

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Jesika Cooper,

Appellant,

v.

Case No. 2015-REM-04-0046

Clinton County Auditor,

Appellee,

ORDER

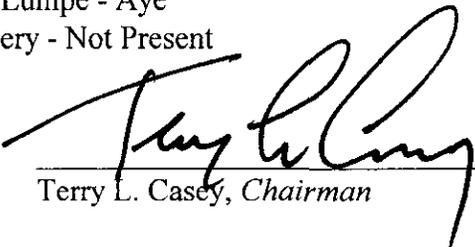
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal. Further, on November 18, 2015, the Board held Oral Argument with both sides present in this matter to review in comprehensive detail the questions of classified versus unclassified status and other related legal questions/issues.

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 and along with the parties' respective presentations at Oral Argument, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Appellant's **REMOVAL** from her position with Appellee be **AFFIRMED**, pursuant to R.C. 124.03 and R.C. 124.34.

Casey - Aye
Lumpe - Aye
Tillery - Not Present




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, December 04, 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 December 11, 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: 2015-REM-04-0046

Transcript Costs: \$57.00 Administrative Costs: \$25.00

Total Deposit Required: * \$82.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: December 21, 2015

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

Jesika Cooper

Case No. 15-REM-04-0046

Appellant

v.

August 27, 2015

Clinton County Auditor

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration pursuant to Appellee's Response to this Board's May 28, 2015 Procedural Order, filed with this Board on August 6, 2015. Appellee asserts that this Board is without jurisdiction to consider the above-referenced appeal because Appellant was an unclassified employee pursuant to R.C. 124.11(A)(9). Appellee further asserts that Appellant is also estopped from claiming that her position fell within the classified service. Appellant filed no memorandum *contra*.

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

Appellant was employed by Appellee in an Account Clerk position. Appellant was notified prior to being hired into the position on September 23, 2014, that the position was considered by Appellee to be a non-exempt, fiduciary position and unclassified pursuant to R.C. 124.11(A)(9).

Appellant accepted the position, along with the benefits of serving in an unclassified position, including higher pay and a shortened probationary period.

CONCLUSIONS OF LAW

This Board does not possess subject matter jurisdiction over unclassified employees since R.C. 124.03 limits this Board's jurisdiction to actions concerning classified employees. Appellee argued that Appellant's position was statutorily exempted from the civil service pursuant to R.C. 124.11(A)(9), and further asserted that Appellant was estopped from claiming that her position was classified because she accepted the position knowing that it was designated by the employer as unclassified and enjoyed the benefits of unclassified status during her tenure with Appellee.

The Supreme Court discussed the application of waiver and estoppel in *Chubb v. Ohio Bureau of Workers' Compensation* (1998), 81 Ohio St. 2d and 3d 275, noting that the State may assert the defenses if an employee has accepted the benefits of an unclassified position, regardless of whether the employee's actual job duties fell within a classified status. Further, the court in *Chubb* held that if a public employee has served in an unclassified position and has enjoyed the benefits of the unclassified service, then as a matter of equity and fairness, the employee should be precluded from claiming classified status in order to receive the statutory benefits afforded classified civil servants. If the employee knowingly and voluntarily accepted an appointment into an unclassified position and reaped other benefits, the employee has voluntarily relinquished the statutory rights and protections of civil service status.

In the matter at hand, Appellant knew that the Account Clerk position she accepted was considered by Appellee to be unclassified. The offer letter provided to and acknowledged by Appellant specifically referenced the unclassified designation of the position. Uncontroverted evidence contained in the record indicates that as an unclassified employee, Appellant enjoyed a higher rate of pay and a shortened probationary period.

I find that Appellant knowingly and voluntarily accepted an appointment into an unclassified position and accepted the benefits of the unclassified service, thereby relinquishing the statutory rights and protections of the classified civil service. Appellant is subsequently estopped and/or waived from asserting that she was a classified employee over which this Board may exercise jurisdiction. Because Appellant is so estopped, it is unnecessary for this Board to conduct a

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record hearing to determine whether Appellant's job duties placed her within the unclassified service pursuant to R.C. 124.11(A)(9).

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** for lack of jurisdiction over the parties, pursuant to R.C. 124.03(A), 124.11(A)(9), and 124.34.


Jeannette E. Gunn
Administrative Law Judge