

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Tim Mahaffey,

*Appellant,*

v.

Case No. 2014-RMD-10-0261

Department of Youth Services,  
Circleville Juvenile Correctional Facility

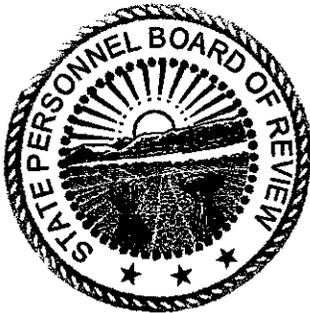
*Appellee,*

**ORDER**

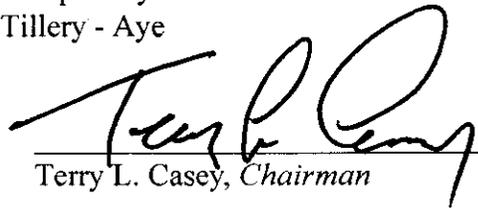
This matter came on for consideration on remand from the Court of Common Pleas of Franklin County. The Court instructed this Board to hold a record hearing and further consider the issue of whether Appellant's position of Operations Administrator fell within the classified or, conversely, the unclassified service.

After a thorough examination of the entirety of the record on remand, the Board finds that Appellant's position fell within the classified service and, thus, that the Board had jurisdiction to consider the subject matter of Appellant's removal, as reflected in the Opinion, attached hereto. Thus, we incorporate by reference the Board's October 28, 2013 Order and its holding.

Wherefore, it is hereby **ORDERED** that Appellant's **REMOVAL** be **MODIFIED** to a **30-DAY SUSPENSION** and that Appellant be **REINSTATED** to an Operations Administrator position, effective 30 days after the effective date of Appellant's removal, pursuant to R.C. 124.03 and R.C. 124.34.



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, April 01, 2015.

  
Erin E. Conn  
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  
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Tim Mahaffey,

*Appellant*

v.

Case No. 2014-RMD-10-0261

Department of Youth Services,  
Circleville Juvenile Correctional Facility,

*Appellee,*

**OPINION**

This cause comes on due to the Court of Common Pleas of Franklin County's October 15, 2014 Order of Remand in this matter, which effectuated the Order of the Court of Appeals for the 10<sup>th</sup> District. On January 21, 2015, this Board held a full record hearing to further develop the record on the issue of whether Appellant's Operations Administrator (OA) position at the Circleville Juvenile Correctional Facility (CJCF) fell within the classified service or, conversely, within the unclassified service.

Present at the record hearing was Appellant, Tim Mahaffey, who was represented by Raphael Davis-Williams, Attorney at Law. Appellee, Department of Youth Services (DYS), was present through its designee, Karla Stallworth, CJCF Deputy Director of Direct Services, and was represented by Robert E. Fekete and Amanda L. Scheeser, Assistant Attorneys General. On or before March 11, 2015, the parties timely filed their respective full post hearing briefs, both of which have been reviewed comprehensively by the Board.

At the record hearing, which lasted approximately four hours, four witnesses testified, were questioned, and provided additional depth of evidence on these legal questions.

First to testify, as if on cross, was Tim Mahaffey, Appellant. Next to testify was Chris Baker, who served as Superintendent of CJFC from the Spring of 2010 through approximately September 2011 and currently serves as DYS' Chief of the Bureau of Community Facilities. Next to testify was Ronald D. Edwards, who served as Superintendent of CJFC from approximately September 2011 until March 2014 and who followed Superintendent Baker in that position. Next to testify was Karla Stallworth, who served as CJCF's Deputy Superintendent of Direct Services. Last to testify was Appellant, on direct.

Further, in SPBR Case No. 2012-REM-05-0088, the Full Board had previously considered the instant issue; although not through a full hearing. Nothing in the instant record suggests that the specific evidence referenced and utilized in this Board's October 17, 2013 Lifting of Stay and Issuance of Final Order concerning the instant issue was in any way inaccurate. Accordingly, we incorporate herein, by reference, the following excerpt from that document, as follows.

... Appellee's own records show that most of Appellee's OAs and nearly all of its Pay Range 13 employees [the Pay Range assigned to Appellant's position] were carried as classified at and near the time of Appellant's removal. Indeed, only 25 percent of Appellee's OAs were considered to be unclassified and fewer than 10 percent of all of its Pay Range 13 employees were considered to be unclassified at that time. Additionally, there is nothing in the record to indicate that Appellee ever carried Appellant as unclassified during any portion of his long tenure with Appellee and nothing in the record to indicate that Appellant ever agreed to serve in the unclassified service.

In order to fully comply with the Court's Order of Remand, the Full Board expanded its inquiry and, at the January 21, 2015 record hearing, took extensive evidence of Appellant's actual duties for the full two-year time period immediately preceding Appellant's removal from his OA position.

By way of background, CJCF is a full-service youth facility operated by DYS. It houses a variety of juvenile offenders and others and operates not only as an incarceration facility but also as a school for the youth under its care. That care includes ensuring the health and well-being of the youth, properly educating them, conducting proper initial intake, screening, and release, and ensuring that the youth are transported safely and timely in regard to medical and other appointments and in regard to court dates.

Appellant had served as an OA at DYS since approximately 1999. His position fell under the supervision and control of CJCF's Deputy Superintendent of Direct Services.

Appellant supervised approximately six to eight Operations Managers (OM), who, themselves, supervised a number of Youth Specialists (YS), who are line-level collective bargaining employees. OMs oversee the daily administrative duties of security at CJCF and effectuate policy and procedures concerning the respective YSs who fall under their supervision. YSs carry out duties to ensure the general safety and well-being of resident youth and staff at the institution.

Because Appellant served as a second level supervisor, he was included in periodic/weekly department head meetings with the Superintendent.

Appellant was not, however, included in executive ("administration") staff meetings. His position does not fall on the "Administration" component of CJCF's table of organization. This evidence of Appellant not being at the top of these administrative positions is important for consideration as one of many factors by this Board.

Each DYS facility has an OA. As the OA at CJCF, Appellant acted as the liaison between executive management and the OMs. He also functioned as the backup for reviewing use of force incidents, oversaw aspects of institution security, and briefed his superiors regarding same, at times making recommendations regarding security which were sometimes adopted. The Board noted that Appellant's designation as the "back-up" for various functions stood in stark contrast with Appellee's assertion that Appellant functioned as the deciding person in charge and responsible for these final decisions.

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Appellant also was one of four individuals (including a locksmith and a maintenance supervisor) who determined who was and who was not able to have certain keys at CJCF, ultimately subject to the authority of the Superintendent. Appellant also generally oversaw tool inventory and control, in conjunction with the department heads.

Much was presented regarding Appellant being the “keeper of the keys” and in charge of tools. These “duties” are important. Yet the question must be asked as to whether Appellee is suggesting that the “keeper of the keys” at any state, school, or other public facility should automatically become designated as an unclassified employee under state law.

The record is mixed regarding Appellant’s authority to oversee and authorize transportation. In the past (prior to the pertinent two-year look back period), Appellant had more authority and latitude regarding youth transportation. That authority was circumscribed during the review period and Appellant was not CJCF’s designated Transportation Coordinator.

The record indicates that Appellant did not serve even one time as acting head of CJCF in the absence of the Superintendent during the review period.

The record appears to be devoid of any policies or post orders authored by Appellant during the review period. This is consistent with Appellant’s testimony that he lacked such authority during the review period. Appellant had no independent disciplinary authority. He could not unilaterally alter staff schedules. It is not even clear that Appellant could make a purchase for the institution.

Appellant did not serve as CJCF’s training officer, its primary use of force officer, its youth advocate, its American Correctional Association compliance officer, or, as noted, above, its transportation officer.

Appellee has asserted that Appellant’s position fell within the fiduciary and/or administrative exemptions from the classified service set forth in R.C. 124.11 (A) (9), which provision reads, in pertinent part:

**124.11 Unclassified service - classified service.**

The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts of the state shall be divided into the unclassified service and the classified service.

(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:

(9) The deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency ...

The term "fiduciary" has been defined many times over by the courts and, in summary, requires the employee to complete his or her assigned job duties with a high degree of trust,

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confidence, reliance, integrity and fidelity, above and beyond the technical competence required to complete the job. *State, ex rel. Charlton v. Corrigan* (1988), 36 Ohio St.3d 68, 71.

O.A.C. 124-1-02 (I) provides additional guidance regarding the fiduciary exemption and indicates:

(I) "Fiduciary relationship" generally means a relationship where the appointing authority reposes a special confidence and trust in the integrity and fidelity of an employee to perform duties which could not be delegated to the average employee with knowledge of the proper procedures. These qualifications are over and above the technical competency requirements to perform the duties of the position. Whether one position occupies a fiduciary relationship to another is a question of fact to be determined by the board.

O.A.C. 124-1-02 (C) provides additional guidance regarding the administrative exemption and indicates:

(C) "Administrative relationship" generally means a relationship where an employee has substantial authority to initiate discretionary action and/or in which the appointing authority must rely on the employee's personal judgment and leadership abilities. The average employee would not possess such qualities or be delegated such discretionary authority. Whether one position occupies an administrative relationship to another is a question of fact to be determined by the board.

Certainly, as CJCF's OA, Appellant performed important work. As a general observation only, we note that the work that Appellant performed during the review period did not appear to be categorically different than the work he had previously performed as an OA, except that his authority and discretion to act appear to have been more circumscribed during the review period.

We have delineated, above, some areas in which Appellant no longer acted as the principal designee of the Superintendent. Further, Appellant's lack of discretion regarding post orders, staffing, transportation, accreditation, *et cetera* belie Appellee's assertion that Appellant performed in either a fiduciary or administrative capacity to the agency.

As can be seen, above, the terms "fiduciary relationship" and "administrative relationship" have very specific contextual meanings gleaned from rather extensive case law on these terms, and particularly on the term "fiduciary relationship". We must ask whether Appellant had a special relationship with the agency beyond what might be expected of a long-term employee in his position. The answer found in the record is that Appellant did not enjoy a special relationship with the agency/Superintendent beyond what might be expected for a long-term employee in his position. Indeed, if anything, Appellant had perhaps less discretion and authority than we might expect and Appellee did not place special reliance on Appellant.

The record contains examples of where the Superintendent expressly removed or otherwise reassigned a number of Appellant's duties either prior to or early on in the review period. This does not indicate a special trust and confidence in Appellant. Further, the fact that Appellant's discretion

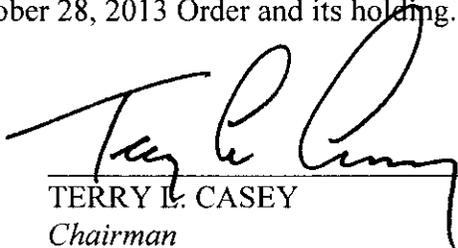
and latitude were circumscribed does not evidence an employee with substantial authority to initiate discretionary action.

Another telling example of Appellant's more limited role is that Appellant was not a part of the executive "administration" at CJCF. He did not attend "administration" staff meetings. He was not asked to oversee the institution in the absence of the Superintendent, even though Alisha Bailey, who fell on the same level of the table of organization as Appellant, had been assigned to run the institution.

We may reiterate, parenthetically, that the record is devoid of evidence that Appellee gave Appellant any indication that it believed Appellant's position fell within the unclassified service. Further, as noted, Appellee carried three of its four OAs in the classified service at the time of Appellant's removal. Moreover, when Appellant was removed, nearly all of DYS' employees in Appellant's Pay Range were carried in the classified service.

Yet, it is an employee's actual duties that are the determinative factor regarding whether the employee's position falls with the unclassified service by operation of R.C. 124.11 (A) (9). Yes, Appellant's work was important, but that work could have also been performed by the ordinary employee in Appellant's position with knowledge of the job. Neither Appellant's circumscribed level of discretion and authority nor Appellee's lack of exemplary trust of and reliance on Appellant suggest a fiduciary or administrative relationship between Appellant and his agency.

Therefore, in accordance with the instructions of the Court of Common Pleas of Franklin County, after reviewing the actual job duties that Appellant's performed for the pertinent two-year period prior to his removal, this Board finds that Appellant occupied an Operations Administrator position that fell within the classified service. Because the Board has found that Appellant is a classified employee, the Board had jurisdiction to consider the appeal of his removal. Thus, we incorporate by reference the Board's October 28, 2013 Order and its holding.



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TERRY L. CASEY  
*Chairman*