

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Mark Montrose,

Appellant,

v.

Case No. 09-RED-10-0460

Franklin County Sheriff,

Appellee.

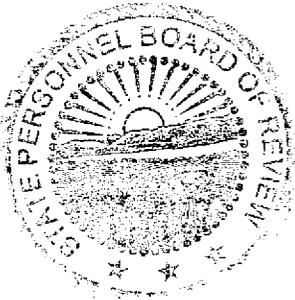
ORDER

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 subject matter jurisdiction, pursuant to O.R.C. § 124.27.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

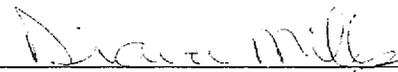



J. Richard Lumpe, *Chairman*

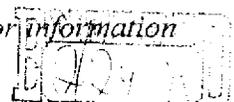
CERTIFICATION

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, Feb. 24, 2010.


Diane Mills
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**

Mark Montrose

Case No. 09-RED-10-0460

Appellant

v.

February 2, 2010

Franklin County Sheriff

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellant's filing of an appeal of his reduction. On November 24, 2009, this Board issued a Procedural Order and Questionnaire to Appellant Montrose. Appellant Montrose filed a reply with this Board on December 9, 2009. In response to the questionnaire, Appellant Montrose stated he was reduced in pay and position on October 16, 2009, as he went from being a Sergeant to Corporal and went from receiving \$39.63 an hour to \$36.36 an hour. In response to question number seven (7), asking if he was serving in a probationary period, Appellant Montrose replied as follows:

Because of reduction in rank/position on Oct. 16, 2009, I am no longer under a probationary period. I was promoted to Sergeant on December 15, 2008. This promotion had a probationary period of one year (December 15, 2008 through December 14, 2009).

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Because Appellant Montrose, by his own admission, was in a promotional probationary period at the time of his reduction from Sergeant to Corporal, this Board is without jurisdiction to hear his appeal. Section 124.27(C) of the Ohio Revised Code governs probationary periods and states as follows, in pertinent part:

(C) All original and promotional appointments, including appointments made pursuant to section 124.30 of the Revised Code, but not intermittent appointments, shall be for a probationary period, not less than sixty days nor more than one year, to be fixed by the rules of the

director, except as provided in section 124.231 of the Revised Code, and except for original appointments to a police department as a police officer or to a fire department as a firefighter which shall be for a probationary period of one year. **No appointment or promotion is final until the appointee has satisfactorily served the probationary period. If the service of the probationary employee is unsatisfactory, the employee may be removed or reduced at any time during the probationary period.** If the appointing authority decides to remove a probationary employee in the service of the state, the appointing authority shall communicate to the director the reason for that decision. **A probationary employee duly removed or reduced in position for unsatisfactory service does not have the right to appeal the removal or reduction under section 124.34 of the Revised Code.**

As can be seen from reading the above statute, there is no right to appeal a probationary reduction pursuant to section 124.34 of the Ohio Revised Code. Therefore this Board is divested of jurisdiction to review a probationary reduction.

Appellant Montrose also filed a Request for Extension of Time to Disclose Disparate Treatment, on January 28, 2010. Due to the finding that this Board is without jurisdiction to consider this appeal, Appellant's Request is hereby deemed to be moot.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** due to a lack of subject matter jurisdiction pursuant to section 124.27 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge