

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

Kareema Mc Cree-Wilson,

Appellant,

v.

Case No. 08-REM-03-0079

Alcohol and Drug Addiction Services,

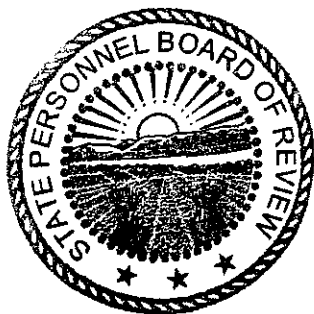
Appellee.

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**, pursuant to O.R.C. § 124.11(A)(29).



Lumpe - Aye
Booth - Aye
Sfalcin - Aye

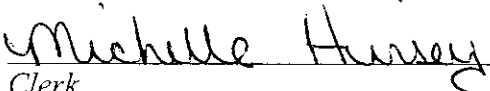


J. Richard Lumpe, *Chairman*

CERTIFICATION

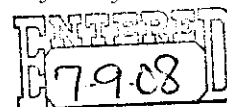
The State of Ohio, State Personnel Board of Review, ss:

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, July 9, 2008.



Michelle Hursey
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**

Kareema McCree-Wilson,

Case No. 08-REM-03-0079

Appellant

v.

May 30, 2008

Ohio Department of Alcohol and
Drug Addiction Services,

Appellee

Elaine K. Stevenson
Hearing Officer

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:


This matter came on for consideration upon Appellant's March 27, 2008 filing of an appeal from her removal from her position as a Researcher 1 with Appellee. Appellant held that position from January 28, 2008 to March 20, 2008. On May 13, 2008, Appellee filed a Motion to Dismiss, Memorandum in Support, and Affidavit of Chief of Human Resources Tracy Gaskin. In its Motion to Dismiss, Appellee asserts that Appellant was in the unclassified service because her employment as a Researcher 1 was a temporary appointment made under the provisions of R.C. 124.30. Appellee further asserts that, prior to her appointment, Appellant signed an agreement to be appointed to the unclassified service as a Researcher 1. (Appellee's Exhibit C) It is noted that Appellant was given the requisite time to file a response to Appellee's Motion to Dismiss but has failed to do so.

Pursuant to R.C. 124.03, this Board has jurisdiction to "[h]ear appeals, as provided by law, of employees in the *classified* state service from final decisions . . . relative to reduction in pay or position, job abolishments, layoff, suspension, discharge. . . ." R.C. 124.11(A)(29) provides that employees who receive temporary appointments under R.C. 124.30(B) are in the *unclassified* service. Therefore, because the uncontroverted information contained in the record established that Appellant's appointment was a temporary appointment under the provisions of R.C. 124.30, I find that this Board lacks jurisdiction to consider the merits of Appellant's appeal of her removal from employment.

Additionally, it is noted that in an appeal by a terminated public employee who claims classified status pursuant to R.C. 124.34, the state may assert the defenses of waiver and estoppel if the employee has accepted an appointment to a position designated as unclassified regardless of whether the employee's actual job duties fall within the unclassified service. *Chubb v. Ohio Bureau of Workers Compensation*, (1998) 81 Ohio St.3d 275. In this case, the uncontroverted information contained in the record established that Appellant signed an agreement to be appointed to the unclassified service as a Researcher 1. (Appellee's Exhibit C) Therefore, I find that Appellant also is estopped from claiming the protections of the classified civil service.

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Based on the foregoing, I respectfully **RECOMMEND** that Appellee's Motion to Dismiss be **GRANTED** and the instant appeal be **DISMISSED**, pursuant to R.C. 124.11(A)(29).


Elaine K. Stevenson
Hearing Officer

EKS:/