal with the state personnel board of review within thirty days after receiving actual notice of the appointing authority's action. . . . (Emphasis added.)

* * *

Case law has established that to invoke the protection of R.C. 124.341, an employee in the classified or unclassified civil service must satisfy the reporting requirements set forth in this statute. The employee must have *properly* reported an alleged violation or violations of state or federal statutes, rules, or regulations, or the misuse of public resources that the employee became aware of during the course of his or her employment. The employee must also demonstrate that, as a result of having filed a report pursuant to R.C. 124.341(A), the employee's appointing authority took disciplinary or retaliatory action against the employee. The reporting requirements set forth in R.C. 124.341(A) are to be strictly applied. See, *Wade v. Ohio Bur. of Workers' Comp.* (June 10, 1999), Franklin App. No. 98AP-997.

There is no evidence that Appellant filed a written report with the Office of Internal Auditing or that she reported a criminal offense or ethics violation to an appropriate official named in the second paragraph of R.C. 124.341(A). Therefore, in order to invoke the protection of R.C. 124.341, Appellant must have filed a written report with her supervisor or appointing authority. That report must identify a violation or violations of state or federal statutes, rules, or regulations or the misuse of public resources. As noted above, Appellant filed copies of several e-mails and a two-page summary regarding various work conversations in response to this Board's September 19, 2008 Procedural Order. A review of the documents submitted by Appellant reveals that none of these documents report a violation of state or federal statutes, rules, or regulations, or the misuse of public resources, as required by R.C. 124.341(A).

Therefore, I respectfully **RECOMMEND** that the instant appeal by **DISMISSED** due to Appellant's failure to comply with the reporting requirements to invoke the whistleblower protection contained in R.C. 124.341.


Elaine K. Stevenson
Hearing Officer

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