

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

DEXTER JOINER,

*Appellant*

v.

Case No. 05-REM-02-0051

LUCAS COUNTY SHERIFF,

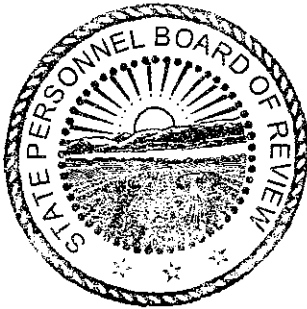
*Appellee*

**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 record and 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 to Dismiss be granted and that the instant appeal be **DISMISSED**, as Appellant's refusal to take a drug test and his fourth degree felony conviction for possession of cocaine are sufficient grounds to affirm his removal pursuant to R.C. 124.34.



Tracy – Aye  
Lumpe – Aye  
Booth – Aye

  
\_\_\_\_\_  
Roger W. Tracy, *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 the foregoing is ~~(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, November 22, 2005.

  
\_\_\_\_\_  
*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  
STATE PERSONNEL BOARD OF REVIEW**

Dexter Joiner,

Case No. 05-REM-02-0051

*Appellant*

v.

October 3, 2005

Lucas County Sheriff,

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 Motion to Dismiss, filed with this Board on September 16, 2005. Appellant filed no memorandum *contra*.

The uncontroverted information contained in the record indicate that Appellant was removed from employment with Appellee on February 2, 2005, based upon charges of inefficiency, incompetency and failure of good behavior, specifically that Appellant was arrested by Toledo Police as a result of his purchase of powder cocaine and was booked into the Lucas County Corrections Center on drug charges. Appellant further refused to take a drug test after being ordered to do so by Internal Affairs. As a result of the same incident, criminal charges were filed against Appellant and Appellant was convicted on the charge of possession of cocaine in violation of R.C. 2925.11(A) & (C)(4)(b), which is a fourth degree felony on July 11, 2005. Appellee filed with its Motion to Dismiss certified court documents reflecting Appellant's conviction.


O.A.C. 124-9-08 provides that conviction of a crime in a court of competent jurisdiction is conclusive evidence of the existence of all of the elements of that crime, although the conviction is not conclusive evidence that disciplinary action based upon the conviction is appropriate. I find that Appellant's felony conviction is sufficient to establish failure of good behavior, as set forth in the R.C. 124.34 Order removing Appellant from his position with Appellee.

O.A.C. 124-11-07 states that a party must demonstrate in response to a properly filed Motion to Dismiss that there remains a genuine issue in dispute. As

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previously noted, Appellant has not submitted any such response. Accordingly, I find that removal was an appropriate response to Appellant's failure of good behavior.

Therefore, I respectfully **RECOMMEND** that Appellee's Motion to Dismiss be granted and the instant appeal be **DISMISSED**.

  
Jeannette E. Gunn  
Administrative Law Judge

JEG: