

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

RENEE L. WRIGHT,

Appellant,

v.

Case No. 11-MIS-11-0352

UNIVERSITY OF CINCINNATI,

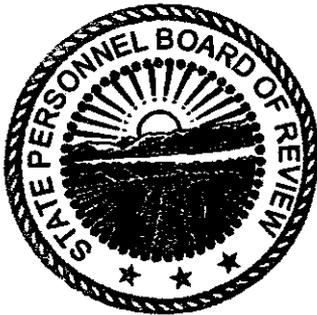
Appellee

ORDER

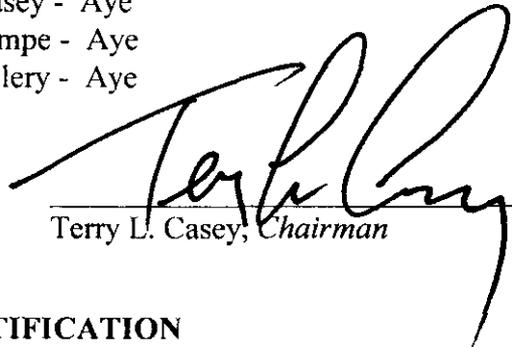
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including 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 is **DISMISSED**, pursuant to both Ohio Revised Code Section 124.03 and the doctrine of civil service waiver and estoppel established by the Supreme Court of Ohio.



Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *Chairman*

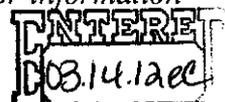
CERTIFICATION

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 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, march 14, 2012.


Eric Con
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**

RENEE L. WRIGHT,

Case No. 11-MIS-11-0352

Appellant

v.

February 7, 2012

UNIVERSITY OF CINCINNATI,

JAMES R. SPRAGUE

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's filing of an appeal from her removal from the position of Information Technology Analyst in Information Security with Appellee. Thereafter, the record was extensively developed.

On November 3, 2011, this Board issued a Procedural Order that sought additional information concerning whether Appellant had been removed utilizing the disciplinary process for classified employees contemplated in R.C. 124.34. From the parties' responses, it was clear that, while Appellee removed Appellant for alleged performance failures, Appellee nonetheless considered Appellant's position to fall within the unclassified service.

Further, Appellee provided a letter in its response. Appellee demonstrated that this letter constituted Appellant's acceptance letter upon which her pending service was predicated. Paragraphs 1 and 2 of this letter state that Appellant's contemplated position falls within the unclassified service. These Paragraphs, as well as Paragraph 3, also appear to expressly set out the conditions and benefits attached to the position as a result of its alleged inclusion in the unclassified service of Appellee.

To ensure the accuracy of the above, this Board issued an additional Procedural Order on December 22, 2011, which provided the parties with ample opportunity to offer analysis and opinion on the issue of whether Appellant should be estopped from claiming the protections of the *classified* service while apparently garnering a number of benefits available only to employees whose positions Appellee considered to fall within the *unclassified* service.

On December 23, 2011, Appellant filed Appellant's Reply to Appellee's Response to Procedural Order. On January 13, 2012, Appellee filed Appellee's Response to Procedural Order / Estoppel Issue.

From the parties' respective filings, it is clear that on at least four separate occasions Appellant acknowledged her membership in Appellee's unclassified service. Further, from the record, it is clear that Appellant garnered tangible and significant contemporaneous benefits (to which she would not otherwise have been entitled) because she repeatedly held herself out as a member of Appellee's unclassified staff.

This Board has recognized that even an employee whose duties may appear to place the employee in the classified service cannot, time and again, enjoy the benefits of unclassified service and then claim the protections of the classified service; when the appointing authority acts to sever their employment relationship. Yet, this is precisely the fact pattern that faces this Board in this appeal.

When such a situation arises, case law allows this Board to render a determination based on equity and fairness, without the need to hold a record hearing when the record has been otherwise adequately developed. See *Chubb v. Ohio Bureau of Workers Compensation* (1998), 81 Ohio St.3d 275, 278. Applied to the instant appeal, it is clear that allowing Appellant to prevail, after Appellee has established that Appellant benefited numerous times from her unclassified pronouncements, would both be inequitable and contrary to established case law on this subject.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant appeal, pursuant both to R.C. 124.03 and the doctrine of civil service waiver and estoppel established by the Supreme Court of Ohio.



JAMES R. SPRAGUE
Administrative Law Judge