

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

Paul J. Gubanich,

Appellant,

v.

Case No. 2013-ABL-09-0245

Ohio State University,

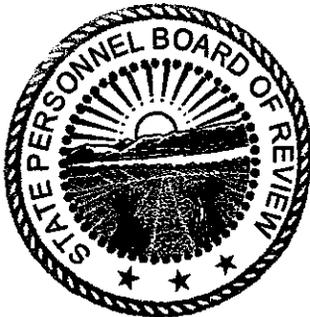
Appellee,

ORDER

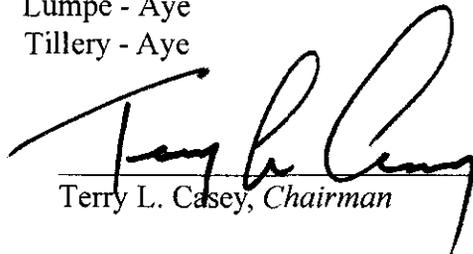
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellee's motion is **GRANTED** and the instant appeal is **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to R.C. 124.03, R.C. 124.11 (A) (7) (a), and O.A.C. 124-11-07 (A) (2) and (C).



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, June 18, 2014.


Erin E. 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**

Paul J. Gubanich

Case No. 2013-ABL-09-0245

Appellant

v.

March 6, 2014

Ohio State University

James R. Sprague

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's September 25, 2013 filing of an appeal from the alleged abolishment [or non-renewal] of one or more of Appellant's positions at the Ohio State University Wexner Medical Center (WMC). Following Appellant's initial filing of his Notice of Appeal, Appellant filed no other pleading in the instant case.

On February 6, 2014, Appellee filed Appellee's Motion to Dismiss, a Memorandum in Support, the Affidavit of Katherine H. Dillingham, the WMC's Director of Human Resources, and accompanying documents. Appellant was provided with the requisite time in which to respond to Appellee's Motion to Dismiss, but, to date, has not done so.

In its Motion to Dismiss and related pleadings, Appellee asserts that Appellant held two positions at the WMC. The first appointment was as an "Assistant Professor-Clinical" at the WMC's College of Medicine, Department of Internal Medicine. The second appointment was as a Physician in the Faculty Group Practice, which is governed by a Physician Employment Agreement (PEA). Appellee's non-renewal of Appellant's Physician appointment is the subject of the instant appeal.

In accordance with O.A.C. 124-11-07 (A) (2), when a Motion to Dismiss is properly filed and properly supported (such as we have here), the opposing party must set forth facts showing there is a genuine issue in dispute. O.A.C. 124-11-07

(C) sets forth a 10-day time frame in which to file a Memorandum *Contra* to the Motion to Dismiss.

In the instant appeal, Appellant did not file a Memorandum *Contra*, even with additional time allowed to so file.

Further, it appears that Appellant's specific "Physician" appointment was governed under a contract (the afore-mentioned PEA) with the WMC. As well, it appears that the WMC simply chose not to renew Appellant's PEA.

Since that non-renewal appears to fall under contract law, that matter is likely best adjudicated in a court of competent jurisdiction and not before this Board. Thus, Appellee's Motion to Dismiss should be granted. (Please see *Klaiman v. Ohio State Univ.*, 10th Dist. Franklin No. 03AP-683).

Moreover, there appears to be merit to Appellee's argument that Appellant's Physician position fell within the unclassified service by virtue of his performing teaching and/or instruction connected with educational research duties performed for a public university. (Please see R.C. 124.11 (A) (7) (a), and *Klaiman, supra.*).

In summary, Appellant has failed to follow the requirements set forth in O.A.C. 124-11-07 (A) (2) and (C). Further, Appellant's position at issue appears to be governed by contract law and not by R.C. Chapter 124. Finally, even if Appellant's position is determined to be governed by R.C. Chapter 124., Appellant's position appears to fall within the unclassified service pursuant to R.C. 124.11 (A) (7) (a) and, thus, would not be subject to review for the non-renewal of Appellant's Physician Employment Agreement with the Wexner Medical Center.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal for lack of jurisdiction over its subject matter, pursuant to R.C. 124.03, R.C. 124.11 (A) (7) (a), and O.A.C. 124-11-07 (A) (2) and (C).


James R. Sprague
Administrative Law Judge