

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

David Milligan,

Appellant,

v.

Case No. 08-REC-02-0045

Department of Rehabilitation and Correction, Noble Correctional Institution and
Department of Administrative Services,

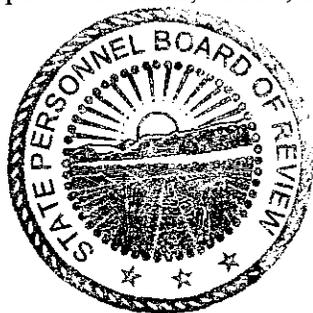
Appellees

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 Department of Administrative Services' determination, that Appellant's position is properly classified as Building Maintenance Superintendent 2, 53134, be **AFFIRMED**, pursuant to R.C. 124.14.



Lumpe - Aye
Booth - Aye
Sfalcin - Aye

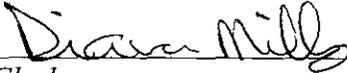


J. Richard Lumpe, *Chairman*

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 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, December 16, 2008.



Diana Mills
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**

David Milligan,

Case No. 08-REC-02-0045

Appellant

v.

October 27, 2008

Ohio Department of Rehabilitation and Correction,
Noble Correctional Institution,

and

Ohio Department of Administrative Services,

Appellees

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on September 10, 2008 at 10:00 a.m. Present at the hearing were the Appellant, David Milligan, appearing *pro se*, and the Appellees, the Ohio Department of Administrative Services, was present through its designee, Karen Benson, a Human Resource Analyst 3, and the Ohio Department of Rehabilitation and Correction, Central Office was present through its designee, Amy Parmi, Human Resource Legal Counsel.

On or about December 18, 2007, the Appellant, David Milligan, requested a job audit of his Building Maintenance Superintendent 2 position, classification specification number 53134. Subsequently, on or about February 6, 2008, the Appellant received the results of his job audit request which notified him that his proper classification for his position was that of a Building Maintenance Superintendent 2, classification specification number 53134. After receiving the Ohio Department of Administrative Services' decision, the Appellant timely filed his appeal to this Board on or about February 15, 2008. It should be noted that the aforementioned was stipulated to, as well as the subject matter jurisdiction of this Board was established.

Before proceeding onto the record hearing, the Appellant stated that although he is presently classified as a Building Maintenance Superintendent 2, he was seeking to be reclassified as a Building Construction Superintendent, classification specification number 53141.

STATEMENT OF THE CASE

The Appellant, David Milligan, testified he is presently employed by the Ohio Department of Rehabilitation and Correction, London Correctional Institution as a Building Maintenance Superintendent 2. The witness stated he has held his present position since December 1995 and that he requested his audit back on December 18, 2007, in hopes of being reclassified to the Building Construction Superintendent's position. The witness testified his immediate supervisor is Ms. Brenda Duffy, a Business Administrator 3, who was recently bumped down into that position, as her previous position was Deputy Warden of Operations, and that Ms. Duffy has been his supervisor dating back to early 1996. Further, the witness explained Ms. Duffy's responsibilities included directing the departments of the business office, the cashiers department, the garage, grounds keeping, storeroom and the maintenance department where he is employed. The Appellant explained although Ms. Duffy is handling the garage department and/or unit presently, she has only taken over that from him recently due to the layoffs which have taken place at the Department of Rehabilitation and Correction.

Next, the Appellant testified that as a Building Maintenance Supervisor 2 he was in charge of a Building Maintenance Superintendent 1 and the Maintenance Supervisor, as those were his direct subordinate reports. However, as a result of the job abolishment that had recently taken place, the witness stated he now only has one direct subordinate report, that being the Building Maintenance Superintendent 1. The witness explained the Building Maintenance Superintendent 1 supervises skilled trades, those being two Air Quality Technicians, a Plumber, a Carpenter, an Electrician and an Electrician Technician. The witness explained that the Maintenance Supervisor supervises five Maintenance Repair Worker 3s in the performance of his duties, as well. The witness stated that he in addition to directly supervising both the Building Maintenance Superintendent 1 and Building Maintenance Supervisor supervised the garage and its employees directly. The witness explained that after the recent layoffs and job abolishments his overall department lost one Air Quality Technician, the Maintenance Supervisor and one

Maintenance Repair Worker 3 and that the garage is now being supervised by Ms. Duffy, as well.

Upon questioning, the witness testified his department is called the Maintenance Department which he is in charge of. Mr. Milligan stated that the mission of his department is to just keep the place running. There are approximately thirteen buildings which are under his care, which includes five housing units which house approximately 2,400 inmates. The witness explained he is a full-time employee working forty hours per week, Monday through Friday, 7:30 a.m. to 3:30 p.m. Upon further questioning, the witness explained he does in fact supervise individuals and he does complete performance evaluations, approve leave time, effectively recommend discipline and acts on the behalf of his supervisor and does perform safety training from time-to-time.

Mr. Milligan then identified Joint Exhibit 1 as the packet of information which the Department of Administrative Services' representative has provided to this Board for the record hearing. When questioned, the witness stated that contained within the Joint Exhibit 1, was his position audit questionnaire which he filled out on December 18, 2007. When questioned as to the main purpose of his job testified that to supervise and inspect new construction alterations and maintenance for the thirteen buildings at the Noble Correctional Institution. The witness stated that he was there to plan, manage and coordinate all functions of the maintenance department and garage, as well. It was noted and agreed by the Appellant, he was no longer, at the time this hearing took place, in charge of the garage as noted on the exhibit. The witness also explained he was there to provide project scope information and cost estimates for the six year capital improvement plan, as well as acting as a liaison with the architects, engineers, state agencies and central office on any new construction and alteration projects. The witness then gave some examples of what he deemed to be construction work which he was directly responsible for at the agency during the last two-year period or so. The witness explained he helped with site preparation of the radio system and tower, helped prepare the control room for any additional electrical work that needed to be done. The witness stated that he also helped with the installation of the spider system, the man down alarm, which lasted approximately six to nine months where many of his crew was used to install electric that needed to be run prior to the installation of the same. Further, the witness explained his department is now responsible for monitoring this, as well. The witness explained that recently an elevator inspector found excess condensation within the elevator shafts and he specifically had to

write up a bid to bring in a vendor to correct the problem. The witness explained the agency is also under going an energy savings plan and that he is redoing the perimeter lighting plan and the hot water usage to see if there are ways to reduce this cost to the state. The witness stated he was also responsible for a recent \$500,000.00 paving project and that he worked with CAM on administering the contract, as well. Mr. Milligan explained he is also involved in the renovation project of the dental clinic to expand its services as a result of the Fussel lawsuit that was recently handed down, and right now at this time they look like they are going to do and process the work in house.

The witness then went on to describe his job duties which were outline in the audit questionnaire. The witness explained eighty percent of his job duties were to supervise and inspect new construction alterations and maintenance for the thirteen buildings at Noble Correctional Institution, as well as planning, managing and coordinating all the functions of the maintenance department in the garage. The witness stated also he provides project scope information and cost estimates for the six year capital improvement plan and acts as a liaison with architects, engineers, division of industrial compliance, CAM and contractors on design, construction supervision and close out of new construction alteration projects. The witness stated that he also monitors punch list items, change orders, warranties, drawings and related construction documents on all projects, while maintaining building systems and assisting in the preparation of annual maintenance budget. The witness testified that he coordinates all the maintenance personnel issues, maintains computer work order preventative maintenance, bar code inventory systems, while maintaining building plans on auto cad. Mr. Milligan stated that he oversees the maintenance tool, chemical control program, as well as for providing maintenance to the equipment and asset inventory while implementing and overseeing maintenance staff and inmate safety programs.

However, upon questioning by the undersigned, the witness explained he has as a result of the reorganization which recently took place, he is no longer in charge of anything with the garage and that he described that his construction alteration and maintenance for thirteen buildings would be within the eighty percent would be broken down, twenty percent with construction, thirty percent with alterations and approximately fifty percent working on the maintenance portion of the buildings.

The witness then testified that ten percent of his time he acts as a liaison and oversees compliance with other departments and agencies which include, but are

not limited to, the Ohio Department of Commerce-elevators and boilers inspections/fire marshal inspections/UTS inspections, factories and building permits; federal government ADA and OSHA; Ohio BWC employee safety issues, Ohio EPA Hazardous Waste Emissions; state purchasing and term projects and large projects; CAM-Capital projects, FAMS System, Pavement Management System, Energy Management Program Energy Conservation Projects, Electrical Safety Programs, State and Local Health Departments-food service operations, and the Village of Caldwell Water and Sewer Service.

The witness then stated approximately ten percent of his time he serves as the logistics section chief for the critical incident management exercises, while serving as the use of force chairman for inmate and staff use of force hearings, in addition to serving as a pre-disciplinary hearing officer for the management union hearings. The witness stated he has also served on additional committees, as well as attending labor management meetings and conducting monthly maintenance department meetings.

When questioned as to the most important function of his job, the witness testified in his own words it was the maintenance of the buildings themselves. The witness explained his next most important job in his opinion was the upgrading or alterations which took place within the institution itself, as well.

Upon questioning by the Ohio Department of Administrative Services' representative, Ms. Benson, the witness testified the two projects he previously talked about, the spider; the new man down alarm system and the new radio system and tower, and what he or his department was responsible for, testified they were responsible for the assisting in the installation and the tying in of the electrical systems into their units.

The next person to testify was Ms. Brenda Duffy, the Appellant's immediate supervisor and a Business Administrator 3 since March 2008. Ms. Duffy testified she was employed prior as the Deputy Warden of Administration for approximately six to seven years within the Noble Correctional Institution and that she has been the immediate supervisor of the Appellant herein since 1996 or so. Specifically, when questioned if Mr. Milligan's testimony regarding his job duties and responsibilities were accurate, she testified in the affirmative, as she was in the hearing room and heard the same. The witness really did not clarify any of the Appellant's prior testimony, as she felt the Appellant's testimony was accurate.

However, the witness did identify Joint Exhibit 1 and a portion which she filled out which was completed as the supervisor in the audit request and this was noted by the undersigned that seventy-five percent of the job duties listed for Mr. Milligan under her own words explains that Mr. Milligan supervises a Building Maintenance Superintendent 1, a Building Maintenance Supervisor and other building maintenance staff and maintenance and repair of institutional buildings, equipment, vehicles and associated service lines, etc. Ms. Duffy also wrote that the Appellant was responsible for monitoring expenditures of maintenance area and operating within budget constraints. However, throughout the written portion of the seventy-five percent of the job duties which Mr. Milligan was responsible for, it was noted that Ms. Duffy did not point out that Mr. Milligan was responsible for any construction, whether it be new or old or any alterations. However, on the other hand, it should be noted that there were references within that material that established that Mr. Milligan was responsible for repairing certain institutional buildings and equipment. It was also noted that the fifteen to twenty percent of items listed by the witness was essentially the same as listed by Mr. Milligan in his preparation of his job audit request.

Upon questioning by the Ohio Department of Rehabilitation and Correction's designee, Ms. Parmi, Ms. Duffy testified under the seventy-five percent of the job duties which she listed that Mr. Milligan participated explained that the preparing of bid requests with specifications for materials and projects, estimates and cost of projects, preparing project schedules and other maintenance reports reflected that Mr. Milligan did in fact have responsibilities over construction, alteration and repairs at the institution. Ms. Duffy explained it is true that they do make a lot of alterations and noted that one such alteration which is currently taking place is the fixing of new wiring for televisions to be located within the individual housing units, as an example. However, the witness explained the Noble Correctional Institution opened in 1996 as a brand new institution and is one of the newest institutions so there is not a lot of new construction and/or any construction at all taking place, just renovations and alterations.

The last witness to testify was Ms. Karen Benson, Human Resource Analyst 3 for the Ohio Department of Administrative Services. Ms. Benson stated that she did perform the audit of the Appellant's position and that she determined that the Appellant was in the correct position as a Building Maintenance Superintendent 2. Ms. Benson testified her conclusion was that in review of the Building Construction

Superintendent classification specification number 53141 explained that that series was inappropriate for the Appellant to be placed in since the Appellant did not supervise and inspect construction, alteration and maintenance of public buildings. While when reviewing the Building Maintenance Superintendent 2 classification specification number 53134, Ms. Benson explained this specification was responsible for that employee to supervise Building Maintenance Superintendent 1s, which he was doing, and staff and have independent responsibility for all the maintenance and repair under the Department of Rehabilitation and Correction, as well as supervising lower level grounds maintenance building trades, building maintenance, automotive maintenance, mechanical trades and electrical technology personnel.

FINDINGS OF FACT

There was no real discrepancy between the Appellant's characterization and the duties that he performed and those of the testimony of his supervisor Ms. Brenda Duffy, a Business Administrator 3 for the Ohio Department of Rehabilitation and Correction, Noble Correctional Institution, outside of the fact that the Appellant did not supervise and/or inspect construction within the institution itself. Thus, I find as a matter of fact the Appellant performed the duties about which he testified, absent the supervising and inspecting of construction projects at the Noble Correctional Institution.

CONCLUSIONS OF LAW

This Board is required to perform several functions when determining the most appropriate classification for an Appellant coming before it. The Board must always review relevant classifications specifications to determine which classification best describes the Appellant's actual job duties for the pertinent period of time. *Ford v. Ohio Department of Natural Resources* (1990), 67 Ohio App. 3d 755. In making this determination, the Board considers the classification specification and the job duties outlined therein, as well as the percentages of time the Appellant devotes to each group of job duties. *Klug v. Ohio Department of Administrative Services* (May 19, 1988), Franklin Co. 87AP-306, unreported, 1988 WL54277. This Board's consideration is not solely limited to the duties contained within the classification specification, but may also embrace other relevant facts submitted by the affected parties. *Gordon v. Ohio Department of Administrative Services* (March 31, 1988), Franklin Co. 88AP-0122, unreported, 1988 WL37094.

As a general rule, the Appellant seeking a reclassification to a higher position must demonstrate that his or her respective job duties substantially satisfy those of the higher classification. *Mounts v. Ohio Department of Administrative Services* (1984), 17 Ohio App. 3d 125; *Deist v. Kent State University* (May 23, 1987), Franklin Co. 87AP-28, unreported.

As was previously stated, the Appellant is currently classified as a Building Maintenance Superintendent 2, classification specification number 53134, but is seeking to be reclassified to that of a Building Construction Superintendent, classification specification number 53141. However, as was noted by the undersigned, the Ohio Department of Administrative Services found that the Appellant, David Milligan, was properly classified as a Building Maintenance Superintendent 2 as a result of the findings of the audit. After a thorough review of the above mentioned classification specification, it is my recommendation that the Appellant was properly classified in the position of a Building Maintenance Superintendent 2 classification specification number 53134.

The evidence was clear that the Appellant was performing all the duties outlined in the classification of a Building Maintenance Superintendent 2, classification specification number 53134, outside of the fact that the Appellant was also performing alterations at the agency which the undersigned would not consider repairs, but addendums to the buildings themselves. However, with respect to the Appellant performing these alterations, it did not rise to a level to place the Appellant into a higher classification of that of the Building Construction Superintendent.

The evidence also revealed that the Appellant really did not perform and supervise and inspect construction projects at the Nobel Correctional Institution as it was a relatively newly built facility, dating back only to 1996, something that is called for in the Building Construction Superintendent's classification specification. Additionally, when considering whether to place the Appellant into the Building Construction Superintendent's position, the undersigned also weighed the fact that one occupying that position does not actually have to supervise any personnel under that title and that the Appellant did in fact supervise a Building Maintenance Superintendent 1 and other lower level trades people indirectly. When considering whether to place the Appellant into the classification of a Building Construction Superintendent, the undersigned was aware that during the last couple of years the

Appellant had been involved in various projects at the agency where he assisted various individuals and/or private contractors in allowing them to perform their jobs, but the evidence was the devoid of whether he in fact supervised and/or inspected the construction or whether that was done by others. Thus, the undersigned rejected placing the Appellant, David Milligan, into the classification specification of a Building Construction Superintendent.

However, with respect to the classification specification of a Building Maintenance Superintendent 2, this appeared to be the best fit for the Appellant herein. As was revealed by the job duties in order of importance, Mr. Milligan did in fact supervise a building Maintenance Superintendent 1 and assigned staff and had independent responsibility for all programs of maintenance and repair of one assigned adult correctional institution. Although the Appellant explained that he had construction responsibilities, the evidence revealed that the Appellant ready was only performing alterations at the agency, as the Noble Correctional Institution was a relatively new grounds and construction was few and far between. However, with respect to the Appellant performing these alterations, it did not rise to a level to place the Appellant into a higher classification of that of the Building Construction Superintendent.

RECOMMENDATION

Therefore, after careful consideration of the evidence presented at the record hearing, by preponderance thereof, the classification specification of Building Maintenance Superintendent 2, best describes the duties which the Appellant performed in his job. Therefore, it is my **RECOMMENDATION** that the Appellant, David Milligan, was properly classified as a Building Maintenance Superintendent 2, classification specification number 53134, and that he should remain in this classification. Thus, it is my further recommendation that the Appellant's appeal be **DISMISSED** pursuant to Ohio Revised Code section 124.14.


Christopher R. Young
Administrative Law Judge