

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

Michael C. Moscato,

Appellant,

v.

Case No. 08-MIS-08-0487

Ohio State University,

Appellee.

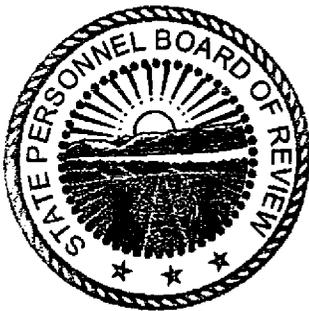
ORDER

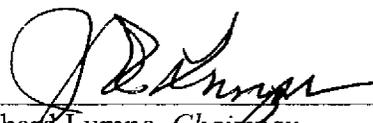
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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** for lack of subject matter jurisdiction, pursuant to O.R.C. § 124.34.

Lumpe - Aye
Booth - Aye
Sfalcin - Aye



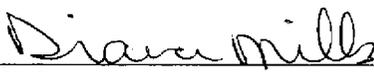


J. Richard Lumpe, *Chairman*

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, November 18, 2008.



Clerk

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

11/18/08

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

Michael C. Moscato,

Case No. 08-MIS-08-0487

Appellant

v.

October 14, 2008

Ohio State University,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration on October 10, 2008. I find that Appellant has filed this appeal to protest his denial of a promotion.

Unlike a court, the State Personnel Board of Review has jurisdiction only when it has been explicitly conferred upon it by the Ohio General Assembly. This Board has no statutory jurisdiction to investigate an individual's failure to be promoted, and will not substitute its judgment for that of Appellee in determining the best candidate to fill a position. See *Ketron v. Ohio Dept. of Transportation* (1991), 61 Ohio App.3d 657; *Singh v. Ohio Dept. of Transportation* (1982), 7 Ohio App.3d 269. Similarly, no section of the Ohio Revised Code grants SPBR the authority to determine whether or not an appointing authority adhered to its own internal personnel procedures.

Therefore, I respectfully **RECOMMEND** that this appeal be **DISMISSED** for lack of subject matter jurisdiction.


Jeannette E. Gunn
Administrative Law Judge

JEG: