

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Cassandra Waltz,

Appellant,

v.

Case No. 09-REM-01-0023

Brown County Prosecuting Attorney,

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)(9) and (A)(30).



Lumpe - Aye
Tillery - Aye

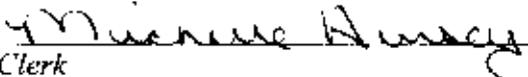


J. Richard Lumpe, *Chairman*

CERTIFICATION

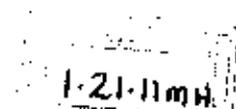
The State of Ohio, State Personnel Board of Review, ss:

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, January 21 2011.



Michelle Hunsy
Clerk

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


1-21-11

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

Cassandra Waltz,

Case No. 09-REM-01-0023

Appellant

v.

December 17, 2010

Brown County Prosecuting Attorney,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on to be heard on April 22, 2010. Appellant was present at record hearing and was represented by Robert Rickey, attorney at law. Appellee, Brown County Prosecuting Attorney Jessica A. Little, was also present at record hearing, and was represented by Jeffrey A. Stankunas, attorney at law.

STATEMENT OF THE CASE

Jessica Little testified that she currently holds the elected position of Brown County Prosecuting Attorney and was sworn into office on January 5, 2009. She indicated that the Prosecuting Attorney who immediately preceded her was Thomas Grennan, who held the office for approximately twelve years.

Ms. Little recalled that she met with Mr. Grennan in mid-November to discuss the transition; she indicated that he mentioned at their meeting that many of the employees within the office were concerned about whether or not she planned to retain them in their positions after she took office. She observed that she had not made any definite decisions at that point and was hesitant to discuss details with Mr. Grennan, but understood that people wanted to be able to plan ahead. The witness noted that a few weeks after their meeting, she advised Mr. Grennan that because she did not want to have family members working together in the same office, she would not retain Appellant in her position after she took office.

Ms. Little recalled that Mr. Grennan asked her to put her intentions in writing and she confirmed that although she was still hesitant to do so, she provided him

first with a handwritten note (Appellee's Exhibit 4) and later with a typewritten copy of the note (Appellee's Exhibit 5) stating her intent not to continue Appellant's employment. She confirmed that she never discussed Appellant's employment with her directly.

Ms. Little stated that Mr. Grennan certified Appellant's sick, vacation, and compensatory time to the auditor's office (Appellee's Exhibit 6), which is typically done for employees who are leaving their positions. She noted that Appellant removed her personal items from the workplace and cleaned out her desk prior to the witness' swearing in on January 5, 2009, and did not return to work.

Danitra Gelter testified that she is presently employed by Appellee and holds the position of Legal Assistant to the Common Pleas Court, which is the position previously held by Appellant. She confirmed that she is familiar with the job duties Appellant performed when she held the position. Ms. Gelter stated that Appellant was supervised in the position of Legal Assistant by her mother, Connie Waltz, who was the Office Manager; Mr. Grennan was Connie Waltz's supervisor.

The witness explained that each of the courts – Common Pleas, Juvenile and Municipal – have legal assistants who assist the prosecutors assigned to those courts. Ms. Gelter observed that Appellant worked primarily with Mr. Grennan, as he handled most of the cases in Common Pleas, but noted that Appellant's job duties did not change if an attorney other than Mr. Grennan was assigned to a case. She stated that Appellant prepared documents for Common Pleas cases and for grand jury proceedings, including indictments, entries, subpoenas, warrants or summons, bills of particulars, discovery documents, and, if necessary, dismissal entries for Municipal Court. The witness noted that grand jury information is not released to the general public and observed that the secrecy of grand jury indictments is important, as Brown County borders Kentucky and there is a risk of flight. She recalled that Appellant typed the grand jury reports from information provided to her by Mr. Grennan or Connie Waltz.

Ms. Gelter noted that Appellant was also responsible for keeping the files in order. She observed that the attorneys provided Appellant with information needed for the documents she prepared, although Appellant occasionally filled in some general information based on her experience in the position. The witness testified that the attorneys were responsible for checking the documents once completed and verified that Appellant did not make any legal decisions with regard to the documents she prepared.

...assistant receiving money. He confirmed that he worked with Appellant and recalled that she performed Legal Assistant duties for the Common Pleas Court as well as general secretarial work for Mr. Grennan. The witness noted that he was assigned primarily to Municipal Court when Appellant was employed by Appellee and did not work with her frequently.

Mr. Erhardt observed that when he filled in for Mr. Grennan on felony cases, he relied on Appellant to include appropriate information regarding sentencing requirements in the entry, as she was more familiar with it than he was. The witness recalled that he would tell Appellant what the plea was and she would fill in the particulars. He noted that Appellant sometimes offered her opinion as to what should or should not be included in discovery and sometimes found things he had missed. Mr. Erhardt testified that he did not know whether or not Mr. Grennan relied on Appellant's professional expertise.

The witness stated that, while he did not feel that he had any specific authority over Appellant, he did have the ability to direct her in handling the files for the cases to which he was assigned. He confirmed that the attorney assigned to the case is responsible for signing off on discovery documents and praecipes for subpoenas. Mr. Erhardt noted that Appellant did not make legal decisions and to his knowledge never appeared in court.

Appellant testified that in 2008 she held the position of Legal Assistant with Appellee. She noted that she was initially hired by Appellee while still in high school as a general assistant and worked in the office through college.

Appellant testified that her primary responsibility as a Legal Assistant was to type documents for the Common Pleas Court. She noted that she prepared most of the documents from dictation or from a draft that had been provided for her. Appellant indicated that although she might remind attorneys of things coming up on the calendar, she did not advise them how to proceed on their cases, did not decide which witnesses should be subpoenaed, and did not attend hearings. Appellant confirmed that she was responsible for figuring speedy trial time on felony cases and also typed letters for Mr. Grennan.

Appellant testified that she also prepared documents for the grand jury. She observed that she had no control over which cases were presented to the grand jury

and had no discretion to instruct the assigned attorney as to how a case should proceed. The witness noted that other employees within the office also assisted with grand jury responsibilities and explained that Ms. Gelter handled grand jury witnesses when they came into the office and made telephone calls to ensure that they had received their subpoenas. Appellant confirmed that because she prepared the grand jury report she knew who the participants in the process were before the indictments became public knowledge; she pointed out that other individuals, such as defense attorneys and investigators, also had knowledge of grand jury indictments prior to the general release of the information.

Appellant confirmed that all of the employees within the office were concerned about their continued employment after Mr. Grennan was defeated in the election and asked him if he had any information about Ms. Little's plans. She recalled that Mr. Grennan later reported that Ms. Little was concerned about family members working together in the same office, but did not recall if any decisions had been made at that time.

Appellant testified that on or about December 23, 2008, Mr. Grennan brought her Ms. Little's handwritten note indicating that Appellant's employment would not be continued once Ms. Little took office. She explained that she understood the note to mean that her last day of employment would be January 3, 2009. Appellant confirmed that she removed her personal effects from the workplace prior to January 5, 2009, and has not returned to the office since that time.

Thomas Grennan testified that he held the elected position of Brown County Prosecuting Attorney from 1997 through January 5, 2009, and confirmed that Appellant was employed by him in 2008. He acknowledged that he served as the appointing authority for the office. The witness stated that he never talked to the County Commissioners about the classification of the employees in his office, but that he generally understood that he had the ability to appoint certain positions to the unclassified service and that the job duties of some employees might make them unclassified.

Mr. Grennan stated that he was Appellant's supervisor in 2008 and considered Appellant a trusted member of his office staff. The witness noted that Appellant was responsible for answering the telephone, typing and filing documents, and that he relied on her to perform those tasks well. He observed that he did not have a personal assistant, although he might occasionally ask Appellant to draft a

letter for him. Mr. Grennan indicated that Appellant did not supervise any other employees.

The witness explained that Appellant did not attend hearings and did not have a substantive role in preparing documents for Common Pleas, but merely typed and filed them as directed. He stated that Appellant, like the other Legal Assistants, was assigned to a particular court and worked with whoever was assigned to handle cases in that court. The witness noted that all of the employees in the office, including Appellant, are entrusted with maintaining the secrecy of the grand jury process. Mr. Grennan testified that Appellant did not have discretion to decide which witnesses would be called for grand jury. He indicated that he or an assistant prosecutor wrote out their discovery and selected the witnesses, then gave the information to Appellant to be typed.

Mr. Grennan recalled that he met with Ms. Little shortly after the November election to discuss the budget and personnel matters. He stated that Ms. Little mentioned her concerns regarding nepotism. The witness noted that when he later became aware that Ms. Little had decided that Appellant's employment would not be continued following her taking office, he requested that Ms. Little provide him with some sort of written indication of her intent.

Mr. Grennan confirmed that he provided Ms. Little's note (Appellee's Exhibits 4 and 5) to Appellant. He further confirmed that he certified Appellant's unused sick leave, vacation leave due and compensatory time to the Brown County Auditor as of January 2, 2009 (Appellee's Exhibit 6), but testified that he did not terminate Appellant's employment.

Connie Sprague (f/k/a Connie Waltz) testified that in 2008 she was employed by Appellee as Office Manager and confirmed that Appellant was her daughter. She recalled that Appellant was employed as a Legal Assistant for the Common Pleas Court in 2008.

The witness indicated that she was responsible for preparing the grand jury list and providing it to Mr. Grennan, who made the final decision as to which cases he intended to take. She noted that many of the employees in the office had some sort of responsibility with regard to grand jury proceedings. Ms. Sprague stated that Appellant had no discretion to decide which cases went to the grand jury.

Ms. Sprague observed that Appellant was responsible for typing entries, discoveries, praecipes and other documents related to the cases heard in Common Pleas Court. She noted that the information needed to complete these documents was provided for Appellant by Mr. Grennan, or one of the other attorneys in the office. The witness described Appellant's job responsibilities as basic secretarial work performed under the direction of an attorney. She testified that, while Appellant exercised some minimal discretion and used personal judgment in the performance of her job duties, it was at a secretarial level.

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 as a Legal Assistant in 2008. She was supervised by her mother, Office Manager Connie Sprague (f/k/a Waltz); Ms. Sprague was supervised by Mr. Thomas Grennan. Appellant's primary responsibility as a Legal Assistant was to type and file documents as directed for cases in the Common Pleas Court. She worked with whichever attorney was assigned to handle cases in that court; Mr. Grennan handled the majority of common pleas matters, although other attorneys were assigned as necessary. Appellant prepared most of the documents she typed from dictation or from drafts provided to her by the assigned attorney. In some instances she made suggestions or filled in general information based on her experience in the position. The assigned attorney was responsible for checking and approving the completed documents.

Appellant prepared documents for the grand jury. She did not determine which cases were presented to the grand jury. Other employees within the office also assisted with grand jury responsibilities. Appellant, along with other court employees, defense attorneys and investigators, had knowledge of grand jury indictments prior to the general release of the information. All of the employees in the office, including Appellant, were entrusted with maintaining the secrecy of the grand jury process.

Appellant did not make legal decisions, nor did she attend hearings. Appellant did not advise attorneys of how to proceed with their cases, nor did she decide which witnesses should be subpoenaed. She occasionally performed

general secretarial work for Mr. Grennan and figured case timelines for felony cases. Appellant did not supervise any other employees.

Jessica Little was elected to the position of Brown County Prosecuting Attorney, and was sworn into office on January 5, 2009. Thomas Grennan held the office of Prosecuting Attorney for approximately twelve years immediately prior to Ms. Little taking office.

Although she did not discuss Appellant's employment with her directly, in mid-November or early December 2008, Ms. Little advised Mr. Grennan that she did not intend to retain Appellant in her position as Legal Assistant after taking office; she placed that intent in writing on or about December 23, 2008, stating: "Once I am sworn in as Prosecuting Attorney, I will no longer need your services. Your last day would be January 3, 2009. Good luck to you in the future."

Mr. Grennan certified Appellant's sick, vacation, and compensatory time to the auditor's office on December 31, 2008. Appellant removed her personal items from the workplace and cleaned out her desk prior to Ms. Little's swearing in on January 5, 2009, and did not return to work thereafter.

CONCLUSIONS OF LAW

The case at hand requires this Board to consider several issues. Initially, the Board must determine whether Appellant occupied a position in the classified service or the unclassified service. If Appellant's position was unclassified, then the Board lacks jurisdiction to further consider her appeal; if it was classified, the Board may proceed. The Board must next determine whether Appellant was removed from employment, either by an employment action taken by Appellee or through a constructive discharge, or whether she voluntarily resigned her position as Legal Assistant. SPBR has no authority to consider an appeal of a voluntary resignation.

The first question to be considered by this Board is whether Appellant's position fell within the unclassified or classified service. Appellee presented testimony and evidence at record hearing intended to demonstrate that Appellant held an unclassified position, as described by R.C. 124.11(A)(9) and (A)(30). Appellee has the burden of proof to establish by a preponderance of the evidence that Appellant's position fell within one or more of these exemptions. R.C. 124.11(A)(9) exempts from the classified service:

"... those persons employed by and directly responsible to elected county officials ... and holding a fiduciary or administrative relationship to such elected county officials ..., and the employees of such county officials whose fitness would be impracticable to determine by competitive examination"

R.C. 124.11(A)(30) exempts:

"Employees appointed to administrative staff positions for which an appointing authority is given specific statutory authority to set compensation."

This Board's rules provide that an "administrative relationship" is one where an employee possesses substantial authority to initiate discretionary action and/or in which the appointing authority must rely on the employee's personal judgment and leadership abilities, O.A.C. 124-1-02(C). "Administrative staff," as contemplated by R.C. 124.11(A)(30) are those employees with the authority to initiate action and perform duties, the nature of which require the agency to rely upon the employee's personal judgment and leadership abilities. Based upon the testimony presented and evidence admitted at record hearing regarding the job duties performed by Appellant, I find that Appellee has failed to establish that Appellant held a fiduciary or administrative relationship to an elected county official, or that she held an administrative staff position, therefore, I find that Appellant was a classified employee at the time of the events which form the basis of this appeal.

The parties agree that Appellant removed her personal items from the workplace and cleaned out her desk prior to Ms. Little's swearing in on January 5, 2009, and did not return to work thereafter. Appellant did not receive an R.C. 124.34 Order of Removal from Appellee or any other type of "official" written notification of termination. Appellant had no direct conversation with Ms. Little, the incoming Brown County Prosecuting Attorney, regarding her employment. Appellant based her understanding of her employment status upon Ms. Little's handwritten note, later presented to her in typewritten form, indicating that Appellant's services would no longer be required after Ms. Little took office.

R.C. 309.06 provides that a county Prosecuting Attorney may appoint assistants, clerks, and stenographers necessary for the proper performance of the duties of prosecuting attorney's office. Mr. Grennan, who held the office of

Prosecuting Attorney prior to Ms. Little's swearing in on January 5, 2009, testified that although he certified Appellant's sick, vacation, and compensatory time to the county auditor's office on December 31, 2008, he did not take any action during his tenure to remove Appellant from employment. Testimony and evidence established that Ms. Little did not take any action regarding Appellant's employment subsequent to being sworn into the office of Prosecuting Attorney. I find that as a matter of law, prior to being sworn into the office of Prosecuting Attorney Ms. Little had no authority to effectuate personnel actions for employees of the Prosecuting Attorney's office.

I further find that no action was taken by either Mr. Grennan or Ms. Little to remove Appellant from employment with Appellee. The record indicates that the only individual who took definitive action with regard to Appellant's employment was Appellant herself. Appellant removed her personal possessions from the workplace and stopped reporting to work. I find that although Appellant did not submit a written resignation to Appellee, her actions indicated an intent to relinquish her employment and were sufficient to constitute a resignation.

As the party seeking to change the status quo, Appellant bears the burden of demonstrating that her resignation was not voluntary. Appellant asserts that Ms. Little's communication that she did not intend to further employ Appellant after taking office constituted a constructive discharge. An individual claiming constructive discharge has the burden of producing evidence that a reasonable person would find his or her working conditions so intolerable that he or she would voluntarily resign. *Mauzy v. Kelly Serv., Inc.* (1996), 75 Ohio St.3d 578, paragraph four of the syllabus; *Schwartz v. Comcorp, Inc.* (1993), 91 Ohio App.3d 639; cert denied 66 Ohio St.3d 1509. While Ms. Little's note may have provided the "writing on the wall" to Appellant regarding her future employment status with Appellee, I find that Ms. Little's expression of intent to terminate Appellant in the future was insufficient to create intolerable working conditions that would result in a reasonable person's voluntary resignation from employment.

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...the instant appellant voluntarily resigned her employment that appeared. As such, this Board lacks subject matter jurisdiction over the instant appeal and I respectfully **RECOMMEND** that this matter be **DISMISSED**.


Jeannette E. Gunn
Administrative Law Judge

JEG: