

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Brenda E. Allen,

Appellant,

v.

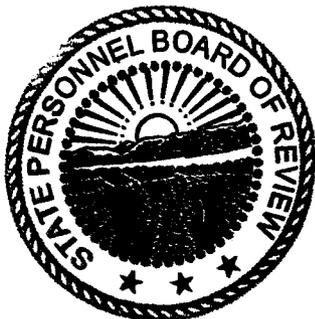
Case No. 2013-REM-07-0179

Miami University,

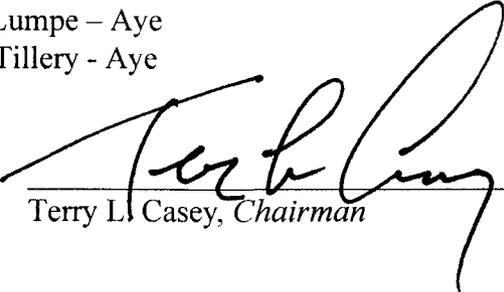
Appellee.

ORDER

This matter came on for consideration on the filing of a Settlement Agreement, attached hereto and incorporated herein by reference. Being fully advised in the premises, the Board hereby orders that the attached settlement agreement is **ADOPTED** and the appeal is **DISMISSED**



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 the foregoing is (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, February 13, 2014.


Clerk

2/13/14ec

NOTE: Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.

STATE PERSONNEL
BOARD OF REVIEW

BEFORE THE STATE PERSONNEL BOARD OF REVIEW

2014 JAN 13 PM 3: 30

BRENDA ALLEN, :
Appellant, : CASE NO. 13-REM-07-0179
v. : CHRISTOPHER R. YOUNG
MIAMI UNIVERSITY, : *Administrative Law Judge*
Appellee. :

NOTICE OF SETTLEMENT

Appellee, Miami University ("MU"), by and through counsel does hereby give notice to the State Personnel Board of Review ("SPBR") that MU and Appellant, Ms. Brenda Allen ("Allen"), entered into a settlement agreement ("Agreement") on January 3, 2014. Included in the Agreement is a complete release and waiver of any and all legal claims or causes of action that Allen may have against MU up to and including the date on which the Agreement was fully executed. *See* Agreement, Section 4, pp. 2 & 3, attached hereto as Exhibit 1. Also included in the Agreement is Allen's resignation effective December 20, 2013, in exchange for MU's rescission of Allen's removal, which gave rise to the appeal currently before the SPBR. Because the removal currently before the SPBR has been rescinded, the instant appeal is moot. Therefore, ODRC respectfully requests the SPBR to dismiss Allen's appeal *sua sponte*.

Respectfully submitted,

MIKE DEWINE (0009181)
Ohio Attorney General



MATTHEW J. KARAM (0085251)
Assistant Attorney General
AMANDA L. SCHEESER (0074259)
Associate Assistant Attorneys General
Employment Law Section

30 East Broad Street, 23rd Floor
Columbus, Ohio 43215
(614) 644-7257 – Telephone
(614) 752-4677 – Facsimile

Counsel for Appellee

CERTIFICATE OF SERVICE

I certify that a copy of the above *Notice of Settlement* was served upon Mr. Jason P. Matthews, Esq., 627 South Edwin C. Moses Blvd., Suite 2-C, Dayton, OH 45417, by ordinary U.S. Mail, postage prepaid this 13th day of January, 2014.

A handwritten signature in black ink, appearing to read "Matthew J. Karam". The signature is fluid and cursive, with a long horizontal stroke at the end.

MATTHEW J. KARAM (0085251)
Assistant Attorney General

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement") is made and entered into by and between Brenda Allen ("Allen" as defined below) and the Miami University ("MU" as defined below).

WHEREAS, Allen filed Case No. 13-REM-07-0179 before the State Personnel Board of Review ("SPBR"); and

WHEREAS, the Parties desire to resolve any and all disputes relating to Allen's claims against MU including, but not limited to, those claims embodied in the above-mentioned case filed with SPBR.

NOW THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows:

1. **Parties.** This Agreement is entered into on behalf of, and shall extend to "Allen" which includes Brenda Allen, her immediate family, heirs, assigns, personal representative, executors, agents and administrators both past and present and to "MU" which includes Miami University, its trustees, successors, assigns, officers, directors, employees and agents, both past and present.

2. **Intent.** Except as specifically set forth herein, Allen and MU wish to bring a complete, final and irreversible end to any and all claims and/or disputes which arise or which could have arisen from the case listed above and to reach a full and final settlement of all matters and claims, of any nature whatsoever, as of the date of execution of this Agreement.

3. **Consideration.** In consideration of the mutual promises and agreements set forth herein, the Parties agree as follows:

A. As for Brenda Allen's Consideration:

1. Allen agrees to withdraw all actions filed by her against MU, including Case No. 13-REM-07-0179 upon receipt of the settlement check described in Section 3(B)(3).
2. Allen agrees to execute a Notice of Withdrawal of Appeal and shall cause such Notice of Withdrawal of Appeal to be filed with the SPBR within seven (7) days of receipt of the settlement check described in Section 3(B)(3).
3. Allen agrees to voluntarily resign her position with MU effective December 20, 2013. Allen hereby agrees that the tender of her resignation, effective December 20, 2013, is irrevocable.
4. Allen agrees to execute a complete release and waiver of any and all legal claims or causes of action that she may have against MU up to and including the date on which the Agreement is fully executed.
5. Allen will neither apply for nor accept employment with MU in the future. This agreement is not intended to bar Allen from future application or employment with any other state agency, board, commission, department, universities, or

colleges, subject to the aforementioned agreement not to reapply for or accept employment with MU.

B. As for MU's Consideration:

1. MU shall rescind the personnel action resulting in Allen's termination effective July 12, 2013, and reflect such rescission in Banner. MU shall make the necessary data entry in Banner to reflect the rescission of the personnel action resulting in Allen's July 12, 2013 termination.
2. By signing this agreement, Allen, as stated above in paragraph 2(A)(3), hereby tenders her resignation, effective December 20, 2013, which resignation is hereby accepted by MU upon execution of this Agreement. This Agreement shall constitute the sole affirmative act by which MU indicates to Allen its acceptance of Allen's resignation.
3. As promptly as possible after execution of this agreement by Allen, MU shall remit to Allen back pay in the amount of \$5,000.00 minus deductions to Allen's Ohio Public Employees Retirement System ("OPERS") account, all applicable taxes and required withholdings. This award represents back pay to be paid to Allen from July 13, 2013 to December 20, 2013. Payment shall be made by check payable to Brenda Allen and sent to Ms. Allen's legal counsel: Jason Matthews, Attorney; 627 South Edwin C. Moses Blvd., Suite 2-C, Dayton, Ohio 45417. In addition, MU shall remit the employer's contribution to MU's OPERS account. MU's payment of these OPERS contributions is subject to acceptance and approval by OPERS, and MU's contribution shall not be deducted from the back pay award. No further interest, costs or fees are payable by MU to Allen. The Parties recognize that all OPERS contributions, both by Allen and MU, shall be based upon Allen's entire earnable salary from July 13, 2013 to December 20, 2013. Allen shall not be entitled to leave of any kind, insurance or any other benefits of employment between July 12, 2013 and December 20, 2013.
4. **Release of All Claims and Dismissal of All Charges and Legal Actions.** Allen and her counsel do hereby fully, finally and forever release, hold harmless from and against, waive and forever discharge the State of Ohio, MU, its current, former and future officers, directors, employees, agents, and agencies, personally and in any other capacity, of or from any and all claims, actions and causes of actions, suits, debts, liability, costs, expenses, demands whatsoever, in law or in equity, and any and all other damages which Allen ever had, may now have, or may hereafter have, whether known or unknown, against the State of Ohio or MU or its officers, directors, employees, agents, and agencies, on account of or in any way arising out of or by reason of any act, claim, matter or cause arising prior to the execution of this Agreement by her or her counsel, whether known or unknown to her or her counsel, including but not limited to any claims for attorney fees or costs, past employment, back pay, front pay, longevity pay, overtime, compensatory time, holiday pay, vacation leave, personal or sick leave, Family and Medical Leave, any other form of leave earned as a result of her employment with MU, insurance or retirement contributions, workers compensation, or any other

benefit, insurance, or other payment, including any payment of interest, which may have accrued to her as an employee of MU.

5. **Complete Dismissal.** Within 3 business days after receipt of the payments set forth in paragraph no. 3 above, Allen agrees to withdraw with prejudice all actions filed by her against MU including Case No. 13-REM-07-0179 before the SPBR. Allen also shall immediately dismiss any other action(s) which have been filed, are now pending, or which could have been filed against MU relating to any acts or omissions which have transpired at any time up to and including the date of execution of this Agreement in regard to Allen's service with MU. Allen further agrees to never file or re-file any action, claim or other lawsuit against MU, its officers, directors, agents or any other agency of the State of Ohio, relating to any acts or omissions which have transpired at any time up to and including the date of the execution of this Agreement and acknowledges that this Agreement would bar any such action or proceeding.

6. **Non-Admission.** The terms set out in the Agreement are a compromise settlement of disputed claims, the validity, existence or occurrence of which is expressly denied by MU. Neither the terms nor the Agreement shall be deemed or construed as an admission by MU of any wrongful acts whatsoever by or against Allen or any other person, nor does any arrangement(s) made with Allen constitute an acknowledgement of the validity of any claim, charge, liability or cause of action asserted, it being expressly understood that all such claims are in all respects denied by MU.

7. **General Terms.** The Parties to this Agreement represent and affirm that the only consideration for their agreement and execution are the terms stated herein, that no other promise or agreement of any kind has been made to or with any of them by any persons or entity to cause either to execute this Agreement, and that no other compensation, benefits, or prerequisites other than those specified in the foregoing Agreement shall be involved or claimed. This Agreement shall not be interpreted to render Allen a prevailing party for any purpose, including but not limited to an award of attorney fees under any applicable statute or otherwise. Each party fully understands the meaning and intent of this Agreement, including but not limited to its final and binding effect. Each Party further acknowledges that before executing this Agreement that they have consulted counsel and that each Party has carefully read and fully understands all of the provisions of the Agreement, and that the execution of the Agreement is a knowing and voluntary act.

8. **Construction and Severability.** This Agreement shall be construed according to its fair meaning, and not strictly for or against any of the Parties. Should any provision of the Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and the illegal or invalid part, term or provision shall be deemed not to be part of the Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

BRENDA ALLEN PLEASE READ CAREFULLY BEFORE SIGNING:

PURSUANT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S. § 621 *ET SEQ.*, A WAIVER OF RIGHTS CANNOT APPLY TO AGE DISCRIMINATION CLAIMS ARISING IN THE FUTURE. I HAVE READ THE FOREGOING AGREEMENT AND RELEASE, AND FULLY UNDERSTAND IT. I ACKNOWLEDGE THAT I WAS GIVEN UP TO TWENTY-ONE (21) DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT, THAT I HAVE BEEN ADVISED TO CONSULT WITH LEGAL COUNSEL PRIOR TO SIGNING THIS AGREEMENT, AND THAT I HAVE THE RIGHT TO REVOKE THIS AGREEMENT, IN WRITING, FOR A PERIOD NOT TO EXCEED SEVEN (7) DAYS AFTER THE DATE ON WHICH IT IS SIGNED BY ME. I HEREBY ACKNOWLEDGE THAT IF I FAIL TO EXERCISE THIS RIGHT TO REVOKE, THIS AGREEMENT WILL BECOME A BINDING CONTRACT AS TO ITS TERMS ON THE EIGHTH (8TH) DAY AFTER I SIGN THIS AGREEMENT. I NOW VOLUNTARILY SIGN THIS AGREEMENT AND RELEASE ON THE DATE INDICATED. IF THIS AGREEMENT SHOULD BE REVOKED BY ME WITHIN THE TIME SET FORTH ABOVE, THIS AGREEMENT SHALL BE VOID AND MU SHALL BE EXCUSED FROM PERFORMANCE HEREUNDER.

This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any and all prior discussions, agreements, transmissions or understandings between the Parties or their representatives.

The undersigned Parties state that they have carefully read the foregoing and understand the contents thereof, and that they execute the same as their own free and voluntary act.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and date indicated below their respective signatures.

Brenda E Allen
BRENDA ALLEN

November 25, 2013
DATE

David B. Creamer
DR. DAVID K. CREAMER
Vice President for Finance and Business
Services

January 3, 2014
DATE