

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

Kevin E. Brown,

Appellant,

v.

Case No. 10-LAY-03-0075

Summit County Children Services,

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, 124.11 and 124.30.

Lumpe - Aye
Sfalcin - Aye
Tillery - Not Participating





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, May 17, 2010.



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**

Kevin E. Brown

Case No. 10-LAY-03-0075

Appellant

v.

April 15, 2010

Summit County Children Services

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on April 15, 2010. Appellant Brown filed a notice of appeal with this Board on March 18, 2010. Attached to his letter of appeal was his notice letter from Appellee, dated March 9, 2010. The first paragraph of that letter states as follows:

We regret to inform you that due to the abolishment of positions for reasons of efficiency, a layoff of personnel is necessary. As a result, effective March 30, 2010, you are being laid off from your position as a certified Director of Research and Evaluation. **This action is based upon your status as an intermittent employee.** (Emphasis added).

Intermittent employees are unclassified employees by statute. Specifically, section 124.30(B) of the Ohio Revised Code states:

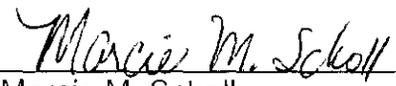
(B) Persons who receive temporary or intermittent appointments are in the unclassified civil service and serve at the pleasure of their appointing authority.

Also, section 124.11(A)(29) of the Ohio Revised Code states "Employees who receive intermittent or temporary appointments under division (B) of section 124.30 of the Revised Code" are in the unclassified service.

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Pursuant to section 124.03 of the Ohio Revised Code, this Board does not possess jurisdiction over unclassified employees. Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute and that authority does not extend to unclassified employees. It is noted that the notice letter provided to Appellant Brown by Appellee does state that he has the right to appeal to this Board. That is correct in that anyone can file an appeal, but then it is up to this Board to determine if the Board possesses jurisdiction to hear the appeal. In the instant case, because Appellant Brown was an intermittent, unclassified employee at the time of his layoff, this Board is without jurisdiction to hear this appeal.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** due to a lack of subject matter jurisdiction pursuant to sections 124.03, 124.11 and 124.30 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge

:mms