

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

Kurt A. Looper,

Appellant.

Case Nos. 09-ABL-02-0083

09-LAY-02-0084

v.

Ohio State University,

Appellee.

ORDER

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

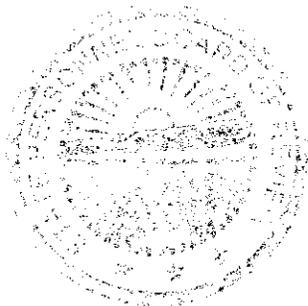
After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeals be **DISMISSED** for lack of jurisdiction over the parties, pursuant to O.R.C. § 124.11 (A)(7)(a).

Lumpe - Aye

Sfalcin - Aye

Tillery - Aye



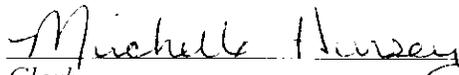


J. Richard Lumpe, *Chairman*

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, October 8, 2009.



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**

Kurt A. Looper,

Appellant

v.

The Ohio State University,

Appellee

Case Nos. 09-ABL-02-0083
09-LAY-02-0084

August 11, 2009

Jeannette E. Gunn
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 July 24, 2009. Appellee asserts that this Board is without jurisdiction to consider the above-referenced appeals because Appellant was an unclassified employee pursuant to R.C. 124.11(A)(7)(a) and R.C. 124.11(A)(9). Appellee further asserts that Appellant is also estopped from claiming that his position fell within the classified service. Appellant filed a memorandum *contra* with this Board on July 29, 2009.

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

Appellant was employed by Appellee as the Program Coordinator for the Enhanced Pre-College Initiative (EPCI) program within Appellee's College of Engineering. Appellant was given the responsibility to create and implement a program plan, and to coordinate and develop the EPCI program. He represented Appellee while working with third-party EPCI partners and other entities outside the University. Appellant coordinated programs and activities for students in Columbus-area schools.

Appellant was responsible for writing fundraising literature and promotional materials for the program, and for seeking additional financial support. He prepared student recruitment materials and collected and evaluated data to determine and report on the progress and effectiveness of the student recruitment programs. Appellant was also responsible for identifying areas for program improvement and

recommending changes to his supervisor and/or the sponsoring partnership to ensure the program was meeting its goals.

On February 15, 2008, Appellant received an offer letter which he signed and accepted. That letter stated that the position of Program Coordinator was an unclassified position, not subject to the provisions of R.C. 124.34. The letter further stated that Appellant's employment in the Program Coordinator position was at-will, and could be ended at any time by either Appellant or Appellee.

CONCLUSIONS OF LAW

This Board does not possess subject matter jurisdiction over unclassified employees since Ohio Revised Code Section 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)(7)(a) and 124.11(A)(9), and further asserted that Appellant was estopped from claiming that his position was classified because he waived his right to classified status and enjoyed the benefits of unclassified status during his 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 cases at hand, Appellant knew that the Program Coordinator position he accepted was considered by Appellee to be unclassified. The offer letter signed by Appellant specifically noted the unclassified designation of the position, as well as clarifying that Appellant would serve "at-will." Uncontroverted evidence contained in the record indicates that as an unclassified employee, Appellant

enjoyed benefits available only to unclassified employees, including accruing vacation at a higher rate than classified employees.

Accordingly, 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 he 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 record hearing to determine whether Appellant's job duties placed him within the exemptions from classified service created by R.C. 124.11(A)(7)(a) or (A)(9).

Therefore, because Appellant occupied a position in the unclassified civil service, I respectfully **RECOMMEND** that the instant appeals be **DISMISSED** for lack of jurisdiction over the parties.


Jeannette E. Gunn
Administrative Law Judge

JEG: