

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

Rebecca L. Walton,

Case Nos. 10-RED-02-0046
10-MIS-02-0047

Appellant.

v.

Department of Transportation,

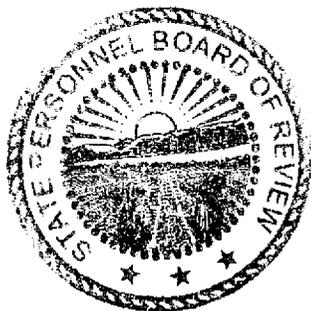
Appellee.

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 subject matter jurisdiction, pursuant to O.R.C. § 124.341



Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

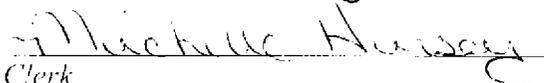


J. Richard Lumpe, *Chairman*

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, August 4, 2010.



Michelle Hunsberger
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**

Rebecca L. Walton,

Appellant

v.

Department of Transportation,

Appellee

Case Nos. 10-RED-02-0046
10-MIS-02-0047

April 16, 2010

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

The above-referenced matters came on for consideration pursuant to Appellee's Motion to Dismiss, filed with this Board on March 23, 2010. Appellee asserted that this Board lacks jurisdiction over the issues raised by Appellant in her February 10, 2010, Notice of Appeal. Appellant filed no memorandum *contra*.

Based upon the uncontroverted information contained in the records, I find that Appellant's Notice of Appeal was filed to contest an unfavorable performance review she received on or about February 1, 2010; her probationary reduction in position from Transportation Manager 1 to Highway Technician 3; and allegedly retaliatory discipline imposed upon her by Appellee as a result of complaints she filed with the Ohio Civil Rights Commission. These three issues form the basis of SPBR Case No. 10-RED-02-0046 and 10-MIS-02-0047.

Ohio Revised Code Section 124.03 grants the State Personnel Board of Review authority to review suspensions of more than three days, removals, reductions, layoffs and abolishments. The authority to consider appeals of performance reviews has not been conferred upon this Board by O.R.C. 124.03 or any other section of the Ohio Revised Code.

Information contained in the record indicates that Appellant was reduced in position from Transportation Manager 1 to Highway Technician 3 during her probationary period, based upon her failure to satisfactorily carry out her job duties. O.R.C. 124.27(C) specifically provides that a probationary employee who is reduced in position for unsatisfactory service does not have the right to appeal the reduction to the State Personnel Board of Review.

O.R.C. 124.341 grants this Board the authority to hear “whistleblower” appeals of retaliatory discipline. In order to establish jurisdiction of this Board to consider an appeal under the provisions of that statute, an employee must initially demonstrate that he or she properly reported a violation of state or federal statutes, rules, or regulations or the misuse of public resources to his or her supervisor or appointing authority. Appellant indicated in her appeal that she had filed a complaint with the Ohio Civil Rights Commission, which resulted in retaliatory discipline; such a report is not sufficient to fulfill the requirements of O.R.C. 124.341 and subsequently trigger its protections. This Board otherwise has no jurisdiction to consider alleged retaliatory discipline.

Based upon the above analysis, I find that Appellant has asserted no claim over which this Board may exercise its statutory jurisdiction. Therefore, I respectfully **RECOMMEND** that Appellee’s Motion be **GRANTED**, and the instant appeals be **DISMISSED** for lack of subject matter jurisdiction.



Jeannette E. Gunn
Administrative Law Judge