

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

Nicole A. Klingeman,

Appellant,

v.

Case No. 09-REM-01-0024

Trumbull County Engineer,

Appellee.

ORDER

This matter came on for consideration on Appellee's Notice of Admission of Appellant's Classified Status and Notice of Withdrawal of Pleadings in the above-captioned appeal and on this Board's October 1, 2010 issuance of a final Order in this matter. On October 12, 2010, Appellant filed a Proposed Order Regarding Motion for Reconsideration of Board's Appeal-Dismissal Order of October 3, 2010, and Request for Stay of Appeal Time Pending Consideration of this Motion. On October 22, 2010, Appellee filed a Memorandum in Opposition to Appellant's Proposed Order.

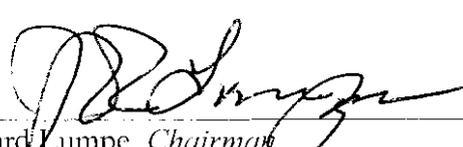
Having reviewed Appellant's Proposed Order Regarding Motion for Reconsideration of Board's Appeal-Dismissal Order and Appellee's Memorandum In Opposition to Appellant's Proposed Order, both of which have been timely and properly filed, this Board finds no good cause to disturb this Board's October 1, 2010 issued final Order.

Wherefore, it is hereby **ORDERED** that Appellant's Proposed Order Regarding Motion for Reconsideration of Board's Appeal-Dismissal Order is hereby **DENIED** and this Board's final Order of October 1, 2010 in this matter stands as previously issued.

Lumpe - Aye

Sfalcin - Aye

Tillery - Aye

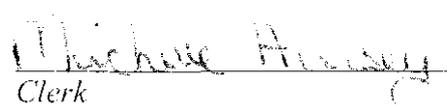


J. Richard Lumpe, *Chairman*

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, October 29, 2010.



Michelle Anusky
Clerk

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

10/29/10MH

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Nicole A. Klingeman,

Appellant,

v.

Case No. 09-REM-01-0024

Trumbull County Engineer,

Appellee.

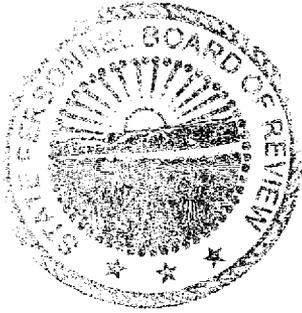
ORDER

This matter came on for consideration on the motion of Appellee that the Rescission attached hereto be adopted. Being fully advised in the premises, the Board hereby orders that the attached rescission, incorporated herein by reference and made a part of the case file in this appeal, be **ADOPTED**, and that Appellant's appeal be **DISMISSED**.

Lumpe - Not Participating

Sfalcin - Aye

Tillery - Aye



Adriana Sfalcin

Adriana Sfalcin, *Vice 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, October 1, 2010.

Michelle Hunsy
Clerk

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

10/1/10MH

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

NICOLE A. KLINGEMAN)
)
Appellant)
)
v.)
)
TRUMBULL CO., ENGINEER)
)
Appellee)

CASE NO. 09-REM-01-0024
2009/10/19 PM 1:08
ADMINISTRATIVE LAW JUDGE
CHRISTOPHER R. YOUNG
NOTICE OF ADMISSION OF
APPELLANT'S CLASSIFIED STATUS

Now comes appellee, David M. DeChristofaro, for the purpose of admitting appellant's status as a classified employee.

Appellee hereby concedes that appellant was a classified employee of the Office of the Trumbull County Engineer on January 5, 2009.

Appellee further concedes that this State Personnel Board of Review should enter an order deeming appellant to have been a classified employee on January 5, 2009, ordering her return to work in the Office of the Trumbull County Engineer, and awarding her back-pay effective January 5, 2009, with all fringe benefits and entitlements incidental to appellee's employment as a Fiscal Assistant in the Office of Trumbull County Engineer on January 5, 2009.

The purpose of this notice is to eliminate any need for this honorable board to conduct a hearing or otherwise, to engage in fact finding as to appellant's status, right to work, or related issues. (See R.C. 124.03).

2009/10/19 PM 1:08
CHRISTOPHER R. YOUNG


DAVID M. DeCHRISTOFARO
Appellee


CHARLES L. RICHARDS - 0022128
Hunter's Square
8600 East Market Street, Suite 1
Warren, Ohio 44484
Telephone: (330) 373-1000
Fax: 330-394-5291
Attorney for Appellee

CERTIFICATE OF SERVICE

A copy of the foregoing notice of admission of appellant's classified status was sent to Subodh Chandra, counsel for appellant, by electronic mail and regular U.S. Mail, this 16th day of August, 2010.


CHARLES L. RICHARDS

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

NICOLE A. KLINGEMAN)
)
Appellant)
)
v.)
)
TRUMBULL CO., ENGINEER)
)
Appellee)

CASE NO. 09-RE-01-0024
2010 AUG 19 PM 1:08
ADMINISTRATIVE LAW JUDGE
CHRISTOPHER R. YOUNG
NOTICE OF WITHDRAWAL
OF PLEADINGS

Now comes Charles L. Richards, attorney for appellee David M. DeChristofaro, and gives notice of the withdrawal of all pleadings filed by the undersigned on behalf of Mr. DeChristofaro, save and except that certain pleading filed on December 3, 2009, and captioned "Motion to Strike Scandalous Material."

For cause, counsel says that all of the pleadings filed in the within matter have been based upon the good faith belief of appellee's counsel that appellee had a defense on the issue of whether appellant was a "classified" employee in the office of the Trumbull County Engineer on January 5, 2009; that the defense centered upon the fact that appellant was terminated due to a lack of funds in the Trumbull County Engineer's budget, and a lack of work in the Trumbull County Engineer's Office ("lack of funds, lack of work" defense).

Since filing the pleadings herein, counsel has become aware of other facts which make the "no funds, no work" defense inapplicable and inappropriate in this matter.

Counsel therefore says that there does not exist good grounds for the lack of funds, lack of work defense; that under

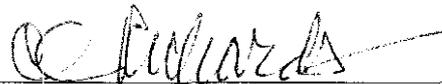
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Prof. Cond. Rule 3.3(a)(3), or some other rule of similar import, counsel is obligated to call to the attention of this tribunal that all pleadings filed by him which were based upon the lack of work, lack of funds defense are not supported by good grounds to support such a defense.

On this date, the undersigned counsel has filed a related pleading entitled "Notice of Admission of Classified Status" in which pleading counsel and Mr. DeChristofaro concede that appellant Klingeman was a classified employee in the Office of the Trumbull County Engineer on January 5, 2009.

WHEREFORE, the undersigned withdraws all pleadings filed in the within cause on behalf of appellee David M. DeChristofaro save and except that certain "motion" filed on December 3, 2009.

Respectfully submitted,



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Telephone: (330) 373-1000
Fax: 330-394-5291
Attorney for Appellee

CERTIFICATE OF SERVICE

A copy of the foregoing notice of withdrawal of pleadings was sent to Subodh Chandra, counsel for appellant, by electronic mail and regular U.S. Mail, this 16th day of August, 2010.



CHARLES L. RICHARDS