

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

Paul E. Nicholson,

Appellant,

v.

Case No. 11-SUS-02-0053

Columbus State Community College,

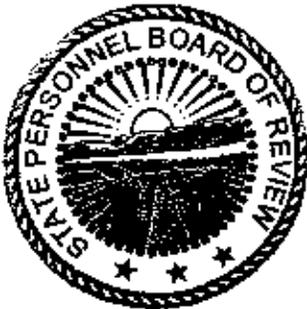
Appellee.

ORDER

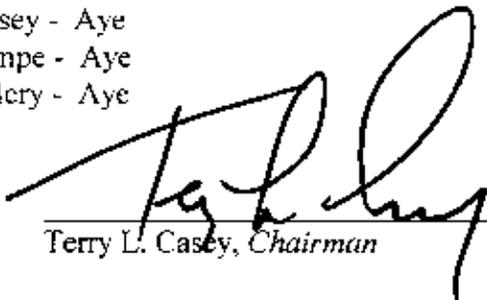
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 a 40 hour suspension of an overtime exempt employee, pursuant to O.R.C. § 124.34(B).



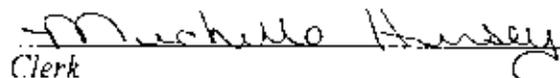
Casey - Aye
Lumpe - Aye
Tillery - Aye


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 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, June 28, 2011.


Michelle Hunsley
Clerk

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

6-28-11 mH

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

Paul E. Nicholson,

Case No. 11-SUS-02-0053

Appellant

v.

May 19, 2011

Columbus State Community College,

Christopher R. Young

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellant's February 8, 2011, appeal of a five (5) day suspension (or 40 hours) which was imposed on February 7, 2011 through February 11, 2011, that was served on the Appellant on February 1, 2011. On May 5, 2011, the Appellee filed a motion to dismiss this matter based on the fact that the Appellant is an overtime exempt employee, who does not have the right to file an appeal to this Board if he was given a suspension of forty hours or less. Appellant Nicholson did not file a memorandum in opposition to Appellee's motion to dismiss.

Attached to the Appellee's motion to dismiss were several documents establishing that Appellant Nicholson was an overtime exempt employee in his position of a Test Center Coordinator at the Columbus State Community College. Also contained within the case file was Exhibit A, an affidavit of Ms. Amy Burns and a position description of the Appellant's that stated among other things, the position description that the Appellant occupied was exempt from payment of overtime compensation.

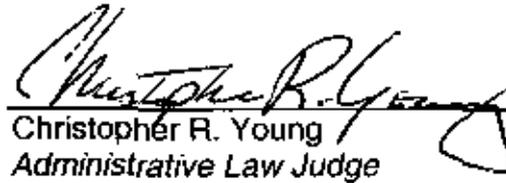
Section 124.34(B) of the Ohio Revised Code states as follows, in pertinent part:

(B) In case of a reduction, a suspension of more than forty work hours in the case of an employee exempt from the payment of overtime compensation, a suspension of more than twenty-four work hours in the case of an employee required to be paid overtime compensation, a fine of more than forty hours' pay in the case of an

employee exempt from the payment of overtime compensation, a fine of more than twenty-four hours' pay in the case of an employee required to be paid overtime compensation, or removal, except for the reduction or removal of a probationary employee, the appointing authority shall serve the employee with a copy of the order of reduction, fine, suspension, or removal, which order shall state the reasons for the action. (Emphasis added).

As can be seen from the above statute, there is no requirement to serve an order to an overtime exempt employee for a suspension of forty (40) hours or less. Since there is no order required to be filed, then there is no right of appeal to this Board. Appellant Nicholson's suspension was for five days or forty (40) hours, therefore this Board is without jurisdiction to hear her appeal.

Therefore, I respectfully **RECOMMEND** that Appellee's motion to dismiss be **GRANTED** and that the instant appeal be **DISMISSED** as the Board lacks jurisdiction over a 40 hour suspension of an overtime exempt employee.


Christopher R. Young
Administrative Law Judge

CRY: