

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Allen Smith,

*Appellant*

v.

Case No. 2024-SUS-11-0219

Putnam County Office of Public Safety

*Appellee*

**ORDER AND OPINION**

This matter came on for consideration before the full Board. It is hereby **ORDERED** that Appellant's Suspension be **DISAFFIRMED** for the reasons set forth below.

Appellant was suspended pursuant to R.C. 124.34. However, Appellant's memo format Order was defective in the following manner:

Ohio Administrative Code Section 124-03-01(A) requires that before an Order may be affirmed, the appointing authority must satisfy the following:

- (1) The copy of the order served on the employee shall bear the original signature of the appointing authority and the date of signature. If an appointing authority is a public body, the order must contain the signatures of a majority of the members, or in the alternative, a certified copy of the resolution adopting the order shall be attached to each copy of the order; and
- (2) The employer shall serve the employee with a copy of the order on or before the effective date of the action; and
- (3) **The order shows, on its face, a list of particulars which form the basis for the order; and**
- (4) The appointing authority can, if challenged, demonstrate both the authority of the signer and the authenticity of the signature on a "section 124.34 order" or an order of involuntary disability separation. (emphasis added)

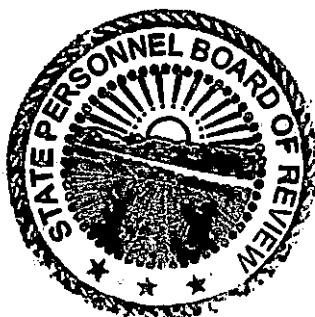
Appellee has failed to comply with Ohio Administrative Code Section 124-03-01(A). Moreover, Appellee has failed to utilize this Board's Order of Suspension – namely ADM 4055 (Rev. 6-99). Further, Appellant's memo format Order of Suspension fails to contain the detailed "SECTION 124.34 ORDER" FORM INSTRUCTIONS" notice that constitutes page 2 of the ADM 4055 R.C. 124.34 Order and apprises the parties of an Appellant's appeal rights, among other things.

Therefore, Appellant's instant Suspension is DISAFFIRMED. Since Appellant retired effective on or about November 15, 2024, Appellant's backpay shall run from the effective date of Appellant's Suspension (November 7, 2024) through November 14, 2024. Further, since Appellant has retired, Appellee may not again suspend Appellant for Appellant's alleged acts or omissions. However, since Appellant has retired, Appellee is not required to reinstate Appellant. Any pending pre-hearing currently scheduled in this case is hereby VACATED.

#### Motions for Reconsideration

If either party disagrees with the content of this Order and Opinion, that party may file a Motion for Reconsideration, in accordance with Ohio Administrative Code Rule Section 124-15-05 (Motions for reconsideration.) Ohio Administrative Code Section 124-15-05 states:

**Any party may move for reconsideration of a final order of the board. Motions for reconsideration shall be filed within ten calendar days of mailing of the final order. If a motion for reconsideration has been filed, and if no appeal has been filed in a court of common pleas, then the board may issue a stay of the final order pending the reconsideration. If the board issues a stay of its final order, the opposing party will then have ten calendar days to file a response to the motion for reconsideration. The filing of a notice of appeal divests the board of jurisdiction to rule on a motion for reconsideration.** (emphasis added)



Casey - Aye  
McGregor - Not Present  
Strahorn - Aye

#### 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 the foregoing is (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, February 12, 2025.

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

## NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal as specified in R.C. 119.12(D) must be filed with this Board within fifteen (15) days after service of this Notice in accordance with R.C. 119.05. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must also be filed with the appropriate Court of Common Pleas within fifteen (15) days after service of this Order.

At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. After the Board has received the deposit, the transcript and copies of the file will be prepared and the cost of those items will be calculated. If the deposit exceeds the costs of these items, then a refund of the excess will be issued; if the deposit does not cover the full amount, then the appealing party will be billed for the outstanding balance. The length of the digital recording, the costs incurred, and the corresponding amount of deposit required are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

**METHOD OF PAYMENT:** for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system. The State Employment Relations Board Fiscal Office will initiate the ISTV after receipt of the Notice of Appeal. The Fiscal Office may be contacted at (614) 466-1128.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU MAY OBTAIN THAT FORM BY CALLING (614) 466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD WITHIN SEVEN (7) DAYS AFTER SERVICE OF THIS ORDER. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT WITHIN FIFTEEN (15) DAYS AFTER SERVICE OF THIS NOTICE AND FINAL BOARD ORDER.

**If you have any questions regarding this notice, please contact the Board at (614) 466-7046.**

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Transcript Costs: \$0.00      Administrative Costs: \$25.00

Total Deposit Required: \* \$25.00