

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

Harry C. Turner III,

*Appellant.*

v.

Case No. 08-ABL-06-0406

Department of Rehabilitation and Correction,  
Ohio State Penitentiary,

*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** as moot, pursuant to O.R.C. § 124.03.

Lumpe - Aye

Sfalcin - Aye

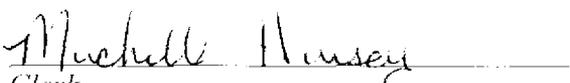
Tillery - Aye

  
\_\_\_\_\_  
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, October 8, 2009.

  
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*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**

HARRY C. TURNER, III,

Case No. 08-ABL-06-0406

*Appellant*

v.

September 11, 2009

DEPARTMENT OF REHABILITATION AND CORRECTION,  
OHIO STATE PENITENTIARY,

*Appellee*

JAMES R. SPRAGUE  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellee's September 3, 2009 filing of Appellee's motion to dismiss, memorandum in support, accompanying affidavit of Janet Thomas, Human Capital Management Senior Analyst at Appellee's Ohio State Penitentiary (OSP), and an attached Personnel Action pertinent to Appellant's reclassification. That Personnel Action reflects Appellant's reclassification upward from Administrative Assistant (AA) 2, 63122 (Pay Range 10 at \$24.91 per hour) to Business Administrator (BA) 1, 63315 (Pay Range 12 at \$28.57), with a retroactive effective date of September 30, 2007, also returning Appellant to OSP from Trumbull Correctional Institution (TCI). On September 8, 2009, Appellant filed Appellant's memorandum in opposition to Appellee's motion to dismiss, memorandum in opposition, an accompanying affidavit from Appellant, and a September 8, 2003 dated letter from Ohio Inspector General Thomas P. Charles.

Procedural History and Historical Background

The record reflects that the procedural history behind the instant action is rather complex. Yet, distilled to its essence, it can be summarized as set forth, below.

Around September 27, 2007, Appellant asked for a job audit of his position at OSP. The Department of Administrative Services (DAS) timely conducted same. DAS then issued a job audit determination that found that Appellant's position should be reclassified from Administrative Assistant 2 to Business Administrator 1, an upward reclassification. Appellant believed the position should have received an

additional upgrade to BA 2; while Appellee believed that DAS' determination overclassified the position.

Both Appellant herein and Appellee herein timely filed appeals with this Board from DAS' determination. Appellant ultimately withdrew his reclassification appeal resulting in this Board adopting Appellant's withdrawal and issuing a final Order to that effect.

Appellee herein's reclassification appeal proceeded to hearing. On March 3, 2009, Administrative Law Judge (ALJ) Christopher R. Young issued a Report and Recommendation recommending that DAS' job audit determination (that Appellant's position at OSP should be reclassified upward to BA 1) should be affirmed. Appellee herein effectuated ALJ Young's recommendation (please reference the aforementioned Personnel Action) even before this Board issued a final Order in Appellee herein's reclassification appeal.

In the interim (June, 2008), during the earlier stages of Appellant herein and Appellee herein's reclassification appeals before this Board, Appellee notified Appellant that his position at OSP was being abolished and Appellant displaced into an Account Clerk Supervisor (ACS) position at TCI. Appellant thereafter timely filed three appeals concerning that abolishment and displacement, including the instant appeal.

#### What is Appellant's Remedy?

Were Appellant to prevail in the instant appeal, the maximum remedy that he could receive would be for this Board to disaffirm the abolishment of Appellant's OSP position and his subsequent displacement into his ACS position at TCI. Appellant has already received as much as, or more than, this remedy could offer.

This is because Appellant has been returned to OSP, has received an 18-month retroactive upgrade from AA 2 to BA 1 (a two-Pay Range increase) and remains employed at OSP in the BA 1 classification. Indeed, Appellant's current situation is now consistent with: 1) DAS' job audit determination; 2) ALJ Young's recommendation; and 3) this Board's final Order in Appellee's aforementioned reclassification appeal. Thus, attempting to laboriously build an additional administrative record that could not possibly result in any additional remedy for Appellant would be (to use an equitable maxim) "the doing of a useless thing."

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To summarize, Appellant has already achieved the equivalent of, or more than, he could receive from fully litigating and prevailing in the instant appeal. Thus, to proceed further would constitute an imprudent utilization of this Board's and the parties' respective time and resources. Accordingly, this matter should be dismissed as moot.

#### **RECOMMENDATION**

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal as moot, pursuant to R.C. 124.03.

  
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JAMES R. SPRAGUE  
*Administrative Law Judge*

JRS: