

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Darrel Board,

*Appellant,*

v.

Case No. 10-SUS-07-0196

Department of Developmental Disabilities,  
Mt. Vernon Developmental Center,

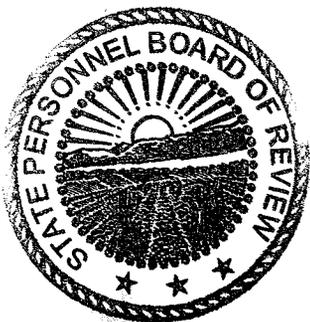
*Appellee.*

**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 jurisdiction over its subject matter, pursuant to O.R.C. § 124.34.



Lumpe - Aye  
Sfalcin - Aye  
Tillery - Aye

*J. Richard Lumpe, Chairman*  
\_\_\_\_\_  
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, December 13, 2010.

*Michelle Hunsay*  
\_\_\_\_\_  
Clerk

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

12/13/10

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

DARREL BOARD,

Case No. 10-SUS-07-0196

*Appellant*

v.

November 12, 2010

DEPARTMENT OF DEVELOPMENTAL DISABILITIES,  
MT. VERNON DEVELOPMENTAL CENTER,

*Appellee*

JAMES R. SPRAGUE  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This matter came on for consideration due to Appellee's October 29, 2010 filing of Appellee's motion to dismiss, memorandum in support, and accompanying documentation, including the Affidavit of Thomas Mickley, Human Resources (HR) Director for the Mt. Vernon Developmental Center. Appellant was provided with the requisite time to file a memorandum *contra*, but, to date, has not done so.

I find Appellant serves in a Residential Care Supervisor 1 position and, as such, encumbers a position that is exempted from overtime pursuant to the FLSA. (See Affidavit of HR Director Mickley at p. 1, Item 3.) I further find that Appellant received a 40 hour working suspension, effective July 13, 2010.

R.C. 124.34, which sets forth this Board's disciplinary jurisdiction, no longer provides this Board with jurisdiction over FLSA overtime exempt employees who receive a suspension of 40 hours or fewer. Since Appellant's suspension was for 40 (working) hours, this Board lacks jurisdiction over the subject matter of the instant appeal and it should be dismissed, accordingly.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal for lack of jurisdiction over its subject matter, pursuant to R.C. 124.34.

  
JAMES R. SPRAGUE  
*Administrative Law Judge*