

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

Eric Spicer,

Appellant,

v.

Case Nos. 2014-REM-04-0076
2014-WHB-04-0077

Greene County Sheriff,

Appellee,

ORDER

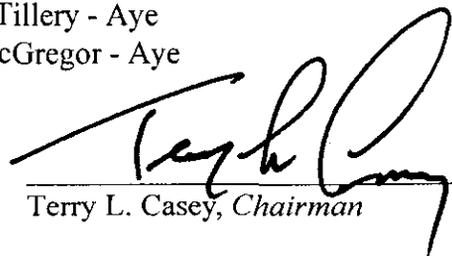
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, 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 two instant appeals are **DISMISSED** for a lack of subject matter jurisdiction, pursuant to R.C. 124.03, R.C. 124.34, R.C. 124.341, and R.C. 311.04 (C) (1).



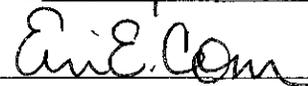
Casey - Aye
Tillery - Aye
McGregor - Aye


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, July 14, 2016.


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 July 21, 2016. 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 Numbers: 2014-REM-04-0076 and 2014-WHB-04-0077

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 29, 2016

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

Eric Spicer

Appellant

v.

Greene County Sheriff

Appellee

Case Nos. 2014-REM-04-0076
2014-WHB-04-0077

May 23, 2016

James R. Sprague
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes come on due to Appellant's filing of removal and whistleblower appeals following his removal from the position of Major with Appellee, Greene County Sheriff's Office (GCSO). The instant records were then extensively developed.

Subsequent to Appellant's removal, Appellant was charged with several federal firearms felonies. The two instant cases were stayed pending resolution of same in the United States District Ohio for the Southern District of Ohio. Appellant was convicted of two federal felonies and some time elapsed before Appellant's sentencing. Once Appellant was sentenced, further record development occurred.

Appellee has alleged that Appellant was removed as an unclassified employee pursuant to R.C. 124.11 (A) (9). Further, Appellee has alleged that Appellant is estopped from claiming the protections of the classified service; by virtue of his contemporaneous acknowledgment of unclassified service both when he was hired in at the rank of Captain and when he was promoted to the rank of Major.

Moreover, Appellee has alleged that Appellant is legally incompetent to hold a deputy sheriff position with the GCSO, which is, self-evidently, a County Sheriff's Office organized and administered under the laws of the State of Ohio. **Appellee has asserted this is the case because Appellant was convicted of two federal felonies and because R.C. 311.04 (C) (1) bars the appointment of a deputy**

Eric Spicer

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sheriff on a permanent basis if the potential incumbent has been convicted of or pleaded guilty to a felony.

By way of further background, R.C. 311.04 (C) (2) (a) sets forth conditions under which a Sheriff must terminate a sitting deputy who is convicted of, or pleads guilty to, certain offenses. R.C. 311.04 (C) (2) (b) mandates the suspension of such a deputy, when the deputy timely files a criminal appeal and until such time as the deputy's guilt or innocence is determined by the highest reviewing Court.

Appellee argues that, since Appellant's employment with the GCSO was severed *before* Appellant was either indicted or convicted, R.C. 311.04 (C) (2) is inapplicable to Appellant's circumstances. Conversely, Appellant argues that, since he timely filed his pending criminal appeal, he has an inchoate right both to reinstatement to his position of Major and to back pay, if his felony convictions are overturned.

Appellant would be correct in his assertion, if he had been convicted while still serving with the GCSO. However, Appellant was removed from his Major position before he was even indicted. Accordingly, R.C. 311.04 (C) (2)'s provisions are inapplicable to Appellant's current and foreseeable situation.

Thus, the GCSO correctly argues that Appellant is legally barred from holding or returning to any deputy position with the GCSO [or with any other Ohio Sheriff's Office]. Accordingly, this Board simply lacks authority to reinstate Appellant to any deputy position. That lack of authority essentially deprives this Board of jurisdiction over the subject matter of Appellant's two instant appeals. Thus, this Board should dismiss them.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the two instant appeals, since this Board is essentially deprived of jurisdiction over the subject matter of those two appeals, pursuant to R.C. 124.03, R.C. 124.34, R.C. 124.341, and R.C. 311.04 (C) (1).



James R. Sprague
Administrative Law Judge