

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

K. Kimaru Wa-Tenza,

Appellant,

v.

Case No. 10-WHB-09-0231

Dayton Board of Education,

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 the untimely filing of the appeal, pursuant to O.R.C. § 124.341.



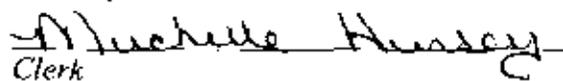
Lumpc - Aye
Sfalcin - Aye
Tillery - Aye


J. Richard Lumpc, *Chairman*

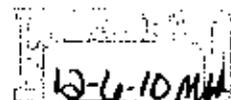
CERTIFICATION

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 6, 2010.


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**

K. Kimaru Wa-Tenza

Case No. 10-WHB-09-0231

Appellant

v.

October 14, 2010

Dayton Board of Education

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on October 14, 2010 upon the filing of a whistleblower appeal by Appellant Wa-Tenza on September 3, 2010. On September 21, 2010 this Board issued a Procedural Order and Questionnaire to Appellant Wa-Tenza. He filed his response to the Questionnaire on September 29, 2010. Appellee did not file an optional reply.

Appellant Wa-Tenza indicated in his response to question number one of the questionnaire that he received notice of the action that he was currently appealing on June 1, 2010. He attached a copy of a memorandum addressed to him and dated June 1, 2010, from James G. Fowler, informing him that his teaching assignment for the 2010-2011 School Year had been changed.

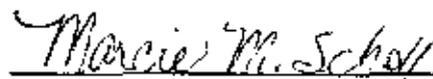
Section 124.341 of the Ohio Revised Code is the statute which governs whistleblower appeals. Paragraph (D) of that statute governs the time limits for filing an appeal and it states as follows, in pertinent part:

(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**. If the employee files such an appeal, the board shall immediately notify the employee's appointing authority and shall hear the appeal. The board may affirm or disaffirm the

action of the appointing authority or may issue any other order as is appropriate. The order of the board is appealable in accordance with Chapter 119. of the Revised Code. (Emphasis added).

As can be seen from reading the above statute, an employee has thirty days of receiving actual notice of an alleged retaliation in which to file an appeal with this Board. In the instant case, Appellant Wa-Tenza found out about the appealed action on June 1, 2010. To be in compliance with the timelines of the statute, his appealed would have had to been filed within thirty days of June 1, 2010, or by July 1, 2010. As stated earlier, Appellant Wa-Tenza did not file his appeal until September 3, 2010, approximately two months late.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** due to the untimely filing of the appeal pursuant to section 124.341 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge

:mms