

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Nicole Brennan,

*Appellant,*

v.

Case No. 2014-RED-06-0123

Department of Health,

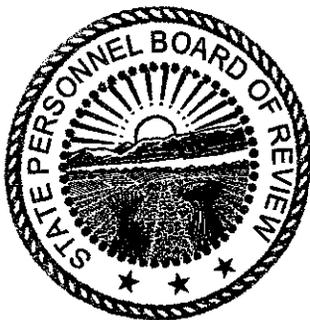
*Appellee,*

**ORDER**

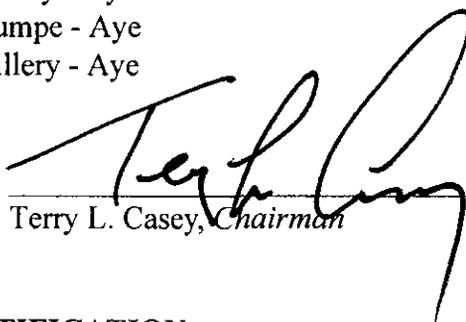
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 matter is **DISMISSED** for lack of jurisdiction, pursuant to R.C. 124.03.



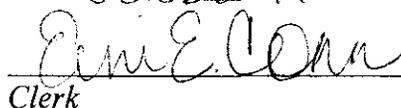
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
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, October 16, 2014.

  
Ami E. Cona  
*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**

Nicole Brennan,

Case No. 2014-RED-06-0123

*Appellant*

v.

August 18, 2014

Department of Health,

Jeannette E. Gunn

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on pursuant to Appellant's timely appeal of her June 10, 2014, alleged reduction in pay and/or position. On July 10, 2014, this Board issued a Procedural Order requiring Appellee to demonstrate the date on which Appellant received a notice of reduction. Appellee filed its response, along with a Motion to Dismiss, with this Board on August 1, 2014, asserting that Appellant was not reduced in pay or position and that the Board was without jurisdiction to consider the appeal. Appellant filed no memorandum *contra*.

Uncontroverted evidence contained in the record indicates that Appellant occupied an unclassified Health Planning Administrator 4 position on June 10, 2014. Appellee revoked Appellant's unclassified appointment via hand-delivered letter on June 10, 2014, and Appellant subsequently exercised her fall-back rights to resume her former Health Planning Administrator 2 position. The instant appeal arises from Appellee's revocation of Appellant's unclassified appointment.

Appellant does not dispute that she was an unclassified employee at the time of the revocation of her appointment. Appellee produced supporting documentation to demonstrate that when Appellant accepted the Health Planning Administrator 4 position she received an increase in compensation and signed a waiver acknowledging that the position was unclassified, pursuant to R.C. 124.11(A)(9).

### CONCLUSIONS OF LAW

Civil service employment in the State of Ohio is divided into the classified and unclassified services. This Board does not generally possess subject matter jurisdiction over an appeal of an adverse job action brought by an unclassified employee, since Ohio Revised Code Section 124.03 limits this Board's jurisdiction to actions concerning classified employees. In the instant matter, I find that Appellant was an unclassified employee at the time of the revocation of her appointment. I further find that Appellant knowingly and voluntarily accepted her appointment to an unclassified position and enjoyed the benefits of that unclassified status. Accordingly, this Board lacks jurisdiction to review either the revocation of Appellant's appointment or the manner in which Appellee processed Appellant's fallback rights. *State ex rel. Asti v. Ohio Dept. of Youth Servs.*, 107 Ohio St.3d 262, 2005-Ohio-6432.

Therefore, because Appellant occupied a position in the unclassified service at the time of the adverse job action from which the above-referenced appeal arises, I respectfully **RECOMMEND** that the matter be **DISMISSED** for lack of jurisdiction, pursuant to R.C. 124.03.

  
Jeannette E. Gunn  
Administrative Law Judge