

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

William Price

Case No. 2020-RED-10-0153

Appellant

v.

Franklin County Community Based Correctional Facility

Appellee

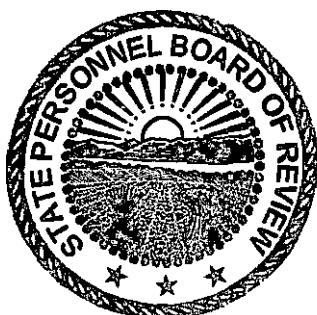
ORDER

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

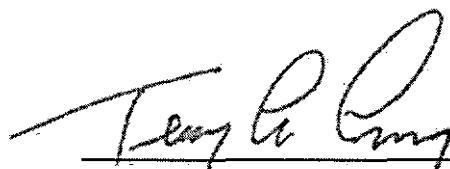
After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge on alternative grounds.

The Board reaffirms its precedents regarding Appellee in Case Nos. 1995-REM-10-0477, 1995-REM-02-0068, 1995-ABL-02-0056, 1995-ABL-02-0055, and 1995-ABL-02-0054. The Board finds, *sue sponte*, that O.A.C. 5120-1-14-03(L) is in force, is applicable to the instant appeal, and renders Appellant unclassified.

Wherefore, it is hereby **ORDERED** that the instant appeal is **DISMISSED** for lack of jurisdiction pursuant to R.C. 124.03, 124.11 and O.A.C. 5120-1-14-03(L).



Casey - Aye
Tillery - Aye
McGregor - Aye

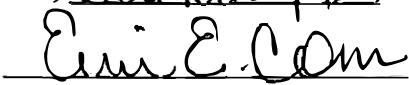


Terry L. Casey, Chairman

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 12, 2021.



Clerk

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

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. After the board has received the deposit, the transcript and copies of the file will be prepared and the cost of those items will be calculated. If the deposit exceeds the costs of these items, then a refund of the excess will be issued; if the deposit does not cover the full amount, then the appealing party will be billed for the outstanding balance. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE January 19, 2021. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2020-RED-10-0153

Transcript Costs: \$0.00 Administrative Costs: \$25.00

Total Deposit Required: * \$25.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: January 27, 2021

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

William Price

Case No. 2020-RED-10-0153

Appellant

v.

November 24, 2020

Franklin County Community
Based Correctional Facility

Appellee

Raymond M. Geis
Administrative Law Judge

To the Honorable State Personnel Board of Review:

This Report comes on due to Appellee's Motion to Dismiss for lack of jurisdiction. Appellant filed no memorandum contra. Appellee argues that Appellant is an unclassified employee by rule and, furthermore, that his appeal is untimely.

This Board has jurisdiction to hear the appeals of employees in the classified state service which includes the counties. R.C. 124.01; R.C. 124.03 However, this Board generally lacks jurisdiction over other political subdivisions.

Appellee cites to O.A.C. 5120-1-14 to support its assertion that Appellant's position is unclassified. This rule is apparently no longer in effect. Consequently, this Board's prior decisions concerning Appellee based on this rule in 1995-REM-10-0477, 1995-REM-02-0068, 1995-ABL-02-0056, 1995-ABL-02-0055, and 1995-ABL-02-0054 are no longer good precedent.

Appellee is an entity created under R.C. 2301.51, which enables the creation of community based correctional facilities to serve one or more counties.

"Political subdivision" or "subdivision" means...the county or counties served by a community-based correctional facility and program...operated under sections 2301.51 to 2301.58 of the Revised Code, a community-based correctional facility and program...and the facility governing board of a community-based correctional facility.

R.C. 2744.01(F)

R.C. 2301.51(5) provides that R.C. Chapter 2744. applies to the county or counties served by a community-based correctional facility ("CBCF") and program. Pursuant to R.C. 2744.01, "State" does not include political subdivisions."

So far as governmental tort liability is concerned, the Ohio General Assembly did not consider a CBCF to be part of the county when it enacted R.C. 2301.51. Moreover, the county is not obligated to fund the CBCF or its governing board, further separating the CBCF from county organization. R.C. 2301.51(C)

A reading of these two statutes can be extrapolated to infer that the Ohio General Assembly regarded the CBCF and its governing board as separate from the county. The county is part of the state. And, R.C. 124.03 did not generally extend this Board's merit jurisdiction beyond the classified civil service of the state (which does not include the employees of cities, villages or other political subdivisions). Accordingly, R.C. 124.03 cannot be read to include CBCFs. Therefore, this Board is without jurisdiction to hear Appellant's claim.

Because this Board is without jurisdiction over Appellee, the question of tolling and timeliness is moot.

RECOMMENDATION

Therefore, I respectfully RECOMMEND that the instant appeal be DISMISSED for lack of personal jurisdiction over the Appellee pursuant to R.C. 124.03.



Raymond M. Geis
Administrative Law Judge