

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

KAREN A. PAWLOSKI,

Appellant,

v.

Case No. 11-REM-02-0035

DEPARTMENT OF TRANSPORTATION,

Appellee

ORDER

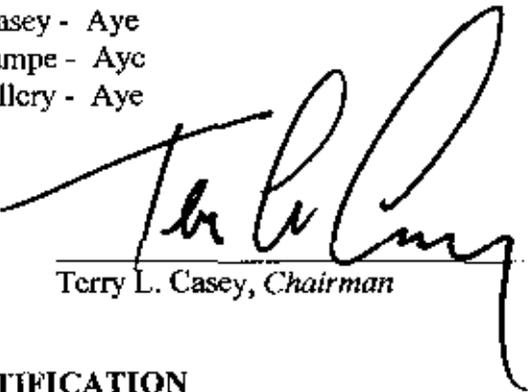
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including 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 R.C. 124.27.



Casey - Aye
Lumpe - Ayc
Tillery - Aye


Terry L. Casey, *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 constitutes (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, September 28, 2011.


Clerk

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

Karen A. Pawloski

Case No. 11-REM-02-0035

Appellant

v.

August 23, 2011

Department of Transportation

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter comes on due to Appellant's February 1, 2011 filing of an appeal from a removal from her position with Appellee, Ohio Department of Transportation (ODOT). Appellant received notice of her removal via letter on January 28, 2011 and the removal was effective on January 28, 2011. No R.C. 124.34 Order of Removal was issued in this case because ODOT asserts that Appellant was serving in a probationary period at the time of her removal.

There is essentially no dispute regarding the actual facts of this case. Accordingly, I find that Appellant was previously employed by Appellee from April 1987 to August 1991 in classified positions. She was then re-employed by Appellee and appointed to the unclassified position of Deputy Director 5, effective March 19, 2007. Appellant Pawloski then served in the unclassified position of Deputy Director 6, effective June 2, 2010 until November 7, 2010, at which time she took a voluntary demotion to a classified position of Management Analyst Supervisor 2. She was not placed into a probationary period on June 2, 2010, although the position of a Management Analyst Supervisor 2 would normally carry with it a one-hundred eighty day (180) probationary period. On January 28, 2011, Appellant Pawloski was notified that she should have been in a probationary status, effective November 7, 2010 and Appellee corrected its records to reflect such. Appellant Pawloski was also notified on January 28, 2011, that she was being probationarily removed for unsatisfactory service effective January 28, 2011.

Because this Board lacks jurisdiction to consider an appeal filed by an employee removed during an initial probationary period, the question arose as to whether or not Appellant Pawloski had to serve a probationary period in her Management Analyst Supervisor 2 position. As a result, on May 20, 2011, Appellee filed a Motion to Dismiss and on June 13, 2011, Appellant filed a memorandum Contra.

It is clear that Ohio Revised Code section 124.27 (C) indicates that all original and promotional appointments (including appointments made pursuant to section 124.30 of the Ohio Revised Code, but not intermittent appointments) are to include a probationary period. It is equally clear that the same statute divests this Board of jurisdiction to hear an appeal of an employee removed during his or her probationary period. Appellee argues that Appellant's appointment to the Management Analyst Supervisor 2 position qualified as an original appointment because this was the first position Appellant Pawloski held in the classified service with ODOT since her return to employment in 2007. As such, Appellee continues, Appellant Pawloski was required to serve a probationary period and her removal during same is not subject to review by this Board.

Conversely, Appellant Pawloski argues that her appointment to the Management Analyst Supervisor 2 position was a reduction and not an original appointment, as she was already serving in a position with ODOT. As such, Appellant Pawloski continues to argue that she did not need to serve a probationary period and that the only proper avenue for her termination was pursuant to section 124.34 of the Ohio Revised Code.

Ohio law does not provide us with clear direction on this question, but this Board has addressed facts which are very similar to the instant case. The case of *Rayl, Jr. v. ODOT*, case number 11-REM-02-0038, Board Order issued June 2, 2011, presented essentially the same set of facts and this Board adopted the Report and Recommendation in that case, which reasoned that because Appellant Rayl had never served a probationary period, he was required to do so and thus, this Board was without jurisdiction over the appeal. The only difference between the *Rayl* case and the instant one is that Appellant Pawloski had previous employment with ODOT and had served in a classified position during that previous employment. That distinction, however, is irrelevant. Appellant Pawloski had a break in service of approximately seventeen (17) years. When she was hired by Appellee in 2007, it was as a new hire (see Appellee's Exhibit B, attached to Appellee's Motion to