

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

Crystal Taylor,

*Appellant,*

v.

Case No. 2015-REM-05-0054

University of Toledo,

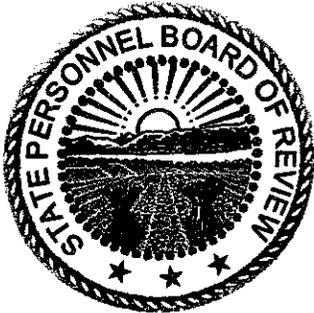
*Appellee,*

**ORDER**

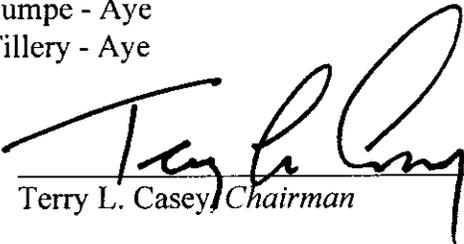
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellee's motion is **GRANTED** and this appeal is **DISMISSED** for lack of jurisdiction, pursuant to R.C. 124.03(A) and 124.34.



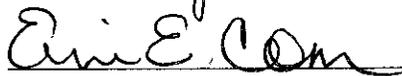
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
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, May 05, 2016.

  
*Erin E. Com*  
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 May 12, 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 Number: 2015-REM-05-0054

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: May 20, 2016

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

Crystal Taylor,

Case No. 2015-REM-05-0054

*Appellant*

v.

February 19, 2016

University of Toledo,

Elaine K. Stevenson

*Appellee*

*Hearing Officer*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

The matter comes on for consideration upon Appellant's Notice of Appeal of her removal from employment with Appellee, filed on April 22, 2015; Appellee's Motion to Dismiss, filed on August 14, 2015; Appellant's Memorandum in Opposition to Appellee's Motion to Dismiss, filed on September 14, 2015; Appellee's Reply to Appellant's Memorandum in Opposition to Appellee's Motion to Dismiss, filed on September 29, 2015; Supplemental Authority of Appellee's Motion to Dismiss, filed on October 9, 2015; and Appellee's Response to Procedural Order, filed on December 23, 2015.

Appellee asserts that, at the time of her removal, Appellant held a position in the unclassified civil service under the Ohio Revised Code ("O.R.C.") § 124.11(A)(7)(a) exemption and, therefore, the Board lacks jurisdiction to consider the merits of Appellant's removal. Appellee also asserts that Appellant's appeal should be dismissed under the doctrines of waiver and estoppel.

**STATEMENT OF FACTS**

1. Appellant began her employment with the Appellee, University of Toledo, on March 22, 2010 in the unclassified position of Enrollment Management Specialist and Director of Pharmacy Camp for the University's College of Pharmacy and Pharmaceutical Sciences. (Appellee's Exhibit 1)
2. On December 9, 2014, Appellee's Associate Vice President, Human Resources and Talent Development, Jovita Thomas-Williams, delivered a memorandum to Appellant offering her the unclassified position of Associate Dean of "YouCollege," effective December 22, 2014. (Appellee's Exhibit 2). The memorandum contains information regarding the position of Associate Dean of YouCollege, including the reporting structure and the base annual salary. The

memorandum also provides detailed information regarding the employment status of this position. On December 12, 2014, Appellant signed the memorandum acknowledging her acceptance of the unclassified position of Associate Dean of YouCollege. The memorandum states, in part:

By accepting this confirmation of offer of unclassified employment, you acknowledge that this position is at-will and falls within the unclassified civil service in the State of Ohio and as such does not create a property right to any position with the University or State of Ohio. This appointment is not subject to the provisions of section 124.34 of the Ohio Revised Code. Accordingly, your employment is at-will, and may be ended at any time by either you or the university. \*\*\*

The unclassified position of Associate Dean, YouCollege is at the will of the appointing authority. In the event of termination, the University will provide a ninety (90) days written notice unless the termination is for cause, in which case termination will be effective immediately.

Signing this memorandum validates your understanding of this appointment and your acceptance of the policies and benefits of unclassified employment. You may indicate acceptance of this position by signing below and returning a signed copy of this letter to me at Mail Stop 405. I would appreciate receiving a response to this offer by December 12. Please feel free to call me if you have any questions about the department, the university, or the terms of this offer.

3. On March 6, 2015, Appellant was placed on paid administrative leave pending an investigation. (Appellee's Exhibit 3)
4. On April 15, 2015, Appellee served Appellant with a letter of termination. (Appellee's Exhibit 4; "Notice of Involuntary Separation").
5. In her affidavit, Appellant acknowledges that, on April 15, 2015, she received a termination letter from the University's Human Resources Department, dated April 15, 2015. (Appellant's Exhibit B; "Notice of Corrective Action").
6. In her affidavit, Appellant states that when she returned to retrieve her personal items approximately one week later, on or about April 22, 2015, she was given a second letter also dated April 15, 2015. The second letter notifies Appellant of her termination, which is designated as an "Involuntary Separation" rather than a "Corrective Action." The second letter notes the unclassified status of Appellant's position and provides additional information regarding the nature of the 90-day

notice period and the effective date of termination as July 14, 2015. (Appellee's Exhibit 4).

7. As Associate Dean for the University's YouCollege, Appellant enjoyed benefits available exclusively to unclassified employees. Specifically, Appellant enjoyed an annual base salary of \$61,500. Appellant also enjoyed a higher rate of vacation accrual than those in the classified civil service. Appellant was provided with a 90-day separation notice that included payment of her full salary and health care benefits through July 31, 2015. Appellant was not required to report to work during the 90-day notice period.

### CONCLUSIONS OF LAW

As noted above, Appellee asserts that that the Board lacks jurisdiction to consider the merits of Appellant's appeal because Appellant held a position in the unclassified service at the time of her removal. Appellee also asserts the defenses of waiver and estoppel to deny Appellant's claim of classified status. For the reasons set forth below, Appellant's appeal should be dismissed pursuant to the doctrines of waiver and estoppel; as a result, it is not necessary to address Appellee's argument regarding the unclassified status of Appellant's position under the O.R.C. § 124.11(A)(7)(a) exemption.

Ohio's civil service system is divided into classified and unclassified positions pursuant to O.R.C. § 124.11. Employees in the classified service may be removed for good cause only in accordance with the procedures set forth in O.R.C. § 124.34 and related rules and regulations. Employees in the unclassified service generally do not have the protections of O.R.C. Chapter 124. O.R.C. § 124.03 generally limits this Board's jurisdiction to employees whose positions fall within the classified civil service.

In *Chubb v. Ohio Bureau of Workers' Compensation*, 81 Ohio St.3d 275 (1998), the Supreme Court of Ohio held that: "...in an appeal pursuant to R.C. 124.34 by a terminated public employee who claims classified status, the state may assert defenses of waiver and estoppel if the employee has accepted an appointment to a position designated as unclassified and also has accepted the benefits of that unclassified position. We also hold that the employee's actual job duties need not fall within the unclassified status in order for waiver or estoppel to apply." *Chubb* at 278.

In this case, the information contained in the record indicates that prior to accepting the unclassified position of Associate Dean of YouCollege, Appellant received a memorandum stating that the position was in the unclassified service. Appellant accepted the position by signing and returning the memorandum within the specified timeframe. As an unclassified employee, Appellant enjoyed a higher rate of vacation accrual than employees in the classified civil service and she received a 90-day notice of involuntary separation, which is only available to those individuals removed from the unclassified civil service. Therefore, based on the evidence contained in the record,

Appellant knowingly and voluntarily accepted an appointment to the unclassified service and she accepted the benefits of such appointment. For that reason, Appellant is barred from claiming the protections of the classified civil service under the doctrines of waiver and/or estoppel.

However, Appellant argues that she did not knowingly waive her rights to a review of the termination of her employment when she signed the December 9, 2014 memorandum accepting the position of Associate Dean of the YouCollege. A review of the December 9, 2014 memorandum reveals that it contains a detailed description of the unclassified status of the Associate Dean position and states, in part:

\*\*\*

By accepting this confirmation of offer of unclassified employment, you acknowledge that this position is at-will and falls within the unclassified civil service in the State of Ohio and as such does not create a property right to any position with the University or State of Ohio. This appointment is not subject to the provisions of section 124.34 of the Ohio Revised Code. Accordingly, your employment is at-will, and may be ended at any time by either you or the university....

\*\*\*

Additionally, it is noted that above-cited memorandum provides contact information and advises Appellant to call Ms. Thomas-Williams if she has any questions about the department, the university, or the terms of the offer. Given the information provided in the December 9, 2014 memorandum, Appellant's claim that she did not knowingly waive her rights to claim the protections of the classified civil service is unconvincing.

Appellant further argues that the actual job duties she performed at the time of her removal placed her in the classified civil service; therefore, she has not waived her right to claim classified civil service status and this Board has jurisdiction to consider whether her position was properly designated as unclassified. In support of her argument, Appellant cites Ohio Administrative Code Rule 124-7-04 and *Boston v. Ohio Dept. of Human Serv.* (December 20, 1994), Franklin App. Nos. 94APE06-914 and 94APE06-0915, unreported, 1994 WL 714570. Appellant's argument is misplaced based upon the facts of this case and the holding in *Chubb, supra*. In this case, Appellant accepted an appointment to a position designated as unclassified and accepted the benefits of the unclassified service. Under the holding in *Chubb*, Appellee need not demonstrate that Appellant's actual job duties placed her in the unclassified service in order for Appellee to assert the defenses of waiver and estoppel. *Id.* at 278.

Appellant further argues that this Board's jurisdiction has been invoked because she received two different notices with the same date regarding the termination of her

employment. Since the evidence establishes that Appellant's position was designated as unclassified in December 2014 and that Appellant waived her rights to claim the protection of the classified civil service when she accepted the position in December 2014, any alleged irregularities in Appellant's termination notice do not trigger the Board's jurisdiction under O.R.C. § 124.34.

Lastly, Appellant argues that this Board has assumed jurisdiction for similarly situated unclassified employees. In support of her argument, Appellant cites two SPBR cases: *Barbara Rudnicki v. University of Toledo*, 2007-REM-04-0130 and 2007-INV-08-0338 (March 25, 2008) and *Wanda D. Carter v. University of Toledo*, 2005-REM-11-0457 (January 12, 2007). A review of these cases reveals that the Board dismissed both cases for lack of jurisdiction. In *Rudnicki*, the Board dismissed the appeal for lack of jurisdiction after determining that the information provided established that the Appellant was in the unclassified civil service. In *Rudnicki*, the Board did not address the affirmative defenses of waiver or estoppel. In *Carter*, the Board dismissed the appeal for lack of jurisdiction based upon the Appellee's assertion of the defenses of waiver and estoppel.

Therefore, because the information contained in the record establishes that Appellant is barred from claiming the protections of the classified civil service under the doctrines of waiver and estoppel, I respectfully **RECOMMEND** that Appellee's motion to dismiss Appellant's appeal of her removal be granted and that this appeal be **DISMISSED** for lack of jurisdiction, pursuant to Ohio Revised Code §§ 124.03(A) and 124.34.

  
Elaine K. Stevenson  
Administrative Law Judge