

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

BARBARA JACKSON,

*Appellant.*

v.

Case No. 11-REM-07-0252

TERRA COMMUNITY COLLEGE,

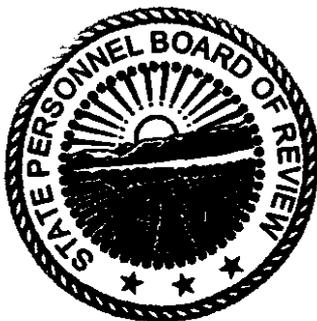
*Appellee*

**ORDER**

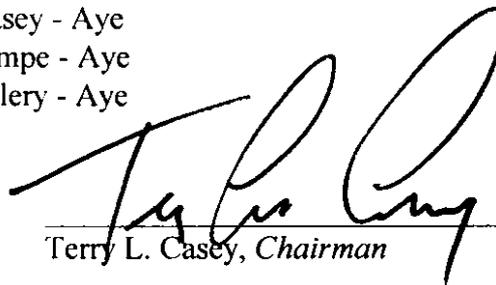
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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.

Wherefore, it is hereby **ORDERED** that the case is **DISMISSED** due to a lack of subject matter jurisdiction of this Board pursuant to section 124.03 of the Ohio Revised Code since Appellant Jackson was an unclassified employee at the time of her removal and this Board does not possess jurisdiction over employees in the unclassified service.



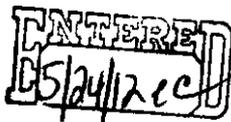
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
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 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, May 24, 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**

Barbara Jackson

Case No. 11-REM-07-0252

*Appellant*

v.

April 5, 2012

Terra Community College

Marcie M. Scholl

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on November 16, 2011. Present at the hearing were the Appellant, Barbara Jackson, represented by Thomas A. Sobecki, Attorney at Law and Appellee Terra Community College designee Dr. Bordner, represented by Timothy M. Miller, Assistant Attorney General.

The purpose of the record hearing was to determine if Appellant Jackson was or was not an unclassified employee at the time of her removal. Appellee alleged Appellant Jackson was an unclassified employee pursuant to section 124.11(A)(9) of the Ohio Revised Code. If this Board determines that Appellant Jackson was an unclassified employee at the time of her removal, then the appeal will be dismissed as this Board does not possess jurisdiction over the removal of an unclassified employee. If, however, this Board determines that Appellant Jackson was a classified employee at the time of her removal, then a second hearing would be convened to take evidence on the merits of her removal pursuant to the pre-disciplinary documents and her timely appeal of her removal.

**STATEMENT OF THE CASE**

Appellee's first witness was Appellant Jackson, as if on cross examination. She stated she held the position of Executive Assistant to the President for approximately two years, since August, 2009, and was terminated effective June 30, 2011. She reported directly to Dr. Marsha Bordner, President. Appellant Jackson stated she was also appointed to the position of Secretary for the Board of Trustees. She testified she only completed a time sheet if she had taken leave

time; other than that she did not complete time sheets. She stated according to Human Resources, she was listed as an hourly employee and she did not receive overtime pay, just compensatory time.

Appellant Jackson identified Appellee's Exhibit 1 as the position description for her position, stating it summarized her duties to an extent. Appellee's Exhibit 2 was identified by Appellant Jackson as a self-assessment she completed on May 18, 2010. Appellant Jackson testified she managed the clerical functions of the President's office. If someone came in without an appointment, Appellant Jackson would intercede to determine if the President needed to be interrupted or if a student came in, Appellant Jackson talked to the student, calmed them down if needed and directed them to the proper person or place. She stated she followed the student guidelines and procedures in directing them or filing grievances, as the protocol states the student should first go to a faculty member, then the Dean, then the Vice President and finally, the President. Appellant Jackson stated if a student called into the office, she followed the same process. Most of the complaints were about faculty members or how a student was treated. She may have chatted with President Bordner about the student's complaint but she always gave her information as to what happened so the President would stay informed. Appellant Jackson testified she determined what issue a student had but she did not determine the procedure for dealing with the issue, as that was determined by the guidelines.

Office supplies were purchased by Appellant Jackson and when it was necessary to purchase a laptop computer, Appellant Jackson stated she worked with purchasing. They researched prices and availability and Appellant Jackson presented the information to the President and they decided together on which laptop to purchase. With regard to patio furniture, Appellant Jackson testified she was given a dollar limit for the furniture and she and Dr. Webster's administrative assistant purchased the furniture. She stated she worked with the President on the image of her office and she understood that it needed professionalism. Appellant Jackson testified she had experience and knowledge regarding the building and maintenance of the President's office's image, but she maintained she always checked first with the President and did not use her own discretion.

With regard to furniture and paint for her own office, Appellant Jackson testified she worked with the same purchasing agent that she worked with on the laptop. She was permitted to select and decorate her own space, which was right outside of the President's office. Appellant Jackson testified that sometime in the spring of 2011, she had ordered a very nice dinner for a function attended by a Foundation and the Governing Board, but plans were changed by someone other than herself and she basically got her hands slapped. The responsibility for ordering the food for this function was taken from her by the President.

Appellant Jackson testified she was familiar with the budgeting procedures and she explained that approval of purchases was done electronically. The purchase first went to the President and she would either approve a purchase or ask Appellant Jackson to do so. Appellant Jackson stated that in the absence of the President, she could review purchases made by other departments. If she approved anything over \$10,000 she would make a copy of the purchase order to apprise the President of the purchase. If there was not enough money in a department's account, then Appellant Jackson would contact the budget person and discuss it with them. If she had a question about a purchase, she would discuss it with the President or if the President was not there, then she would talk to the fiscal officer. Appellant Jackson testified that on large purchases involving the renovation, she would always talk with the Treasurer on purchases of \$100,000 or more.

Appellant Jackson testified she drafted letters for President Bordner and transcribed documents for her, many of which were confidential. She set up meetings, talked with and made arrangements for commencement speakers. She stated, however, that she had no decision making authority as to who the speaker would be or who would attend meetings with them. Appellant Jackson stated she was the one that extended the invitation and made sure tables and chairs were set up. She testified there are two convocations a year and other than setting them up and ordering food, which she did the same each time, she had no input into the subject matter of the convocations. Appellee's Exhibit 5 was identified by Appellant Jackson as an agenda for a convocation, which she typed. She testified that with each convocation, she only updated the dates and time, as it was the President and her cabinet who determined the substance of the speeches. She ordered food, obtained the chairs and the AV equipment, drew a schematic for the maintenance people and ensured there was staff available. She stated it was all very routine work.

The fourth Wednesday of every month, the Board of Trustees met. Appellant Jackson stated she ensured the appropriate agenda was complete and that the room was set up. She also explained she was responsible for typing and getting things together for the Listening and Learning sessions. Appellant Jackson worked on thirty-three of them, determining what room on campus they would be held in, or if the session took place off campus, she worked with the location to ensure the accommodations were proper. Appellant Jackson stated sometimes she selected the food when the sessions were held on campus.

Another part of her job was to build a relationship with the constituent groups and to work as a team with the other offices and staff. Appellant Jackson would talk to a particular person's staff as directed by the President. For example, she stated when the decision was made to have Senator Sherrod Brown come to the campus, she talked with his staff and built a relationship with them. She didn't talk with Senator Brown until he arrived and she greeted him. When President Gee of OSU was visiting, the President initiated the letter to him. Appellant Jackson stated she followed up with his staff and kept in contact with them. She stated this was just routine secretarial work.

Appellant Jackson testified she participated in two golf outings with the Foundation office as the President told her it would be a good idea for her to volunteer. She attended a NCAAP function on behalf of the President, just as a liaison, as she did not speak. She stated the President had a ticket she couldn't use so she suggested to Appellant Jackson that she attend the event. Appellant Jackson testified she had a dotted line of authority to the Board of Trustees, as she was their secretary and she attended all of the monthly meetings. Appellee's Exhibit 6 was a packet which Appellant Jackson prepared for the Board of Trustees in April 2010. She explained this was a typical packet. It consisted of a compilation from the various areas of their benchmarks regarding the strategic plans. Appellant Jackson testified she would contact the areas and remind them what they needed to turn in and then the President reviewed the packet and made changes before it was printed.

The President shared confidential information with Appellant Jackson regarding disciplinary actions, resumes and other items. Appellant Jackson testified she was not privy to all confidential information as she was not included in the Executive Session of the Board of Trustees and the President never shared with her what went on in those sessions. She stated the President always wrote the letters

to the Board and she only typed it. Appellant Jackson testified she did read everything addressed to the President as it crossed her desk. She also had information with regard to collective bargaining negotiations that the average employee was not privy to and access to all the files regarding the closing of the child care center, which was confidential. Appellant Jackson testified she was asked by the President to keep all of the confidential files under lock and key and she had the only key to those files.

Appellee's next witness was Dr. Marsha Bordner, President of Appellee for approximately eight years. She explained that Terra Community College is a two year college with approximately 400 employees and 3,600 students in 100 academic programs. Dr. Bordner stated she is responsible for the overall management of the college; promoting and implementing the strategic plan; fundraising in the community and meeting with legislators and others interested in the college. She stated Appellant Jackson was her assistant from August 2009 until June 2011. Dr. Bordner was her direct supervisor and she testified Appellant Jackson was never an hourly employee as she was always considered to be in an exempt position.

In looking at Appellee's Exhibit 1, Dr. Bordner identified it as Appellant Jackson's position description and stated it accurately described the duties performed by Appellant Jackson. Dr. Bordner testified Appellant Jackson was essentially an office manager as she ran "command central" for the entire college as well as donors and community leaders. Appellant Jackson was the gatekeeper as to who needed to see her and why. Dr. Bordner stated her business card contained Appellant Jackson's telephone number on it and Appellant Jackson had complete discretion in deciding who was granted access to her. Dr. Bordner testified Appellant Jackson scheduled meetings for her. As she spends approximately fifty percent of her time out of her office, Dr. Bordner stated Appellant Jackson held a critical position as she does not have the time to deal with the day-to-day operations of the office.

Dr. Bordner identified Appellee's Exhibit 3 as a Purchase Approval Authority form, which, she explained meant that Appellant Jackson had the training and authorization to sign off on electronic purchases. She stated that per Board policy, she is the final signature on purchase requisition orders but Dr. Bordner testified she delegated her authority to Appellant Jackson in many instances. Dr. Bordner testified she and Appellant Jackson were the only two people in the college who had

the authority to approve purchase requisitions. Appellee's Exhibit 4 was identified by Dr. Bordner as a document resulting from a search done of all the purchase requisitions which were approved by Appellant Jackson. She stated she did not approve these prior to Appellant Jackson approving them.

One of Appellant Jackson's primary functions was to keep a lot of information confidential. Dr. Bordner stated that some of the confidential information was personal but there were many levels of confidentiality. An example was that Dr. Bordner had Appellant Jackson transcribe her notes regarding the difficulties that the Executive Director of the Foundation was having performing her duties. She would ask Appellant Jackson frequently to not share information with student workers due to the confidential nature of the information.

Dr. Bordner testified that working with donors was a highly complicated issue, as it was very important to know when to talk to them or to talk to them about making a donation. A lot of times Dr. Bordner asked Appellant Jackson to invite someone to campus so that she could ask them for donations. There was a great deal at stake during these times and Dr. Bordner testified Appellant Jackson was very good with the donors.

Appellant Jackson produced the Board minutes and Dr. Bordner stated there is some discretion as to what goes into the minutes. She would read over the minutes, making comments and edits. Dr. Bordner testified Appellant Jackson was responsible for orchestrating events. She stated the reception for Senator Brown was organized by Appellant Jackson and she was responsible for directing the traffic of people talking with the Senator. When President Gee visited, Dr. Bordner testified all she did was send the initial letter and everything thereafter was taken care of by Appellant Jackson. Dr. Bordner stated that when then Governor Strickland came to visit, she did not have any contact with him or his office prior to his visit as Appellant Jackson handled all the arrangements. With regard to the convocations, Dr. Bordner testified that weeks ahead of time she and Appellant Jackson worked on the agenda. Dr. Bordner dictated the text and Appellant Jackson put it into a power point format. They both discussed the agenda and Appellant Jackson expressed her opinions and designed the slides. Appellee's Exhibit 5 was identified by Dr. Bordner as an agenda which she and Appellant Jackson worked on. The words "not final" are in her handwriting and she anticipated that Appellant Jackson would determine what the final list would look like. Appellant Jackson had everything organized and ready to go. She had a role

in the planning of the agenda, refreshments, rehearsal, the power point slides and the critique of it all.

Dr. Bordner testified that when they hosted all the University Presidents in the region, she did very little as Appellant Jackson basically made the contacts with the staffs of the presidents and she planned the event. She stated the event went well.

Dr. Bordner testified Appellant Jackson was in charge of orchestrating the thirty-three strategic planning sessions or the Listening and Learning sessions. She also stated that Appellant Jackson had to determine how to build relationships with legislators, fiscal personnel and managers and she had to know who to give access to and who to deny access to. Appellant Jackson had direct access to Dr. Bordner, the cabinet and all of the Deans and was Dr. Bordner's liaison all day, every day with respect to the campus, students, legislators, community and donors.

Appellant Jackson testified that her hours were generally 8 A.M. to 5 P.M. and that she was not a member of the cabinet. She stated that President Bordner was out of the office quite a bit but that she did not take over the President's duties in her absence. That was done by the Administrator in Charge, who was a cabinet member designated by the President to be in charge. The campus was notified of the designation and Appellant Jackson testified she was never the person so designated.

Appellant Jackson stated she did not write any policy and did not create any forms. The President attended all the Board meetings and although Appellant Jackson also attended them, she did not talk, only took notes. Appellant Jackson testified she was in charge of food for the Board meetings and she typed the agendas, but only after they were approved by the President. She typed the minutes and editorialized them for grammar, not content. She did not address the media and met dignitaries only in a hostess role as the initial contact. Appellant Jackson stated she did not have the authority to enter into any contracts on behalf of the college, she did not handle any money and she did not have the authority to hire, fire or discipline employees.

Appellant Jackson testified she had ordered a \$400 prime rib dinner for a function and she ended up getting her "hand slapped" for doing so. She stated the Early Learning Center had been losing money and the President felt the price of the dinner did not look good and should not have been ordered. Appellant Jackson drafted retiree letters for the President's signature and she prepared agendas for

the administrative council meetings. In looking at Appellee's Exhibit 6, an agenda for a Board meeting, Appellant Jackson testified she typed the agenda from information she received from the President and from a copy of the previous year's agenda, which the President then modified. She stated she did not author any information summary sheet, as she received the information and then cut and pasted, but did no editing. She looked at the entire document and approved it for print. Appellant Jackson also denied having anything to do with the financial document in the minutes. She also stated she did not type anything for the Foundation Board.

With regard to purchases, Appellant Jackson stated that nine times out of ten, the purchases she approved were already made and she had no discretion in approving them. She testified she never disapproved a purchase and if she had a question about a purchase, she went to the Treasurer. In looking at Appellee's Exhibit 5, the 2010 Spring Convocation materials, Appellant Jackson testified this information was given her to type as she was not the author of the material. She testified she did not write the content of the power point presentation as she only took text from another document and made up the slides. The President then approved it.

Appellant Jackson testified she only coordinated, not created, campus-wide events. She stated she did contact people and organized the yearly legislative council meeting. Appellant Jackson identified Appellant's Exhibit A as a thank you note she received from the President and Appellant's Exhibit B as the only performance evaluation she received during her tenure. It was written and signed by the President.

On cross examination Appellant Jackson testified she believed she had the authority to approve purchases but stated that it never came up as an issue. Appellant Jackson testified she knew her place as a secretary and when dignitaries came to campus, she greeted them and then left the meeting, as she knew it was not her place to stay in the meeting even though no one asked her to leave. She stated the President always let her know who she wanted to talk to and who she did not want to talk to, so she did not have to use her discretion in that manner. Appellant Jackson stated that when she attended functions with all of the Deans, selected staff, Board members and the President, she was not there in any substantive way, but went only to make sure the food was there and looked nice.

Appellee's rebuttal witness was Dr. Bordner. She testified that the only people who could approve purchase requisitions were her and Appellant Jackson.

### **FINDINGS OF FACT**

After thoroughly reviewing the testimony of the witnesses and the documents admitted into evidence, I hereby find the following facts:

1. Terra Community College is comprised of approximately 400 employees, 3,600 students and 100 academic programs. The President of the College is Dr. Marsha Bordner.
2. Appellant Jackson had been employed with Appellee as an Executive Assistant to the President since August, 2009. She was terminated as an unclassified employee effective June 30, 2011.
3. Appellant Jackson reported directly to the President of Terra Community College and was the Secretary to the Board of Trustees.
4. As part of her duties, Appellant Jackson managed the day-to-day operations of the office of the President and was responsible for determining who could or could not meet with the President.
5. Appellant Jackson and President Bordner were the only two persons in the college who had authority to approve purchase requisitions. Appellant Jackson did not need prior approval from President Bordner to approve purchases and she had no dollar limit on the purchases she could approve. Appellant Jackson self-imposed limits wherein she would talk with the Treasurer or President and would apprise them of large purchases.
6. Appellant Jackson had the only key to the file cabinet which housed the confidential files. She had access to confidential disciplinary records, resumes, letter from the President to the Board of Trustees, all of the President's mail and information regarding collective bargaining negotiations.

7. On behalf of the college and President Bordner, Appellant Jackson built relationships with different offices, such as the offices of Sherrod Brown, then-Governor Strickland and President Gee of the Ohio State University. She also established relationships with many donors to the college.
8. Appellant Jackson frequently coordinated and planned events, such as the Listening and Learning sessions, the convocations and the gathering for regional University Presidents.
9. Appellant Jackson did not formulate policy, did not address the media and did not stand in the stead of the President during the President's absence. She also could not enter into contracts on behalf of the university.
10. President Bordner's business card contained Appellant Jackson's phone number. President Bordner's duties take her away from the office approximately fifty percent of her time and during those times, Appellant Jackson was responsible for running the day-to-day operations of the office and for scheduling the President's meetings.
11. Appellant Jackson was responsible on a day-to-day basis for being the President's liaison with her cabinet, the Deans, the students, the legislators, the donors and the community.

### **CONCLUSIONS OF LAW**

Appellee had the burden of proving by a preponderance of the evidence that Appellant Jackson was an unclassified employee at the time of her removal. Appellee has met its burden.

Appellee removed Appellant Jackson as an unclassified employee pursuant to section 124.11(A)(9) of the Ohio Revised Code. That statute states as follows:

- A) The unclassified service shall comprise the following positions, which shall not be included and which shall be exempt from all examinations required by this chapter:

**(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, provided that division (A)(9) of this section shall not affect those persons in county employment in the classified service as of September 19, 1961. Nothing in division (A)(9) of this section applies to any position in a county department of job and family services created pursuant to Chapter 329. of the Revised Code. (Emphasis added).

As can be seen by reading the above statute, Appellee had to prove that Appellant Jackson held either a "fiduciary or administrative relation" to the Appellee. Both of those terms are defined in this Board's administrative rule 124-1-20 of the Ohio Administrative Code. They are as follows:

(C) "Administrative relationship" generally means a relationship where an employee has substantial authority to initiate discretionary action and/or in which the appointing authority must rely on the employee's personal judgment and leadership abilities. The average employee would not possess such qualities or be delegated such discretionary authority. Whether one position occupies an administrative relationship to another is a question of fact to be determined by the board.

(I) "Fiduciary relationship" generally means 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.

Appellant Jackson held both an administrative and fiduciary relationship to her appointing authority, President Bordner. While Appellant Jackson did not have "substantial authority to initiate discretionary action", she was relied on by President Bordner for her judgment and leadership abilities. President Bordner reposed a special confidence and trust in her to perform her duties and she worked closely with her. President Bordner trusted only Appellant Jackson as the one other employee in all of the college to have the authority to approve purchase requisitions. Some of those purchase approvals, as exemplified in Appellee's Exhibit 4, were for amounts from \$5,000 to \$241,500. The evidence established while Appellant Jackson testified she never disapproved a purchase, the fact remains that she could have, as she had that authority. No one in President Bordner's cabinet had such authority, only Appellant Jackson. That authority is an example of President Bordner's reliance on Appellant Jackson's judgment and her trust in her.

Another example of Appellant Jackson's fiduciary relationship to President Bordner is the extent to which she was trusted with confidential information. The evidence established that Appellant Jackson maintained and had the only key to the cabinet which held all confidential materials. She had access to confidential disciplinary records, collective bargaining negotiation materials, communications between the President and the Board of Trustees and to all of the President's mail. Obviously President Bordner placed a great deal of trust in and had a special confidence in Appellant Jackson's ability to maintain confidentiality.

Appellant Jackson was not without discretion in her position, as President Bordner testified she was out of the office approximately fifty percent of her time and during those times, she trusted Appellant Jackson to take care of the day-to-day operations of the President's office. While Appellant Jackson was not delegated the Presidential functions, she was responsible for managing the office in her absence. President Bordner's business card contained Appellant Jackson's phone number, so she was trusted with knowing who President Bordner would want to, or need to, meet with. She talked with many donors, whom President Bordner testified is a very sensitive issue which Appellant Jackson handled well.

In Appellant Jackson's self assessment, identified as Appellee's Exhibit 2, she states, in her own words, that she:

- Works exclusively for the President and the Board of Trustees.
- Serves as a primary link for all duties assigned to other high level administrators.

- Relieves the President of administrative-type functions in order to increase the time available for executive level responsibilities.
- Plan, organizes, and implements the President's routine affairs with discretion.
- Relies on experience and judgment to plan and accomplish goals and to ensure that timelines are met.
- Builds relationships with all constituent groups to ensure openness with the President and the office.

Appellant Jackson's self description of her duties exemplify her fiduciary and administrative duties. She states she exclusively reports to the President and to the Board of Trustees, that she relieves the President of administrative duties, that she is counted on to use discretion, experience and judgment in her job, and that she builds relationships on behalf of the President.

The evidence has established that Appellant Jackson was relied on by President Bordner and the Board of Trustees in a fiduciary and administrative capacity that could not be delegated to the average employee. (See *Yarosh v. Becane*, 63 Ohio St.2d 5, (1980); *State. ex rel. Charlton v. Corrigan*, 36 Ohio St.3d 68 (1988); and *Rarick v. Geauga Cty. Brd. of Comm.*, 63 Ohio St.2d 34 (1980)). Therefore, Appellee has met its burden of proof in establishing that Appellant Jackson was an unclassified employee at the time of her removal.

It is my **RECOMMENDATION** that this case be **DISMISSED** due to a lack of subject matter jurisdiction of this Board pursuant to section 124.03 of the Ohio Revised Code since Appellant Jackson was an unclassified employee at the time of her removal and this Board does not possess jurisdiction over employees in the unclassified service.

  
\_\_\_\_\_  
Marcie M. Scholl  
Administrative Law Judge