

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

Angela Yazell,

Appellant,

Case Nos. 09-REM-10-0439
09-MIS-10-0440
09-SUS-10-0441

v.

Brown County Sheriff,

Appellee.

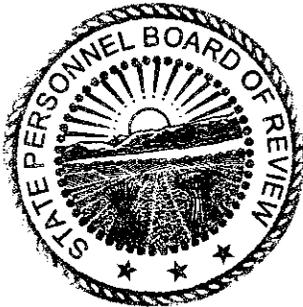
ORDER

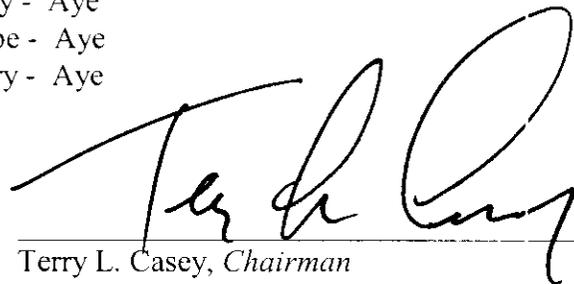
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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** as there are no remaining legal issues to be resolved, pursuant to O.R.C. §§ 124.03, 124.34 and 2921.41 (A) (2) and O.A.C. § 124-9-08.

Casey - Aye
Lumpe - Aye
Tillery - Aye

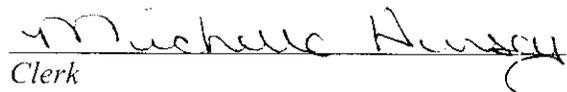



Terry L. Casey, *Chairman*

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 Hunsberger
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**

Angela Yazell,
Appellant

Case Nos. 09-REM-10-0439
09-MIS-10-0440
09-SUS-10-0441

v.

February 4, 2011

Brown County Sheriff,
Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

The above-referenced causes came on for consideration on January 5, 2011, upon a review of the information contained in the record. Based upon the uncontroverted evidence contained in the record, I make the following findings of fact:

Appellant filed her original notices of appeal with this Board on October 2, 2009, alleging that on or about September 24, 2009, she had been removed from employment without benefit of an R.C. 124.34 Order of Removal, that she had been sent home by her employer, and that she had been instructed by her employer to submit a resignation letter

On October 26, 2009, Appellee advised this Board that a criminal investigation relating to Appellant's employment was pending. The above-referenced matters were stayed to allow for resolution of the investigation.

Appellant was indicted on six felony counts as a result of the investigation, and the stay was extended. The indictments were subsequently dismissed, the stay was lifted and the appeals were scheduled for record hearing before this Board.

Prior to record hearing, Appellant's counsel requested a continuance/stay, due to the reinstatement of the criminal case against Appellant. The continuance requested by Appellant was granted; parties were ordered on December 1, 2010, to provide this Board with information regarding the status of the criminal case.

Appellee notified this Board on December 10, 2010, that Appellant had entered a plea of "no contest" to the charge of Theft in Office, a felony of the fifth degree and supplemented the record on January 7, 2011, and February 3, 2011, by providing this Board with a certified copy of the judgment entry accepting plea and finding of guilty and the judgment entry of sentence.

CONCLUSIONS OF LAW

The specific employment action taken by Appellee in this matter is somewhat undefined. Appellant alleged in her original notices of appeal that on or about September 24, 2009, she was removed from employment with Appellee without benefit of an R.C. 124.34 Order of Removal, that she was sent home by her employer, and that she was instructed by her employer to submit a resignation letter. A criminal investigation of Appellant's conduct was initiated; on November 19, 2010, Appellant pled "no contest" to the charge of Theft in Office, a fifth-degree felony, and was found guilty by the Brown County Court of Common Pleas.

Pursuant to R.C. 124.34(A), Appellant's conviction of a felony involving conduct that was the basis for her alleged removal impacts the instant appeals in three areas. First, the conviction establishes that all of the elements of the crime exist. See, O.A.C. 124-9-08. Appellee's submission of a certified copy of the conviction's journal entry is sufficient to meet its burden of proof before this Board that Appellant's conduct constituted a violation of R.C. 2921.41(A)(2). Second, the conviction bars Appellant from recovering any back pay in the event that this Board were to modify any disciplinary action taken by Appellee as a result of procedural non-compliance or because the action was not an appropriate disciplinary response. See, R.C. 124.34(A). Third, the conviction prohibits Appellant from claiming classified civil service status, as of the date of the conviction. See, R.C. 124.34(A). If reinstated by this Board, Appellant would be considered an unclassified employee subsequent to November 19, 2010, the date of conviction, and could be removed by Appellee without cause; this Board has no jurisdiction over appeals brought by unclassified employees. R.C. 124.03.

Appellant is not entirely without legal remedy in this appeal, as this Board could, in theory, find that the disciplinary action taken by Appellant was either not procedurally compliant with the relevant sections of the Ohio Revised Code and

Angela Yazell

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Ohio Administrative Code or not an appropriate disciplinary response to Appellant's conduct. In this instance, however, these issues are moot.

Therefore, I respectfully recommend that this Board **DISMISS** the above-referenced appeals, as there are no remaining legal issues to be resolved.



Jeannette E. Gunn
Administrative Law Judge

JEG: