

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

Donna Gilman,

Appellant,

v.

Case No. 2014-REM-04-0090

Fairfield County Clerk of Courts,

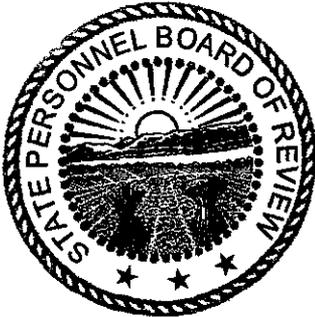
Appellee,

ORDER

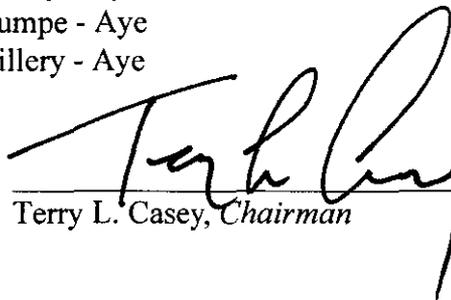
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 this appeal is **DISMISSED** due to a lack of subject matter jurisdiction, pursuant to sections 124.03 and 124.11 of the Ohio Revised Code.



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, September 22, 2014.


Eric 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**

Donna Gilman

Case No. 2014-REM-04-0090

Appellant

v.

August 18, 2014

Clerk of Courts Fairfield County

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellee's Motion to Dismiss, filed on July 2, 2014, and Appellant Gilman's Response to Appellee's Motion to Dismiss, filed on July 10, 2014.

Appellee argues that this Board has no jurisdiction over the instant appeal as Appellant Gilman served in an unclassified position pursuant to sections 124.11(A)(9) and (10) of the Ohio Revised Code at the time of her removal. Attached to Appellee's Motion to Dismiss was an affidavit from Branden Meyer, Fairfield County Clerk of Courts since February 3, 2014. He took the action to remove Appellant Gilman from her position, effective April 23, 2014. In his affidavit, Mr. Meyer states Appellant Gilman served as Chief Deputy in charge of the Pickerington title office, making her responsible for the supervision of eight employees and the day to day operations of the office. He further states Appellant Gillman's office took in millions of dollars in revenue, including a significant amount of cash, for which Appellant Gilman was ultimately responsible.

Also attached to Appellee's Motion to Dismiss were several "UNCLASSIFIED SERVICE ACKNOWLEDGMENT FORMS", signed by Appellant Gilman and dated January 12, 2009 and January 7, 2013. Appellant Gilman's job description was also attached, as was a record of the monthly deposits for the year 2014 from the Pickerington office. That report showed cash amounts of: January - \$23,460.79; February - \$29,334.81; March - \$28,811.91; and April - \$39,923.70. The remainder of the attachments were copies of Appellant Gilman's signature authority for a checking account for the Appellee and other documents relating to Appellant Gilman's purchasing authority.

In Appellant Gilman's response to Appellee's Motion to Dismiss, she confirms she was a Chief Deputy and "ran the Pickerington office". She further stated "For the last 4 years I was in charge of the Pickerington Title office." Also attached to

Appellant Gilman's response was a form entitled "Appointment of Chief Deputy Clerk of Courts" and signed by Appellant Gilman, as Chief Deputy Clerk, February 6, 2014. The form was also signed by Mr. Meyer, Fairfield County Clerk of Courts, although in the body of the form, it references Deborah Smalley, Clerk of Court of Common Pleas, as she had just resigned prior to that date. The form gives to Appellant Gilman the authority ". . . to act for me and in my stated position as my true and lawful Deputy, and in my name to do and perform all such acts and things as would be lawful for me to do as Clerk of Courts aforesaid, beginning February 6, 2014."

Section 124.11(A) (10) 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:

(10) Bailiffs, constables, official stenographers, and commissioners of courts of record, **deputies of clerks of the courts of common pleas who supervise or who handle public moneys or secured documents**, and such officers and employees of courts of record and such deputies of clerks of the courts of common pleas as the appointing authority finds it impracticable to determine their fitness by competitive examination; (Emphasis added).

As can be seen from reading the above statute, Appellant Gilman is an unclassified employee pursuant to that section of the Ohio Revised Code. The evidence is uncontroverted that Appellant Gilman was employed as a Chief Deputy of the Clerk of Courts. She supervised eight employees, handled public money and secured documents and was the person responsible for running the Pickerington title office of Appellee.

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. This Board's jurisdiction is found in section 124.03 of the Ohio Revised Code, which states as follows in pertinent part:

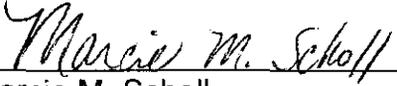
- (A) The state personnel board of review shall exercise the following powers and perform the following duties:

(1) Hear appeals, as provided by law, of **employees in the classified state service** from final decisions of appointing authorities or the director of administrative services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position

classification, or refusal of the director, or anybody authorized to perform the director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under division (D) of section 124.14 of the Revised Code. As used in this division, "discharge" includes disability separations. (Emphasis added).

As can be seen from reading the above statute, this Board does not have jurisdiction over unclassified employees. Since it is clear that Appellant Gilman was an unclassified employee at the time of her termination pursuant to section 124.11(A) (10) of the Ohio Revised Code, this Board does not possess jurisdiction to hear her appeal. There is no need to analyze whether or not she was also unclassified pursuant to section 124.11(A) (9) of the Ohio Revised Code since she has been found to be unclassified under section 124.11(A) (10) of the Ohio Revised Code. With the authority that she had though to act in the place and stead of the Clerk of Courts, along with her purchasing and signature authority, it is clear that she was also unclassified pursuant to section 124.11(A)(9) of the Ohio Revised Code.

Therefore it is my **RECOMMENDATION** that this appeal be **DISMISSED** due to a lack of subject matter jurisdiction pursuant to sections 124.03 and 124.11 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge