STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Jacqueline Leisenheimer,

Appellant,

v.

Case Nos. 2015-REM-08-0164
2015-MIS-08-0165

Ohio Department of Veterans Services,

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. *It is noted that Appellant may have an avenue of remedy through filing an original action directly with a court of competent jurisdiction.*

Wherefore, it is hereby **ORDERED** that Appellee's Motion to Dismiss is **GRANTED** and the appeals are **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, February 29, 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 March 7, 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: 2015-REM-08-0164 & 2015-MIS-08-0165

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: March 15, 2016

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Jacqueline Leisenheimer	Case Nos. 15-REM-08-0164 15-MIS-08-0165
Appellant	
v.	December 30, 2015
Ohio Department of Veterans Services	
Appellee	Jeannette E. Gunn *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on pursuant to Appellee's Motion to Dismiss, filed with this Board on November 17, 2015. Appellee asserts that this Board lacks jurisdiction over the above-referenced matters. Appellant filed no memorandum contra.

Based upon the uncontroverted information contained in the record, I make the following findings of fact:

Appellant was employed by Appellee as a Deputy Director 4 from March 2014 through August 2015. At the time of her appointment to the Deputy Director 4 position, Appellant acknowledged that the position was unclassified. She further acknowledged that as an unclassified employee she had no property interest in her position, served at the pleasure of the appointing authority and had no right to appeal her removal to the State Personnel Board of Review.

Appellant's unclassified appointment was revoked effective August 18, 2015, and she was removed as an unclassified employee without an R.C. 124.34 Order of Removal. She filed the above-captioned appeals with this Board on August 25, 2015, to appeal her removal from employment, as well as Appellee's failure to grant fallback rights and failure of due process.

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 R.C. 124.03 generally limits this Board's jurisdiction to actions concerning classified employees. Appellant was an unclassified employee at the time of her removal from employment and this Board may, therefore, not review either her removal or Appellee's alleged failure to grant fallback rights in accordance with R.C. 124.11(D). *State ex rel. Asti v. Ohio Dept. of Youth Servs.*, 107 Ohio St.3d 262, 2005-Ohio-6432. The Board also lacks jurisdiction to consider Appellant's general claim of failure of due process.

Accordingly, because Appellant occupied a position in the unclassified service at the time of the adverse job action from which the above-referenced appeals arise, I respectfully **RECOMMEND** that Appellee's Motion to Dismiss be **GRANTED** and the above-referenced appeals be **DISMISSED** for lack of jurisdiction, pursuant to R.C. 124.03.

Jeannette E. Gunn
Administrative Law Judge