

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Bradley Long,

Appellant,

v.

Case No. 2014-FRN-04-0091

Department of Commerce,

Appellee,

ORDER

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

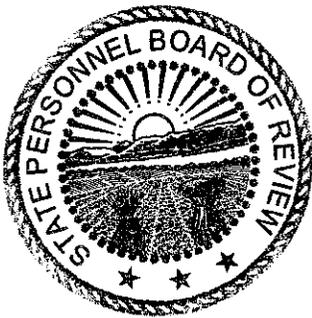
After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

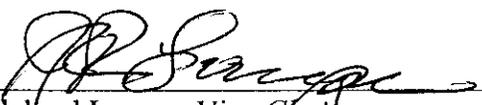
Wherefore, it is hereby **ORDERED** that Appellee's motion is **GRANTED** and the instant appeal is **DISMISSED**, because Appellant is estopped from claiming the protections of the classified service.

Casey - Abstained

Lumpe - Aye

Tillery - Aye

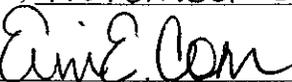



J. Richard Lumpe, Vice *Chairman*

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, November 06, 2014.


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**

Bradley Long

Case No. 2014-FRN-04-0091

Appellant

v.

September 8, 2014

Department of Commerce

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 April 25, 2014 filing of an appeal of his alleged forced resignation from his position of Accountant/Examiner Supervisor with Appellee. Appellant's resignation was tendered on or about April 15, 2014 and Appellant thereafter timely filed the instant appeal.

On May 22, 2014, this Board issued a Procedural Order setting this matter for Pre-hearing and giving further direction to the parties. On July 24, 2014, this Board conducted a Pre-hearing in this matter.

At the Pre-hearing, respective counsel discussed with the undersigned the issue of this Board's jurisdiction over the subject matter of this appeal. Further, Appellee indicated at the Pre-hearing that Appellee was contemplating filing a motion to dismiss. Appellee's motion, if filed, would be based on the assertion that Appellant should be estopped from claiming the protections of the classified service.

Accordingly, on August 14, 2014, Appellee filed Appellee's Motion to Dismiss Appeal and Memorandum in Support. Further, Appellee filed **Appellee's Exhibit A**, the Affidavit of Quentyn Daniels, a Program Administrator 1 with Appellee's Human Resources unit. Mr. Daniels' position includes maintaining the records for Appellee's employees.

Additionally, Appellee filed **Appellee's Exhibit 1**, which is a "STATE OF OHIO Unclassified Service Explanation and Acknowledgment per O.R.C. 124.12". This form appears to bear Appellant's signature, dated March 14, 2011. The form provides a detailed explanation of the salient and dispositive components of unclassified service.

Appellee's Exhibit 2 is a letter from Latisha Hazell, Appellee's Personnel Administrator, to Appellant, dated March 11, 2011. The letter offers Appellant

employment with Appellee in the position of Accountant/Examiner Supervisor with Appellee, effective March 28, 2011. The letter confirms that Appellant's " ... employment is 'at will'" and that Appellant's employment is " ... not guaranteed for any specified time."

Appellee's Exhibit 3 is a "BACKGROUND INFORMATION FORM UNCLASSIFIED EXEMPT EMPLOYEES". The last part of the form reads, as follows"

PLEASE READ THE FOLLOWING CAREFULLY BEFORE SIGNING THIS STATEMENT.

I UNDERSTAND THAT I AM AN UNCLASSIFIED EMPLOYEE SERVING AT THE PLEASURE OF DIRECTOR, AND THAT I CAN BE REMOVED AT ANY TIME WITH OR WITHOUT REASON. (Bold, capitalization, and underlining in original)

Immediately following that advisory statement is what appears to be Appellant's signature, dated March 14, 2011.

On August 29, 2014, Appellant timely filed Appellant Bradley P. Long's Memorandum in Opposition to Appellee's Motion to Dismiss Appeal.

Along with Appellant's Memorandum in Opposition, Appellant also filed **Appellant's Exhibit A**, the Affidavit of Appellant.

Further, Appellant filed **Appellant's Exhibit B**, the Affidavit of Allison McMillin. Ms. McMillin is a Paralegal employed by the law firm retained by Appellant in the instant matter. In her Affidavit, Ms. McMillin verifies that 10 identified Accountant/Examiners employed in Appellee's Division of Unclaimed Funds (the Division where Appellant was employed) are listed as encumbering positions in the classified service.

Additionally, Appellant filed two documents, both identified as Exhibit 1. The **first Appellant's Exhibit 1** is a Position Description for what appears to be Appellant's position. The Position Description contains the words "Unclassified" and "Update" and is dated March 14, 2011. At the bottom of the Job Duties section of the Position Description, the following phrase is set forth: "UNCLASSIFIED PER ORC 124.11 [(JA(9))".

The **second Appellant's Exhibit 1** is the document referenced in the Affidavit of Allison McMillin and it is titled "EXCERPT OF CLASSIFIED CIVIL SERVICE ROSTER". This document identifies the 10 individuals that Ms. McMillin

references in her afore-mentioned Affidavit and provides additional details about the employment of those 10 individuals.

It is important to objectively examine the evidence Appellant has offered into the record regarding his motivations, understanding, and impressions both prior to obtaining, and as he obtained, his Accountant/Examiner Supervisor position. Thus, let us examine Appellant's Affidavit (Appellant's Exhibit A).

(In the interest of fairness, we note, parenthetically, that only two of the eight numbered paragraphs set forth in Appellant's Affidavit are examined in detail, herein. The undersigned readily acknowledges that numbered paragraphs three through seven do address in some detail the issue of whether Appellant performed *duties* that fell within the unclassified or, conversely, the classified service.

Yet, the two questions presented in the instant inquiry are, first, whether Appellant knowingly and voluntarily relinquished his alleged classified rights and secondly, if so, whether Appellant garnered a tangible, demonstrable benefit by so doing? Put another way, the instant inquiry does not involve Appellant's duties. Nor does it involve Appellant's motivations, understanding, and impressions once he began performing his Accountant/Examiner Supervisor duties.)

Looking to Appellant's Affidavit, Appellant states, at numbered paragraphs three and eight, respectively:

At the time of my hiring, and before I signed my acknowledgements relating to classified/unclassified status of my position, I was told that my job would be unclassified, and based on the conversations I had with Ohio Department of Commerce representatives, I believed that my position with the Division of Unclaimed Funds would be one that would be consistent with an unclassified position in which I would be able to exercise discretion and judgment to impact the policies and procedures of the Division to further the mission of reuniting Ohioans with their unclaimed funds. No one told me that my job responsibilities would be those of a position in the classified service.

At the time I signed the paperwork acknowledging my employment was within the unclassified service, I believed that I had to sign the paperwork as a requirement of being hired.

From the totality of the extant record, it appears clear that Appellant was offered what both parties objectively believed was an unclassified position. Further, Appellant knowingly and voluntarily accepted appointment to that position.

Appellant understood that he would have to satisfy all of the following conditions in order to obtain his Accountant/Examiner Supervisor position: 1) acknowledge the unclassified nature of his appointment; 2) sign the Unclassified Explanation and Acknowledgment form (Appellee's Exhibit 1); and 3) sign the Unclassified Background Information check form (Appellee's Exhibit 3). Once Appellant satisfied all three of these conditions, Appellant was able to, and did, obtain his Accountant/Examiner Supervisor position. Through Appellant's appointment to that position, Appellant obtained a tangible, demonstrable, and valuable benefit.

Thus, Appellant cannot at this juncture assert that his position fell within the classified service. Moreover, because Appellant is estopped from claiming the protections of the classified service, he cannot challenge the propriety of his alleged forced resignation. Accordingly, the instant appeal should be dismissed.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal, because Appellant is estopped from claiming the protections of the classified service.


James R. Sprague
Administrative Law Judge