

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Lawrence Faulkner,

Appellant,

v.

Case No. 09-REM-10-0436

Belmont County,
Court of Common Pleas Probate/Juvenile Division,

Appellee.

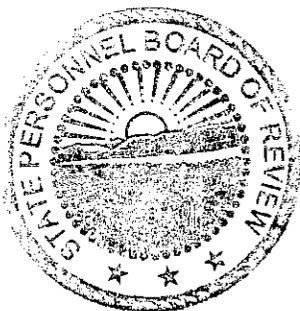
ORDER

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 subject matter jurisdiction, pursuant to O.R.C. §§ 124.03, 2151.13 and 124.11(A)(32).

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



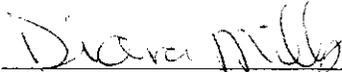


J. Richard Lumpe, *Chairman*

CERTIFICATION

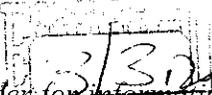
The State of Ohio, State Personnel Board of Review, ss:

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, March 13, 2010.



Diara Mills
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**

Lawrence Faulkner

Case No. 09-REM-10-0436

Appellant

v.

January 28, 2010

Belmont County Court of Common Pleas,
Probate/Juvenile Division

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on January 28, 2010, upon Appellee's Response to this Board's Questionnaire, filed on November 10, 2009. To date, Appellant Faulkner has not filed an optional reply to Appellee's response to the questionnaire.

Appellee stated in its response to this Board's questionnaire that at the time of Appellant Faulkner's removal, he was an unclassified employee pursuant to section 2151.13 of the Ohio Revised Code. Section 2151.13 of the Ohio Revised Code states as follows, in pertinent part:

The juvenile judge may appoint such bailiffs, probation officers, and **other employees** as are necessary and may designate their titles and fix their duties, compensation, and expense allowances. The juvenile court may by entry on its journal authorize any deputy clerk to administer oaths when necessary in the discharge of his duties. **Such employees shall serve during the pleasure of the judge.** (Emphasis added).

Appellee states in its response to the questionnaire that Appellant Faulkner was employed as the Assistant Director of the C-Cap program in the Probate/Juvenile division of the Belmont County Court of Common Pleas. In his notice of appeal, Appellant Faulkner states he was terminated from the Probate/Juvenile division. Therefore, the evidence has established that Appellant Faulkner was an employee of the Probate/Juvenile Court at the time of his removal and as such, pursuant to the above quoted statute, he served in that position at the pleasure of the judge.

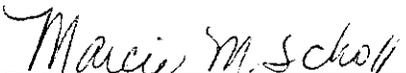
Since Appellant Faulkner was basically an at-will employee, serving at the pleasure of the judge, he was subject to termination at the judge's pleasure or discretion. Such an employee is deemed to be an unclassified employee with no civil service protection or rights and is an employee that this Board does not possess jurisdiction over. Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Section 124.03 of the Ohio Revised Code determines this Board's jurisdiction and specifically limits its jurisdiction to classified employees. The pertinent part of the statute states as follows:

(A) The state personnel board of review shall exercise the following powers and perform the following duties:

(1) Hear appeals, as provided by law, **of employees in the classified state service** from final decisions of appointing authorities or the director of administrative services relative to reduction in pay or position, job abolishment, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal of the director, or anybody authorized to perform the director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under division (D) of section 124.14 of the Revised Code. As used in this division, "discharge" includes disability separations. (Emphasis added).

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Therefore, since Appellant Faulkner was an unclassified employee serving at the pleasure of the judge at the time of his removal, this Board is without jurisdiction to hear this appeal. Therefore, it is my **RECOMMENDATION** that this appeal be **DISMISSED** for a lack of subject matter jurisdiction pursuant to sections 124.03, 2151.13 and 124.11(A)(32) of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge

:mms