

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

OMAR ALOMARI,

Appellant,

v.

Case No. 10-REM-09-0251

DEPARTMENT OF PUBLIC SAFETY,

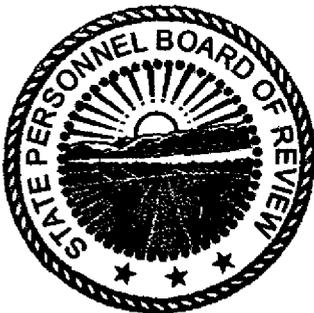
Appellee

ORDER

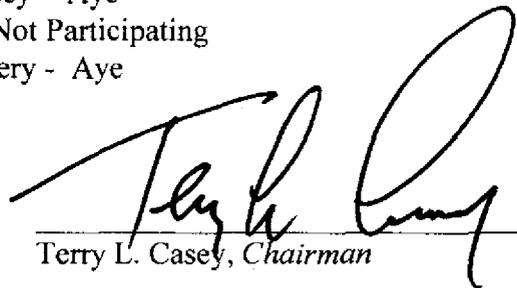
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

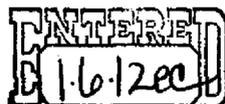
After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge. It is noted that Appellant's counsel's detailed and comprehensive submission of Objections was fully and completely reviewed by the Chairman and Board Member. Given this Board's comprehensive review, referenced, herein, this Board fully comprehends the role and independence that Appellant exercised when he testified before Congress and made various high-level presentations in Ohio and around the nation. That evidence was an important factor, among many items, considered by the assigned Administrative Law Judge and also by this Board in conducting its careful review and making its concomitant decision in this case.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to Ohio Revised Code sections 124.03 and R.C. 124.34.



Casey - Aye
Lumpe - Not Participating
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 constitutes ~~(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 06, 2012.



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

OMAR ALOMARI,

Case No. 10-REM-09-0251

Appellant

v.

October 20, 2011

DEPARTMENT OF PUBLIC SAFETY,

Appellee

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came to be heard on May 3, 2011 and June 27, 2011. Present at the hearing was Appellant, who was represented by Laren E. Knoll, Attorney at Law. Appellee, Ohio Department of Public Safety (ODPS), was present through its designee, Krista Weida, Assistant Legal Counsel, and was represented by Rory P. Callahan and Timothy M. Miller, Assistant Attorneys General.

This cause comes on due to Appellant's June 30, 2010 timely filing of an appeal from his removal from the position of Management Analyst Supervisor 2, (with a working title of Community Engagement Officer) with ODPS' Division of Homeland Security (DHS). Appellant's removal was effectuated through an R.C. 124.34 Order of Removal that was both received and effective on June 29, 2010.

Discovery on the merit removal was conducted and the case was set for merit hearing. However, Appellee then asserted that Appellant's position fell within the unclassified service by operation of R.C. 124.11 (A) (9). Thus, it was necessary for this Board to make a jurisdictional determination prior to considering the merits of this matter.

Accordingly, on March 8, 2011, a pre-hearing was conducted to finalize both jurisdictional discovery and the procedures to be utilized at the classified/unclassified hearing. At the pre-hearing, it was determined that the two-

year statutory look-back period to be utilized in this case ran from June 29, 2008 to June 29, 2010 (the effective date of Appellant's removal).

By agreement of the parties, post hearing briefs in this matter were timely filed on or before September 9, 2011 and the record was thereafter closed. It is noted that respective counsel performed ably and admirably for their respective clients in this matter. Accordingly, respective counsel are to be commended.

Because I have found, below, that Appellant's position fell within the unclassified service by operation of R.C. 124.11 (A) (9), this Board lacks jurisdiction over the subject matter of Appellant's removal and this matter should be dismissed.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

At hearing, four witnesses testified.

Omar Alomari, Appellant served from his initial hire as a full-time employee in October, 2005 until his removal in a position titled Multicultural Relations Officer, Senior Multicultural Relations Officer, and finally Community Engagement Officer. Appellant's classification remained Management Analyst Supervisor 2 throughout this time period.

William Vedra served from 2004 until July, 2007 as Deputy Director of the Division of Preparedness/ODPS and thereafter until January 28, 2011 as the Executive Director of the Division of Homeland Security/ODPS. Mr. Vedra was Appellant's direct supervisor for the entire review period of June 29, 2008 to June 29, 2010.

Earl Mack served as a Deputy Director of the ODPS. His duties included oversight of the DHS during the pertinent time period at issue, herein, as well as ODPS oversight of Infrastructure Protection and Private Security Guards.

John Overly served as the Executive Director of the Ohio Office of Homeland Security from May 2003 until his retirement in February, 2007. Prior to that time, Mr. Overly served as the Sheriff of Union County for more than six terms.

Appellant's duties included:

managing and directing the Office of Multicultural Affairs (with Appellant as its sole employee), which was designed to strengthen DHS' mission of prevention, protection, response, and recovery;

developing educational material on diverse cultures to be presented/distributed to law enforcement personnel, schools, and the media; and

presenting cultural awareness programs, training various interested parties and pertinent groups, and attending cultural events fostered by local communities.

Appellant's activities ranged from facilitating a multicultural dialogue at a Firehouse for the Columbus Division of Fire to presenting written and oral testimony before a homeland security subcommittee of the U.S. House of Representatives.

Appellant had frequent/daily interaction with his supervisor, William Vedra, who would be kept informed regarding Appellant's activities, the subject matter Appellant was presenting, and the scope of Appellant's duties. Appellant also had periodic but meaningful contact with ODPS Director Henry Guzman. Additionally, Appellant and the Director together attended two-day trainings at the Naval Postgraduate School in Monterey, CA.

Mr. Vedra did not micromanage Appellant's job and utilized an approach that emphasized Appellant's experience and provided Appellant's with considerable latitude and discretion. This was tempered, to a degree, by the need for Appellant and his Office of Multicultural Affairs to utilize and conform to the structure and overarching policies of the ODPS.

In the course of Appellant's activities, Appellant conducted considerable training and information dissemination. This included: training approximately 3000 Ohio State Highway Patrol personnel; presenting at the National Fusion Center Conference in New Orleans, LA; presenting at the Naval Postgraduate School; and presenting at a conference of the International Association of Chiefs of Police.

Appellant also performed substantial outreach to various ethnic communities, including to the Arab, Somali, and Muslim communities of Ohio.

Further, Appellant was a member of a working group for the U.S. Homeland Security Advisory Council of the U.S. Department of Homeland Security. Here, Appellant served as a liaison between U.S. Department of Homeland Security and the Ohio DHS. He contributed to a working draft on violent extremism and traveled to Washington, D.C. to further his work for the Council.

Appellant also had notable contact with Congressional staff. This includes his preparation for his presentation before the afore-mentioned U.S. House subcommittee and interaction with the staff of U.S Senator George Voinovich and U.S. Senator Sherrod Brown.

Based on the testimony presented and evidence admitted at hearing and upon the post-hearing briefs submitted by the parties, I make the following Findings:

First, I note that I incorporate, herein, any finding set forth, above, whether express or implied. Next, I find that Appellant performed the duties as set forth, above.

Clearly, while Appellant did not have unfettered discretion, Executive Director Vedra, and indeed the Director, trusted and valued Appellant for his high level of technical competence in the subject areas with which Appellant worked. Yet, they also trusted Appellant for his judgment, fidelity, and discernment.

Without question, the Department placed Appellant in numerous situations and circumstances where a misstep could have had severe and long lasting adverse consequences for the Department. These are the types of situations where an appointing authority must and, here, did place its trust and confidence in the employee. Indeed, the sensitive subject matter with which Appellant dealt, combined with the level of authority of many of the individuals with whom Appellant dealt, could have been a recipe for disaster; had not Appellant handled himself in a professional, discerning, and appropriate manner, which, by all accounts he did in regard to these duties.

CONCLUSIONS OF LAW

This case presents this Board with the question of whether Appellant's position fell within the unclassified service pursuant to R.C. 124.11 (A) (9)? Based on the findings, set forth, above, and for the reasons set forth, below, this Board should find that Appellant's position was exempted from the classified service by

operation of R.C. 124.11 (A) (9) and, so, should dismiss the instant appeal for lack of jurisdiction over its subject matter.

R.C. 124.11 (A) (9) indicates, in pertinent part, that an individual performing the following duties holds a position that is exempted from the classified service:

“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 ...”.

Case law is replete with analysis and examples of the application of R.C. 124.11 (A) (9). One of the seminal cases in this area is *State ex rel. Charlton v. Corrigan* (1988) 36 Ohio St.3d 68, 70.

In that case, the Supreme Court of Ohio reiterated the determination that, in order for an employee's position to be exempted under the fiduciary exemption found in R.C. 124.11 (A) (9), the employee must not only possess the technical competencies expected for satisfactory performance in the position. The employee must also hold a high degree of trust, confidence, reliance, integrity, or fidelity in relation to the appointing authority or agency. These requirements are echoed in the definition of “fiduciary relationship” set forth in O.A.C. 124-1-02 (I).

As found, above, the structure and functions of the various iterations of Appellant's position at DHS would essentially require the incumbent to perform at a level of trust and fidelity that would also fulfill the requisite elements for unclassified service found in R.C. 124.11 (A) (9). Moreover, we find this to be the case during Appellant's tenure at DHS.

Appellee placed its trust and reliance in Appellant to exercise his technical skills. More importantly for our purposes, Appellee also placed its trust and reliance in Appellant to exercise his judgment, fidelity, and discernment. Accordingly, the importance of these duties and the level of discretion with which Appellant performed these duties placed Appellant's position in the unclassified service, by operation of R.C. 124.11 (A) (9)'s fiduciary exemption.

I have found, above, that Appellant's position was exempted from the classified service by operation of R.C. 124.11 (A) (9)'s fiduciary exemption. Further, Appellant performed no supervisory duties. Thus, it is not necessary, at this time, to rule on Appellee's additional assertion that Appellant's position was exempted from the classified service by operation of R.C. 124.11 (A) (9)'s administrative exemption.

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To summarize, Appellant performed not only at a high level of technical proficiency but also performed at a level where his appointing authority had to place its trust and confidence in, and its reliance on, Appellant's integrity and fidelity. As such, Appellant's position was exempted from the classified service by operation of R.C. 124.11 (A) (9). Accordingly, the instant appeal should be dismissed for lack of jurisdiction over its subject matter.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant appeal for lack of jurisdiction over its subject matter, pursuant to R.C. 124.03 and R.C. 124.11 (A) (9).



JAMES R. SPRAGUE
Administrative Law Judge