

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Timothy Bensonhaver,

Appellant,

v.

Case No. 11-REM-05-0175

Hocking County,
Board of Developmental Disabilities,

Appellee.

ORDER

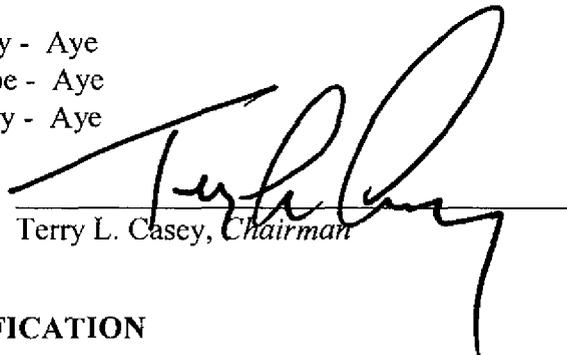
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 **DISMISED** since Appellant failed to comply with the requirements set forth in O.A.C. § 124-11-07(A)(2) and (C) and also DISMISS the instant appeal for lack of jurisdiction over the removal of probationary employees, pursuant to O.R.C. § 124.27(C).



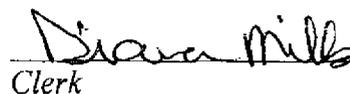
Casey - Aye
Lumpe - Aye
Tillery - Aye

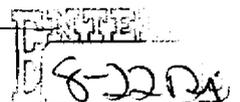

Terry L. Casey, *Chairman*

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, August 22, 2011.


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**

Timothy Bensonhaver,

Case No. 11-REM-05-0175

Appellant

v.

July 8, 2011

Hocking Co., Board of Developmental Disabilities,

Appellee

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration due to the Appellee's June 24, 2011, filing of motion to dismiss regarding the above-captioned case. The motion to dismiss contained: a memorandum in support; the affidavit of Kathy Gerken, Appellee's Coordinator of Administrative Services at Hocking County Board of Disabilities. Appellant was provided with the requisite amount of time to file a memorandum contra to Appellee's motion to dismiss, but, to date has not done so.

O.A.C. 124-11-07 sets forth the motions practice before this Board. O.A.C. 124-11-07 (A)(2) indicates that when a party files a dispositive motion, then an adverse party must respond affirmatively and show that there is a genuine issue in dispute. O.A.C. 124-11-07 (C) sets forth a ten-day time frame to respond to dispositive motions, such as the instant motion to dismiss. Appellant has failed to file the required response to Appellee's motion to dismiss and thus, has failed to comply with O.A.C. 124-11-07.

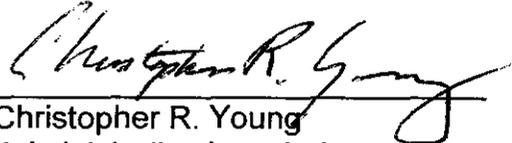
Furthermore, Appellee's jurisdictional arguments that the Appellant was removed as a probationary employee that addressed the above captioned appeal appear to have merit. As such I find Appellant was appointed as Adult Program Specialist's position on November 1, 2010. I further find that this classification has been assigned a 12 months probationary period. Additionally, I also find that the Appellant was removed on May 6, 2011, because he did not meet minimum work standards during the Appellant's probationary period.

Ohio Revised Code Section 124.27(C) states:

(C) All original and promotional appointments, including appointments made pursuant to section 124.30 of the Revised Code, but not intermittent appointments, shall be for a probationary period, not less than sixty days nor more than one year, to be fixed by the rules of the director, except as provided in section 124.231 of the Revised Code, and except for original appointments to a police department as a police officer or to a fire department as a firefighter which shall be for a probationary period of one year. No appointment or promotion is final until the appointee has satisfactorily served the probationary period. If the service of the probationary employee is unsatisfactory, the employee may be removed or reduced at any time during the probationary period. If the appointing authority decides to remove a probationary employee in the service of the state, the appointing authority shall communicate to the director the reason for that decision. A probationary employee duly removed or reduced in position for unsatisfactory service does not have the right to appeal the removal or reduction under section 124.34 of the Revised Code.

Because there is no right to appeal from a removal which occurs during a probationary period, I conclude that the State Personnel Board of Review does not have subject matter jurisdiction.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the above captioned appeal for Appellant's failure to comply with the requirements set forth in O.A.C. 124-11-07 (A) (2) and (C). Further, I would also **RECOMMEND** that the State Personnel Board of Review **DISMISS** the above captioned appeal for lack of jurisdiction over the removal of probationary employees pursuant Ohio Revised Code Section 124.27(C).


Christopher R. Young
Administrative Law Judge

CRY: