

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Latisha Plaughner,

*Appellant,*

v.

Case No. 2013-RMD-04-0081

Preble County Board of Commissioners,

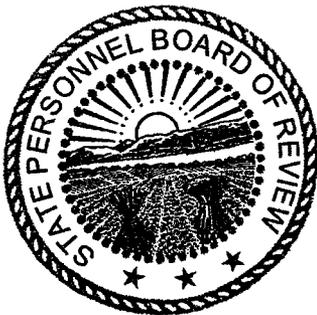
*Appellee.*

**ORDER**

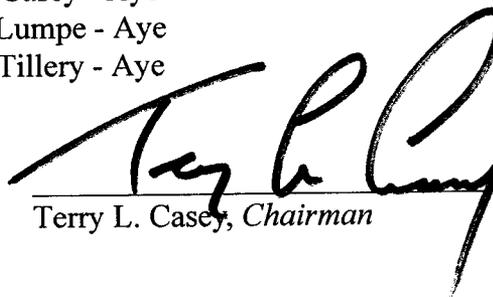
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellant Plaughner is **ESTOPPED** from claiming the protections of the classified civil service and that this appeal is **DISMISSED**.



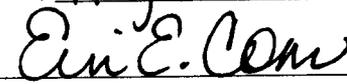
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
Terry L. Casey, *Chairman*

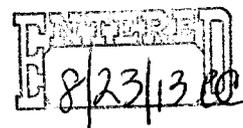
**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that 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 23, 2013.

  
Erin E. Conner  
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**

Latisha Plaughter

Case No. 2013-RMD-04-0081

*Appellant*

v.

July 29, 2013

Preble County Board of Commissioners

Marcie M. Scholl

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for consideration on July 29, 2013 upon the Order of Remand by the Board to determine "... whether Appellant should be estopped from claiming the protections of the classified service." The parties were ordered to submit briefs and Appellee's brief was filed on May 17, 2013 and Appellant's Brief in Opposition was filed on June 3, 2013.

As was stated in this Board's Procedural Order of May 1, 2013, the issue in this case is not whether Appellant Plaughter was a fiduciary or administrative employee at the time of her removal, but instead, the issue is whether or not Appellant Plaughter was a department head pursuant to section 124.11 (A)(3)(b) of the Ohio Revised Code at the time of her removal and if she should be estopped from claiming the protections of the classified service.

Section 124.11(A)(3)(b) 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:

(3) (b) The heads of all departments appointed by a board of county commissioners;

It is the above section that Appellee states Appellant Plaughter fell under at the time of her removal, thus making her an unclassified employee. There is no discrepancy as to the fact that when Appellant Plaughter was hired into the position of Solid Waste Coordinator, she signed an Unclassified Service Explanation and Acknowledgment Form on August 12, 2009. (Appellee's Exhibit E attached to Appellee's Brief). The first part of the form explains that unclassified employees do not have a property interest in their positions, that they serve at the pleasure of the appointing authority thereby meaning they can be removed from their position at any time, and that such employees do not have appeal rights to this Board.

The second portion of the form is an acknowledgement signed by Appellant Plaughter, dated August 12, 2009. That portion of the form states as follows:

I, Latisha Plaughter, acknowledge the following:

1. I have read and understand the information provided above about the nature of employment in the unclassified civil service of the State of Ohio.
2. I acknowledge that the position of Solid Waste Coordinator that I occupy for the Board of Preble County Commissioners is in the unclassified service per Section 124.11(A)(3)(b) of the Ohio Revised Code as a Department Head.
3. I sign this form and accept appointment to this position in the unclassified service knowingly and voluntarily, and I acknowledge that I serve at the pleasure of my appointing authority, and that I have no protection under the civil service laws of the State of Ohio.

The evidence is abundantly clear that as Solid Waste Coordinator, Appellant Plaughter was in the unclassified service. Appellant Plaughter argues, however, that upon the appointment of a Sanitary Engineer, on or about November 7, 2011, she no longer performed the duties that she did previously and that her duties were "significantly diminished". She then argues that this Board should have a hearing to determine what her duties were at the time she was terminated as she maintains she was performing classified duties at that time thus negating her waiver.

There are several problems with Appellant Plaughter's arguments. Appellee has not alleged that Appellant Plaughter was unclassified pursuant to the duties she performed. If so, Appellee would be maintaining that she was unclassified pursuant

to section 124.11(A)(9) of the Ohio Revised Code, where it would be necessary for her to be performing fiduciary or administrative duties. Instead, the statute Appellee is relying on, section 124.11(A)(3)(b) of the Ohio Revised Code, only has one requirement of unclassified status which is that the employee is a "head" of a department and appointed so by the board of county commissioners.

Appellee's Exhibits C, D and E, attached to Appellee's Brief, all evidence that Appellant Plaughter was appointed by the Preble County Board of Commissioners and that at all times since her appointment, she remained in the position of Solid Waste Coordinator. There was no evidence presented by either of the parties that Appellant Plaughter's position control number, her title or her rate of pay was ever changed during her tenure as Solid Waste Coordinator.

Having established that Appellant Plaughter was at all times employed as the Solid Waste Coordinator, appointed by the Preble County Board of Commissioners, and considered to a head of a department by the Commissioners, the result is then that she was an unclassified employee pursuant to section 124.11(A)(3)(b) of the Ohio Revised Code. This is the conclusion of Judge Sprague in the removal appeal filed by Appellant Plaughter in case number 2012-REM-12-0257. As was stated earlier, the Board remanded that case to determine whether or not the issue of estoppel is applicable in this case.

The question of waiver and estoppel only arises when an unclassified employee's duties have been found to fall within the classified service, but due to signing a waiver of his or her rights and enjoying the benefits of the unclassified service, is thereby estopped from claiming the protections of the classified civil service. Otherwise, if the employee was found to be unclassified, there would be no need to even raise the issue of waiver and estoppel, as the unclassified status itself would be enough to divest the employee of any civil service protection.

In the case of *Chubb v. Ohio Bureau of Workers Compensation*, (2004) 81 Ohio St.3d 275, 690 N.E.2d 1267, the Court held:

...we affirm the judgment of the court of appeals and hold that, in an appeal pursuant to R.C. 124.34 by a terminated public employee who claims classified status, the state may assert defenses of waiver and estoppel if the employee has accepted appointment to a position designated as unclassified and also has accepted the benefits of that

unclassified position. We also hold that the employee's actual job duties need not fall within the unclassified status in order for waiver or estoppel to apply. *Id.* at 277.

This is the precise situation that we have in the instant case. Appellant Plaughter was appointed into an unclassified position and signed a waiver of her civil service protection upon her appointment. Appellant Plaughter now argues that her job duties at the time of termination would fall within the description of a classified position. Therefore, the doctrine of estoppel and waiver is applicable.

Appellee pointed out in its brief that Appellant Plaughter continued throughout her tenure to enjoy the higher salary of the department head position of Solid Waste Coordinator. Her salary did not change throughout her tenure. Once again, the case of *Chubb* is directly on point. The Court noted:

We recognize the importance of the civil service system and the benefits it affords to individuals employed as civil servants. However, we find that, **if a public employee has served in an unclassified position and has enjoyed the benefits of the unclassified status such as increased salary, then as a matter of equity and fairness, the employee should be precluded from claiming classified status in order to receive the statutory benefits afforded classified civil servants.** If the employee knowingly and voluntarily accepted appointment to an unclassified position and reaped other benefits such as higher wages, the employee has voluntarily relinquished the statutory rights and protections of the civil service status. (Emphasis added). *Id.* at 278.

Therefore, in accepting Appellant Plaughter's argument that she was performing classified duties at the time of her termination, the question then becomes if she should be estopped from claiming civil service protection. The answer is clearly "yes". There is no question that Appellant Plaughter signed a waiver which in great detail explained what it means to serve in the unclassified service. The waiver was specific to Appellant Plaughter's position of Solid Waste Coordinator and she received the benefit of the higher salary accorded to that position. She remained in that position throughout her tenure. Therefore, Appellant Plaughter should be estopped from asserting classified status.

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Therefore, it is my **RECOMMENDATION** that Appellant Plaughter be **ESTOPPED** from claiming the protections of the classified civil service and that this appeal be **DISMISSED**.

  
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Marcie M. Scholl  
Administrative Law Judge

:mms