

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

DENISE FOBELL,

*Appellant,*

v.

Case No. 11-REM-04-0114

ASHTABULA COUNTY NURSING HOME,

*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**, pursuant to R.C. 124.03, R.C. 124.34, O.A.C. 124-11-19 (A), and O.A.C. 124-11-13 (B).

Casey - Aye  
Lumpe - Aye  
Tillery - Aye

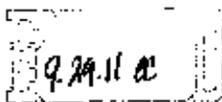


  
Terry L. Casey, *Chairman*

**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**

DENISE FOBELL,

Case No. 11-REM-04-0114

*Appellant*

v.

September 2, 2011

ASHTABULA COUNTY NURSING HOME,

JAMES R. SPRAGUE

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This matter came on for consideration on September 2, 2011 for a Show Cause Hearing. Appellee, Ashtabula County Nursing Home, appeared through its designee, Donna Sallee, Human Resources Director, and was represented by Jason L. Fairchild, Attorney at Law. Appellant failed to appear and Appellee moved to dismiss this appeal.

I find notice of the Show Cause Hearing was properly served on Appellant on June 24, 2011, by regular mail through the issuance of a detailed Procedural Order (*i.e.* "Procedural Order/Show Cause Hearing Scheduled"). Although Appellant filed a lengthy letter with this Board on September 1, 2011, she has not demonstrated sufficient cause for her failure to appear for the Show Cause Hearing. Further, in her September 1, 2011 filed letter, Appellant acknowledges receipt of this Board's June 24, 2011 issued Procedural Order.

At the Show Cause Hearing, Donna Sallee, Appellee's Human Resources Director, offered testimonial and documentary evidence regarding the procedural background leading up to and effectuating Appellant's removal. Ms. Sallee serves as Appellee's records custodian and was able to offer testimony regarding pertinent documents in Appellant's personnel file and regarding the facts involved with the instant appeal.

Based on the extant record, including testimonial and documentary evidence offered at the Show Cause Hearing, it is possible to ascertain the following facts, and, as such, I find the following.

Appellant was apprised on March 15, 2011 that Appellant would be receiving a determination regarding her pending potential discipline on that same date. Subsequently, still on March 15, 2011, Appellant "called off" work and indicated that she would be visiting a doctor later that day.

Around 2:00 p.m. and around 4:00 p.m. on March 15, 2011, Ms. Sallee attempted to reach Appellant by telephone but was unsuccessful. Thus, Ms. Sallee left a message for Appellant to call into work. Nursing Home Administrator Monica Williams was also present when Ms. Sallee made these calls.

Appellant did not return Ms. Sallee's March 15, 2011 telephone calls and message to Appellant.

Appellant did come in to the facility around 1:00 p.m. on March 16, 2011. At that time, she was personally served with both pages of her pertinent R.C. 124.34 Order of Removal.

The bottom of Page 1 of the Order (in bold type) directs the parties to Page 2 for important instructions. Page 2 of the Order, of course, contains detailed and unambiguous instructions to the employee regarding the method to timely perfect an appeal of a disciplinary action to this Board.

To have been timely with her appeal pursuant to R.C. 124.34 (A), Appellant would have needed to have filed her appeal with this Board within 10 days of receiving her R.C. 124.34 Order of Removal.

She did not do so and, instead, did not file her appeal with this Board until April 15, 2011. This date is well past the filing deadline imposed by R.C. 124.34 and pursuant to R.C. 124.03 and R.C. 124.34, this Board would lack jurisdiction to proceed with Appellant's appeal.

Appellee has moved to dismiss Appellant's appeal on three grounds.

First, Appellee notes that Appellant failed to appear for her mandatory Show Cause Hearing and, as such, she has failed to sufficiently prosecute her appeal. Appellee is correct and, so, this Board should dismiss this matter, pursuant to O.A.C. 124-11-19 (A).

Secondly, Appellee moved to dismiss because Appellant failed to timely file her appeal with this Board within 10 days of receipt of her R.C. 124.34 Order of Removal. Appellee is, again, correct, and Appellant's failure to timely file has prevented her from being able to invoke this Board's jurisdiction over the subject matter of her removal.

Thirdly, Appellee moved to dismiss because Appellant failed to comply with the express notice requirements set forth in this Board's June 24, 2011 Procedural Order regarding identification of witnesses and their expected testimony and regarding providing the opposing party with a copy of any documents expected to be presented at the Show Cause Hearing. While there are other sufficient grounds that this Board may and, it is respectfully suggested, should utilize to dismiss this appeal, O.A.C. 124-11-13 (B) does provide this Board with the authority to dismiss an appeal or provide other appropriate relief to an opposing party for a party's failure to comply with provisions set forth in a Procedural Order.

In summary, Appellee has provided three independent bases on which this Board may rely to potentially dismiss this appeal. Further, this Board has already demonstrated that it is not unsympathetic to Appellant's situation and, indeed, has already remanded this matter even though on its face it appeared that Appellant had not timely filed her appeal.

Based on the extant record, then, it appears that Appellant's appeal is untimely filed and that Appellant did not avail herself of the additional opportunity that this Board provided to her to prove facts to the contrary. Accordingly, this appeal should be dismissed.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal, pursuant to R.C. 124.03, R.C. 124.34, O.A.C. 124-11-19 (A), and O.A.C. 124-11-13 (B).

  
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JAMES R. SPRAGUE  
*Administrative Law Judge*

JRS: