

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

BRIAN DALEY,

*Appellant,*

v.

Case No. 12-REM-05-0085

HAMILTON COUNTY, RIVER CITY CORRECTIONAL CENTER,

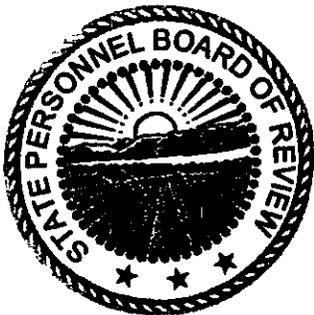
*Appellee*

**ORDER**

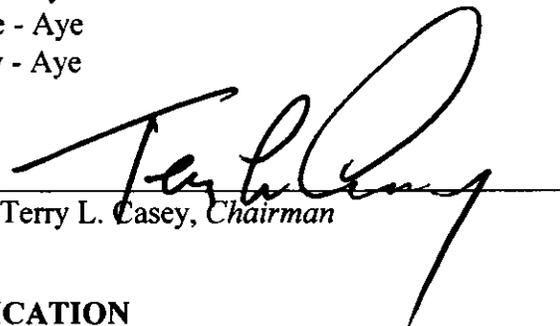
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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** for a lack of subject matter jurisdiction pursuant to sections 124.03, 124.11(A)(32), 2301.51 and 5120.10 of the Ohio Revised Code and administrative rule 5120:1-14-03 of the Ohio Administrative Code.



Casey - Aye  
Lumpe - Aye  
Tillery - Aye

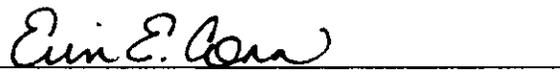
  
Terry L. Casey, *Chairman*

**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, August 22, 2012.



  
Erin E. Coan  
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**

Brian Daley

Case No. 12-REM-05-0085

*Appellant*

v.

July 17, 2012

Hamilton County, River City  
Correctional Center

*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 July 17, 2012 upon Appellant Daley's notice of appeal, filed on May 4, 2012 and Appellee's Motion to Dismiss With Memorandum in Support and Supporting Affidavit of Wayne Adkins Attached, filed on June 7, 2012. To date, no memorandum *contra* has been filed by Appellant Daley.

Appellant Daley was removed from his position of Employment Specialist effective April 24, 2012. Appellee argues this Board does not possess jurisdiction over the instant case as at the time of his removal, Appellant Daley was an unclassified employee pursuant to section 124.11(A)(32) of the Ohio Revised Code and administrative rule 5120:1-14-03(L) of the Ohio Administrative Code. Appellee's arguments are persuasive.

Pursuant to section 124.03 of Ohio Revised Code, this Board does not possess jurisdiction over unclassified employees. According to the affidavit of Business Manager for Appellee, Wayne Adkins, attached to Appellee's Motion to Dismiss, Appellant Daley was employed as an Employment Specialist with Appellee and on February 20, 2008, Appellant Daley signed an Acknowledgement of Key Terms and Conditions of Employment. The first paragraph of such document signed by Appellant Daley states "I also understand that my employment is, at all times, 'at will' ".

Section 124.11(A)(32) of the Ohio Revised Code states as follows:

(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter:

(32) Employees placed in the unclassified service by another section of the Revised Code.

Appellee is a community-based correctional facility created and approved in accordance with sections 2301.51 and 5120.10 of the Ohio Revised Code. It is governed by a facility governing board and pursuant to administrative rule 5120:1-14-03(L) of the Ohio Administrative Code, all employees are unclassified. That administrative rule states as follows, in pertinent part:

**5120:1-14-03 Requirements for facility governing boards in the operation of community based correctional facilities**

**(L) Persons hired to staff community-based correctional facilities and programs shall be unclassified employees of facility governing boards or contract providers.** Each facility governing board shall develop and adopt personnel policies and procedures for hiring, promoting, demoting, suspending, and removing its employees. (Emphasis added).

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** for a lack of subject matter jurisdiction pursuant to sections 124.03, 124.11(A)(32), 2301.51 and 5120.10 of the Ohio Revised Code and administrative rule 5120:1-14-03 of the Ohio Administrative Code.

*Marcie M. Scholl*

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Marcie M. Scholl  
*Administrative Law Judge*

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