

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

Christine A. Lawrence,

Case Nos. 09-REM-08-0370
09-MIS-08-0371

Appellant.

v.

Hardin County
Hardin Hills Health Center,

Appellee.

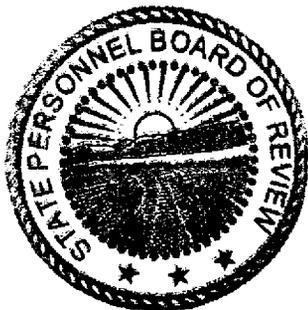
ORDER

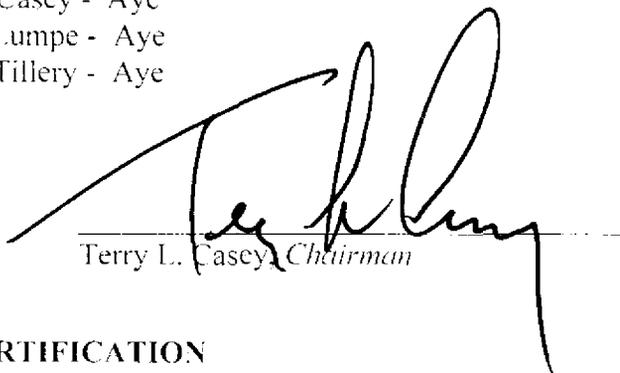
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals

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, pursuant to O.R.C. § 124.03.

Casey - Aye
Lumpe - Aye
Tillery - Aye

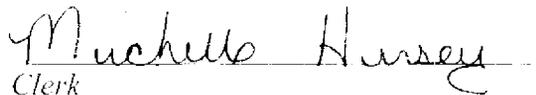



Terry L. Casey, *Chairman*

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 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, March 10, 2011.


Michelle Hursey
Clerk

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

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Appellant

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Hardin County, Hardin Hills Health Center,

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February 1, 2011

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on to be heard on May 3, 2010. Post-hearing briefs were subsequently filed on September 23 and 24, 2010, with reply briefs submitted on October 8, 2010.

Appellant was present at record hearing and was represented by Terry L. Hord, attorney at law. Appellee was present through its designee, Nursing Home Administrator Nick Scheck, and was represented by Frank D. Hatfield, attorney at law.

Appellant was removed from employment with Appellee. Appellee asserts that Appellant's position was unclassified pursuant to R.C. 124.11(A)(9) and R.C. 124.11(A)(28), therefore, jurisdiction over the subject matter of the appeal was not established at the beginning of record hearing.

STATEMENT OF THE CASE

Appellant testified that she was employed by Appellee from 1993 until August 2009, and held the position of Office Manager at the time of her removal. She confirmed that she reported directly to Nick Scheck. Appellant indicated that Mr. Scheck served as Administrator both for Appellee, Hardin Hills Health Center (HHHC), and for Auglaize Acres, a care facility in Auglaize County. She noted that Mr. Scheck split his time between the two facilities and was typically at Auglaize Acres twice a week.

Appellant confirmed that, as Office Manager, she was authorized to sign Mr. Scheck's name to certain documents when he was not available, or when he instructed her when to do so. She acknowledged that she signed contracts authorizing new Internet service in their building (Appellee's Exhibit 4), and running an advertisement in the local telephone book (Appellee's Exhibit 5). Appellant recalled that she had discussed the matters with Mr. Scheck prior to signing the contracts and he had instructed her to take care of the matters.

Appellant acknowledged that she also signed Mr. Scheck's name to documents addressed to the County Auditor's Office transferring money between accounts and requesting additional appropriations of funds (Appellee's Exhibits 6-10). She testified that she signed Mr. Scheck's name to Expense Reimbursement Request Forms (Appellee's Exhibit 20), and to payroll forms, in his absence (Appellee's Exhibits 12-19, 90-94).

Appellant confirmed that she completed and signed the Facility Information document which is provided to the Ohio Department of Health (Appellee's Exhibit 22) in her capacity as Office Manager. She acknowledged that she also completed the employer's portion of a variety of Workers Compensation forms on behalf of Appellee (Appellee's Exhibits 23-36) in her capacity as Office Manager and without counter-signature. Appellant explained that she made copies of these forms for Mr. Scheck and any other appropriate individuals before sending the information to the County EMA, Max Trachsel. Appellant testified that Mr. Trachsel discussed some aspects of the claims with her, but also worked with Mr. Scheck on them.

Appellant testified that she compiled information for Medicare billing, although the actual billing was performed by an outside company, Professional Review Network (PRN). She agreed that she was PRN's main point of contact. Appellant noted that if she was informed by Mr. Scheck or the billing company that a new procedure was needed, she changed the procedure as instructed. She recalled that HHHC changed billing companies at the beginning of April 2009, and the position of Controller was created in March 2009 to handle in-house billing responsibilities for Medicaid/Medicare. She indicated that after she cross-trained the individual hired to fill the Controller position, she no longer performed duties related to Medicaid/Medicare billing.

Appellant stated that she gathered information for the HHHC annual budget and worked with Mr. Scheck to prepare the budget for the Commissioners' approval. She indicated that she maintained the petty cash fund for the Business Office.

Appellant noted that both she and Kathy Martino, who was the other individual employed in the Business Office, could collect rent for Appellee's rental property. She acknowledged that she was responsible for preparing bank deposits, and that she, Mr. Scheck or Ms. Martino could take the deposit to the Treasurer's Office. Appellant observed that although she did not supervise Ms. Martino in the performance of her duties, she signed her timesheets, leave requests, requests for discipline and completed her performance evaluations as supervisor.

Appellant confirmed that she and Ms. Martino balanced the bank account that held residents' funds; she explained that the combined account was an aggregate of individual patient accounts. She acknowledged that she was the sole employee who maintained the balance sheet of the individual accounts and who was authorized to verify the account balance with the bank. Appellant noted that she and two other employees were authorized to make withdrawals from residents' bank accounts to "spend down" individual accounts and purchase items at the request of the resident or their family. She indicated that they were not required to seek Mr. Scheck's approval for spending down resident funds.

Appellant testified that she exercised no discretion in the performance of her job duties and did not use personal judgment or leadership skills above those which would be required of a regular employee. She stated that she never had a fiduciary relationship with the Hardin County Commissioners, although she recalled that during the time HHHC was without an Administrator she signed papers at the Commissioners' instruction and reported on what was happening at the facility. Appellant noted that Hardin County does not have a County Administrator.

Nick Scheck testified that he is presently employed by Appellee as Nursing Home Administrator at HHHC and reports directly to the Hardin County Commissioners. He noted that he is also employed by Auglaize County as its Nursing Home Administrator.

Mr. Scheck stated that the HHHC has approximately eighty residents and one hundred employees. He indicated that he is responsible for managing HHHC staff and budget items, as well as serving as an advocate for residents of the Center. The witness testified that he also functions as the appointing authority for the HHHC and has done so during the entire nine years he has been employed by HHHC. Mr. Scheck confirmed that he was the individual who terminated Appellant, and noted that to his knowledge the Hardin County Commissioners did not take any type of additional steps to ratify his actions. He observed that the Commissioners

do not prescribe his specific job duties and he has never discussed Appellee's policy manual with them.

The witness testified that he supervised Appellant in the performance of her duties as Office Manager. He noted that the job descriptions for Appellant's Office Manager position, reflected in Appellant's Exhibits C and D, were not accurate and stated that Appellant performed many tasks in addition to those listed. Mr. Scheck indicated that he had more contact with Appellant than with any of the other department heads at HHHC and was aware of most of the things she was working on, but not all of them. He observed that he had confidence in Appellant to complete her assignments.

Mr. Scheck recalled that Appellant was responsible for accounts receivable functions and Medicare/Medicaid billing; coordinated all activities with regard to workers' compensation and unemployment; and supervised Ms. Martino. The witness noted that as Office Manager, Appellant had the authority to sign his name to documents. He explained that because he is only at HHHC three to four days each week, Appellant often signed his name based on what he had instructed her to do in the past and then notified him that she had done so. Mr. Scheck confirmed that he had instructed Appellant to sign payroll documents in his absence.

The witness stated that he and Appellant worked together to prepare the annual budget, with Appellant gathering the information and drafting a working copy. He acknowledged that he had the ultimate authority to decide what would be submitted to the Commissioners for their approval.

Mr. Scheck testified that while Appellant had to get approval from him for some things, she also had the authority to make decisions for HHHC on her own. He noted, for instance, that he did not approve the transfers of funds reflected in Appellee's Exhibits 6 through 11. The witness explained that Appellant was in charge of funds and moved money within the accounts as she saw fit. Mr. Scheck stated that Appellant also had the ability to change patient liability for Medicare and Medicaid without prior approval either from him or from the Department of Job & Family Services.

Mr. Scheck recalled that Appellant was responsible for workers' compensation claims and was authorized to act for him with regard to those matters. He indicated that Max Trachsel, who is the Loss Prevention Coordinator for all of Hardin County, ultimately handed all workers compensation claims for the

county and observed that Mr. Trachsel sometimes discussed claims with him and sometimes did not.

Mr. Scheck noted that HHHC has a Superintendent and a Director of Nursing. He noted that the Director of Nursing has authority in medical matters, and the Superintendent serves as a backup person both for him and for the Director of Nursing.

Max Trachsel testified that he is employed by Hardin County as its Emergency Management Director and Loss Control Coordinator. He confirmed that as part of his job duties, he manages workers compensation claims for all county employees. The witness acknowledged that he had worked with Appellant in the past on workers compensation claims and noted that she signed the forms on behalf of HHHC.

Mr. Trachsel noted that he had asked both Appellant and Mr. Scheck, depending on who was available, for additional employee information related to workers compensation claims and whether or not HHHC was going to accept a claim or not. He indicated that he considers HHHC to be a department, and the ultimate authority within that department is the administrator, Mr. Scheck. The witness observed that if HHHC elected to not certify a claim he would definitely discuss it with Mr. Scheck. Mr. Trachsel testified that participation in the Salary Continuation and Temporary Transitional Work programs is optional and that a decision has to be made at the department level to do so.

Jamie Jenkins testified that she was employed by Appellee from 1993 to 1999, and from 2000 to 2009, as an Environmental Aide, a Nurse's Aide, a Social Service Assistant and Transportation Assistant. She indicated that during her employment, she was supervised by the Director of Nursing Debbie Lamb, and later by Social Services Director Cheryl Lenhart. The witness stated that Appellant was employed as the Business Office Manager during the times she worked for Appellee.

The witness observed that Appellant was responsible for patient accounts and for Medicaid billing. She noted that when Appellant was out of the office, Kathy Martino performed some of her job duties. Ms. Jenkins recalled that when she was a Nurse's Aide she documented the services she provided to the residents and Appellant collected the data for billing purposes.

The witness testified that if Mr. Scheck was not at the facility, the Superintendent, Mechel Rowe, was in charge. She noted that if neither Mr. Scheck nor Ms. Rowe were available, she would go to the Director of Nursing.

The witness testified that she had never observed Appellant engaged in supervision of other employees and was not aware of any fiduciary relationship between Appellant and the County Commissioners or Appellant and Mr. Scheck. She stated that, to her knowledge, Appellant did not interpret policy and had no authority to make changes to operations. Ms. Jenkins recalled that Mr. Scheck had made it clear to her that any changes or decisions that needed to be made, he was the individual that would make those changes or decisions.

Ina Schutte testified that she was employed by Appellee from 2004 to 2009; she began her employment as a Nurse's Aide and was promoted to the position of Activity Director. She recalled that Mr. Scheck was her supervisor; she was a Department Head and he supervised all of the Department Heads. The witness indicated that she went to Appellant for activity supplies and for incidental cash related to activities.

Ms. Schutte stated that Appellant was the Business Office Manager and stayed mainly in that area of the facility. She noted that Appellant handled Medicaid paperwork and residents' funds, and performed general office tasks. The witness observed that when Appellant was not in the office, Kathy Martino performed some job duties on her behalf. Ms. Schutte indicated that although she only saw Appellant for a few minutes each day, she did not believe that Appellant was responsible for supervising any other employees or directing their work.

Mary Curtis testified that she was employed by HHHC from 2002 until April 2007 as a member of its nursing staff. She noted that she worked with Appellant during that time and was generally aware of her job duties. The witness stated that she understood that as Office Manager, Appellant was responsible for coordinating residents' accounts and assisting with Medicare/Medicaid billing. Ms. Curtis indicated that she did not know whether or not Appellant signed Mr. Scheck's name to any documents or entered into contracts on behalf of Appellee.

Debi Miller testified that she was employed by HHHC from 1994 through 2004, first as Assistant Director of Nursing and then as Director of Nursing. She stated that she worked with Appellant during that time and observed her in the performance of her job duties but did not supervise her.

The witness stated that Mr. Scheck was responsible for dealing with employee discipline and firing. She noted that, as she understood it, these types of actions were supposed to be approved by the Commissioners but confirmed that the approval process was not always followed.

Ms. Miller recalled that Appellant cross-trained Ms. Martino to perform some of her job duties, such as payroll, but that Mr. Scheck was Ms. Martino's supervisor. She testified that she believed Appellant had on some occasions signed documents on Mr. Scheck's behalf.

FINDINGS OF FACT

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

Appellant was employed by Appellee from 1993 until August 2009 in the position of Office Manager. Appellant was removed by Nursing Home Administrator Nick Scheck as an unclassified employee; no R.C. 124.34 Order was provided to Appellant.

Appellant reported directly to Mr. Scheck. She was authorized to sign Mr. Scheck's name to certain documents when he was not available, or when he instructed her when to do so. Appellant signed contracts on behalf of Appellee, both under Mr. Scheck's name and her own name. She also signed Mr. Scheck's name to documents addressed to the County Auditor's Office transferring money between accounts and requesting additional appropriations of funds, expense reimbursement request forms, and payroll forms.

In her capacity as Office Manager, Appellant completed and signed documents provided to the Ohio Department of Health, and workers' compensation forms. She was responsible for Appellee's accounts receivable. Appellant compiled information for Medicare billing and provided it to the third-party company that handled the actual billing. After the position of Controller was created to handle in-house billing responsibilities, Appellant no longer performed duties related to Medicaid/Medicare billing.

Appellant gathered information for the HHHC annual budget and worked with Mr. Scheck to prepare the budget for the Commissioners' approval, although he retained ultimate authority to decide what would be submitted. She maintained the

petty cash fund for the Business Office. Appellant collected rent and prepared bank deposits. She signed Ms. Martino's timesheets, leave requests, requests for discipline and completed her performance evaluations. Appellant and Ms. Martino balanced the combined bank account that held residents' funds; Appellant was the sole employee who maintained the balance sheet of individual residents' accounts. She and two other employees were authorized to make withdrawals from residents' bank accounts to "spend down" individual accounts and purchase items at the request of the resident or their family.

Mr. Scheck terminated Appellant without an accompanying resolution or other ratifying action from the Hardin County Commissioners.

CONCLUSIONS OF LAW

Civil service employment in the State of Ohio is divided into the classified and unclassified services; the division between these two types of public employment is outlined in R.C. 124.11(A), which describes a variety of positions in the public sector which are placed in the unclassified service. In this instance, Appellee asserts that Appellant's position fell within the unclassified service pursuant to R.C. 124.11(A)(9) and/or (A)(28). R.C. 124.11(A)(9) exempts from the classified service:

(9) The deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency and those persons employed by and directly responsible to elected county officials or a county administrator and holding a fiduciary or administrative relationship to such elected county officials or county administrator, and the employees of such county officials whose fitness would be impracticable to determine by competitive examination ... (emphasis added)

R.C. 124.11(A)(28) exempts from the classified service:

(28) For cities, counties, civil service townships, city health districts, general health districts, and city school districts, the deputies and assistants of elective or principal executive officers authorized to act for and in the place of their principals or holding a fiduciary relation to their principals. (emphasis added)

Accordingly, this Board must consider whether Appellant acted for or on behalf of elected county officials or a county administrator, or for and in the place of

county elective or principal executive officers, and/or whether the duties performed by Appellant placed her in either a fiduciary or an administrative relationship to those individuals.

In reviewing the above-cited sections of the Ohio Revised Code, I find that the duties performed by Appellant at the time of her removal do not fit any of the options set forth in R.C. 124.11(A)(9). Appellant was not directly responsible to any elected county official in Hardin County, and testimony established that Hardin County does not have a county administrator.

During the time period under review in this matter, Appellant was directly responsible to Nick Scheck, who was the Nursing Home Administrator for Hardin County. Evidence contained in the record indicates that Mr. Scheck was appointed to the position of Nursing Home Administrator by the Hardin County Commissioners pursuant to R.C. 5155.03. Mr. Scheck was not an elective county officer, as referenced in R.C. 124.11(A)(28), however, this Board must consider whether or not he was a principal executive officer. Testimony and evidence indicated that the Hardin County Commissioners gave Mr. Scheck the authority to manage operations of the HHHC, and that he exercised that authority independently. Pursuant to R.C. 5155.01, Mr. Scheck had the authority to employ necessary personnel, which also implies the authority to remove them. See, *State ex rel. Minor v. Eschen*, (1995) 74 Ohio St.3d 134, 139. Accordingly, I find that Mr. Scheck was a "principal executive officer" in Hardin County, as referenced in R.C. 124.11(A)(28).

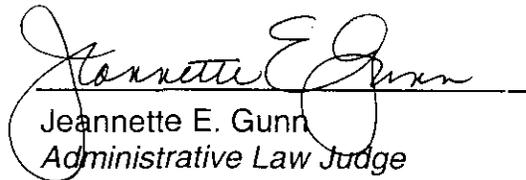
Therefore, this Board must now consider whether the scope and nature of Appellant's job duties demonstrate that she was authorized to act for and in place of Mr. Scheck or that she held a fiduciary relationship to Mr. Scheck. The term "fiduciary relationship" is not defined by the Revised Code, but is defined within the Administrative Code. O.A.C. 124-1-02 defines "fiduciary relationship" in subsection (l) as:

... a relationship where the appointing authority reposes a special confidence and trust in the integrity and fidelity of an employee to perform duties which could not be delegated to the average employee with knowledge of the proper procedures. These qualifications are over and above the technical competency requirements to perform the duties of the position. Whether one position occupies a fiduciary relationship to another is a question of fact to be determined by the board.

Testimony established that Appellant signed Mr. Scheck's name to contracts, to documents instructing the County Auditor's Office to transfer money between accounts or make additional appropriations, to expense reimbursement request forms, and to payroll forms, either in his absence or upon his instruction to do so. I find the evidence sufficient to support a conclusion that Appellant acted for Mr. Scheck in the performance of these duties. As Office Manager, Appellant also signed her own name to contracts binding Appellee, as well as to documents provided to the Ohio Department of Health, and workers' compensation forms, without countersignature. She was responsible for Appellee's accounts receivable and prepared bank deposits. I find that these duties required Mr. Scheck to place a special confidence and trust in Appellant's integrity and fidelity, and that such confidence and trust placed Appellant in a fiduciary relationship to Mr. Scheck.

Although the parties dispute that Mr. Scheck had the authority to remove Appellant from employment without ratification by the Hardin County Commissioners, I find that Mr. Scheck was the appointing authority for the Hardin County Healthcare Center. As previously noted, Mr. Scheck had the statutory authority to employ personnel, which also implies the authority to remove them. R.C. 124.01(D) defines an "appointing authority" as the entity having the power of appointment to or removal from positions in an "office, department, commission, board, or institution." R.C. 5155.01 limits the authority of the Commissioners to setting the rate of compensation for employees, but gives them no power to appoint or remove. The statutory language of R.C. 5155. controls over any conflicting language contained in Appellee's policy manual.

Therefore, because Appellant acted for and in place of her principal executive officer, and because she also had a fiduciary relationship to him, I find that Appellant held a position in the unclassified civil service as defined by R.C. 124.11(A)(28). I respectfully **RECOMMEND** that the above-referenced appeals be **DISMISSED** for lack of jurisdiction, pursuant to the provisions of R.C. 124.03.


Jeannette E. Gunn
Administrative Law Judge

JEG: