

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Misty D. McCann,

Appellant,

v.

Case No. 08-REM-03-0066

Wayne County Juvenile Court,

Appellee.

ORDER

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

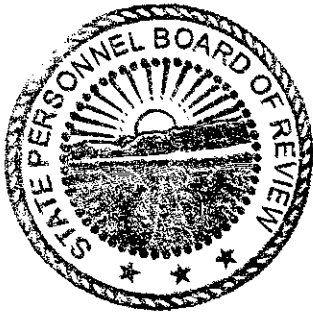
After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** for lack of subject matter jurisdiction, pursuant to O.R.C. §§ 124.11(A)(10) and 2151.13.

Lumpe - Aye

Booth - Aye

Sfalcin - Aye

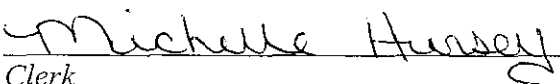



J. Richard Lumpe, *Chairman*

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 constitute ~~(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, June 25, 2008.


Clerk

NOTE: Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.

6-25-08

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

Misty D. McCann,

Case No. 08-REM-03-0066

Appellant

v.

May 22, 2008

Wayne Co., Juvenile Court,

Christopher R. Young

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on May 22, 2008, upon the Appellee's Motion to Dismiss filed on May 8, 2008, along with the attached affidavit of Juvenile Judge Raymond Leisy, and upon the Appellant's response to this Board's April 16, 2008, Procedural Order and Questionnaire, filed with this Board on April 23, 2008, and upon the Appellee's response to the Board's April 16, 2008, Procedural Order and Questionnaire, filed with this Board on April 29, 2008. To date, the Appellant has not responded to the Appellee's motion, nor has she requested an extension of time to do so, as well.

For background purposes, this appeal arose after the Appellant's termination on March 12, 2008, from her position as a Deputy Clerk with the Wayne County Juvenile Court, a Division of the Wayne County Common Pleas Court, under the direction of the Honorable Raymond Leisy. No Ohio Revised Code Section 124.34 Order of Removal was ever filed with this Board regarding the removal of the Appellant. Appellant timely filed an appeal to this Board on March 20, 2008. On April 16, 2008, the undersigned issued a procedural order and questionnaire to both the Appellant and Appellee to clarify certain jurisdictional concerns. On April 23, 2008, the Appellant answered the above-mentioned questionnaire wherein she stated that she was not sure if her position was unclassified or not. On April 29, 2008, the Appellee answered the above-mentioned questionnaire wherein it was stated that the Appellant was removed as an unclassified employee, a Deputy Clerk of Juvenile Court pursuant to O.R.C. section 124.11(A)(10). Further, it should be noted that the Appellee also asserted in its motion to dismiss that the Appellant served at the pleasure of the Juvenile Judge pursuant to O.R.C. section 2151.13.

Notwithstanding that the Appellant's removal was done pursuant to O.R.C. section 124.11(A)(10), the Appellee in its motion to dismiss also cited O.R.C. section 2151.13 as additional authority for removing the Appellant as a Deputy Clerk in the Wayne County Juvenile Court, a Division of the Wayne County Common Pleas Court, under the direction of the Honorable Raymond Leisy.

Ohio Revised Code section 2151.13 reads in pertinent part:

The juvenile judge may appoint such bailiffs, probation officers, and other employees as are necessary and may designate their titles and fix their duties, compensation, and expense allowances. The juvenile court may by entry on its journal authorize any deputy clerk to administer oaths when necessary in the discharge of his duties. Such employees shall serve during the pleasure of the judge.

Ohio Revised Code section 124.11(A)(10) reads in pertinent part:

The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts of the state shall be divided into the unclassified service and the classified service.

(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter

(10) Bailiffs, constables, official stenographers, and commissioners of courts of record, deputies of clerks of the courts of common pleas who supervise or who handle public moneys or secured documents, and such officers and employees of courts of record and such deputies of clerks of the courts of common pleas as the director of administrative services finds it impracticable to determine their fitness by competitive examination;

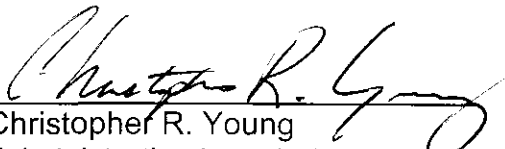
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Moreover, it should be noted that Ohio Administrative Code section 123:1-47-01(A)(82) defines "unclassified service" to mean:

(82) "Unclassified service" – Means all offices and positions which are exempt from all examinations and which provide no tenure under the law are unclassified. Appointment to a position in the unclassified service may be made at the discretion of the appointing authority and the incumbent may be removed, suspended or reduced from the position at the pleasure of the appointing authority.

After a plain and simple reading of the above cited Ohio Revised Code sections and Ohio Administrative Code section, it appears that all employees who serve under a juvenile judge, as in the instant case, serve at the pleasure of that particular judge, and may be removed, suspended or reduced at the pleasure of the judge as an unclassified employees as a matter of law.

Wherefore, as this Board has jurisdiction only over classified employees. I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** the Appellee's motion to dismiss and **DISMISS** this appeal for lack of jurisdiction of the subject matter of the appeal pursuant to Ohio Revised Code sections 124.11(A)(10) and 2151.13.


Christopher R. Young
Administrative Law Judge

CRY: