

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

Keith Gray,

Appellant,

v.

Case No. 2014-REM-10-0247

Brown County Court of Common Pleas,

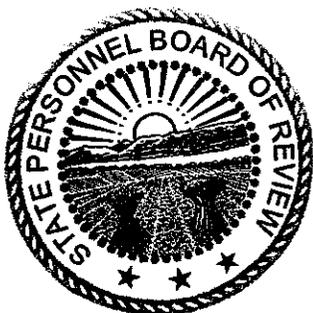
Appellee,

ORDER

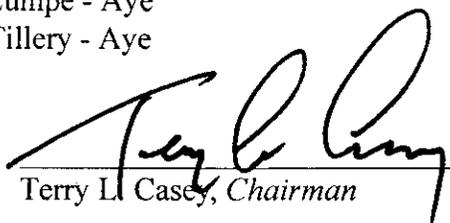
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 instant appeal is **DISMISSED** for a lack of jurisdiction.



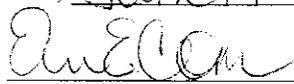
Casey - Aye
Lumpe - Aye
Tillery - Aye


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, June 17, 2015.


Clerk

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

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE June 24, 2015. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2014-REM-10-0247

Transcript Costs: N/A Administrative Costs: \$25.00

Total Deposit Required: * \$25.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: July 2, 2015

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

Keith Gray

Case No. 2014-REM-10-0247

Appellant

v.

May 13, 2015

Court of Common Pleas Brown County

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter comes on for consideration upon the filing of an appeal of his removal, effective October 3, 2014, by Appellant Gray. Appellee contends Appellant Gray was unclassified at the time of his removal, thereby divesting this Board of jurisdiction. Appellee responded to a questionnaire which was issued by the Board and Appellant had ten days to file an optional reply, which he did not do.

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Pursuant to section 124.03 of the Ohio Revised, this Board has authority to conduct appeals of classified employees and does not possess jurisdiction over unclassified employees.

Appellant was removed from his position of Chief Probation Officer/Court Constable/Criminal Bailiff without receiving a section 124.34 Order of Removal. Appellant argues that the Chief Probation Officer duties made him a classified employee pursuant to section 2301.29(A)(1)(c) of the Ohio Revised Code which states:

All positions within the department of probation, except positions held by probation officers in the juvenile division of a court of common pleas, shall be in the classified service of the civil service of the county.

However, Appellee argues that his position of Court Constable/Criminal Bailiff is unclassified, pursuant to section 124.11(A)(10) of the Ohio Revised Code, which states:

(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;

Appellee also argues that pursuant to section 2301.12(B) of the Ohio Revised Code, Appellant Gray's position of Criminal Bailiff was unclassified. That statute states as follows, in pertinent part:

(B) A criminal bailiff, who shall be a deputy sheriff and hold his position at the will of such court.(sic) He shall receive compensation to be fixed by such court at the time of his appointment, not to exceed the amount allowed court constables in the same court, which shall be paid monthly from the county treasury upon the warrant of the auditor.

Appellee also argues that Appellant Gray should be estopped from asserting that he is an unclassified employee due to the fact that he signed a waiver acknowledging he was in the unclassified service. On April 20, 2009, Appellant Gray signed a form titled "Unclassified Service Explanation and Acknowledgment Form" specifically stating that "I acknowledge that the position of Chief Probation Officer/Court Constable/Criminal Bailiff that I occupy at the Brown County Court of Common Pleas is in the unclassified service per Section 124.11(A)(10) of the Revised Code."

Since Appellant Gray held several positions at the same time, he is what has been termed a "hybrid" employee. In the case of *Barr v. Harrison County Common Pleas Court*, 10th Dist. No. 05-AP-760, 2006-Ohio-1348, Ms. Barr was also termed a

“hybrid” employee by holding the positions of probation officer, bailiff, grant administrator and fiscal officer, thus performing both classified and unclassified duties. The court held in that case that since Ms. Barr performed unclassified duties every day as part of her regular duties, “. . .the existence of some fiduciary aspect to the regular tasks assigned . . . would be determinative and place the employee in the unclassified service.” *Id* at pg. 4 2006 WL 726900.

The doctrine of waiver and estoppel has also been discussed by the courts. In the case of *Chubb v. Ohio Bur. Of Workers’ Comp.* 690 N.E.2d 1267 (1997), the Ohio Supreme Court held that a “waiver” is a “voluntary relinquishment of a known right” and as long as an employee signed a waiver specific to a certain position held by that employee and has accepted the benefits of that position, the employee is estopped from asserting classified status. *Id.*

In the instant case, Appellant Gray held a hybrid position and also signed a waiver acknowledging that his position of Chief Probation Officer/Court Constable/Criminal Bailiff was in the unclassified position. Therefore, under the holdings of *Barr* and *Chubb*, Appellant Gray was an unclassified employee at the time of his termination, thus divesting this Board of jurisdiction.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED**.



Marcie M. Scholl
Administrative Law Judge