

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

Ralph E. Berry,

Appellant,

v.

Case No. 09-MIS-07-0321

Ohio 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. § 124.03.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



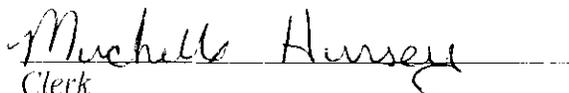


J. Richard Lumpe, *Chairman*

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, November 6, 2009.



Michelle Hursey
Clerk

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

11/06/09

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

Ralph E. Berry

Case No. 09-MIS-07-0321

Appellant

v.

September 18, 2009

Ohio University

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on September 18, 2009, upon the filing of an appeal by Appellant Berry on July 8, 2009. Attached to his notice of appeal are letters of grievance regarding his denial of a promotion or placement into a temporary, one year supervisory position at the technical maintenance department at the College of Osteopathic Medicine.

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. This Board has no jurisdiction over appeals of alleged abuses in the promotion or selection of an employee for a promotion or temporary position. This Board derives its authority from section 124.03(A) of the Ohio Revised Code. That statute states, in pertinent part, as follows:

(A) The state personnel board of review shall exercise the following powers and perform the following duties:

(1) Hear appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities or the director of administrative services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal of the director, or anybody authorized to perform the director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under division (D) of section 124.14 of the Revised Code. As used in this division, "discharge" includes disability separations.

Ralph E. Berry
Case No. 09-MIS-07-0321
Page 3

Since Appellant Berry has not alleged any of the specific areas over which this Board has jurisdiction, it is my **RECOMMENDATION** that this appeal be **DISMISSED** for a lack of subject matter jurisdiction pursuant to section 124.03 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge

:mms

As can be seen from reading the above statute, this Board does not possess jurisdiction over the denial of a promotion or assignment to a temporary position. The above statute does confer jurisdiction on this Board to review the “assignment or reassignment to a new or different position classification” but case law has held that to mean when there has been a job audit requested either by the employee or by the appointing authority. In Appellant Berry's appeal letter and in his attachments, there is no mention of a job audit request or determination.

The courts have also stated in several opinions before them that this Board does not have any authority to investigate or to hear appeals of alleged abuses of promotion. The case of *Ketron v. Ohio Department of Transportation* (1991), 61 Ohio App.3d 657, concerned two employees of the Department of Transportation who filed an investigation request with this Board alleging that the Department was not adhering to the promotion process as described in Chapter 124. of the Ohio Revised Code. This Board reviewed the request and terminated the investigation on the basis of a lack of subject matter jurisdiction. The Appellants appealed and the Court of Appeals held that:

. . . The legislature did not include the term “promotion” in R.C. 124.03(A), and we decline to engage in judicial legislation by inserting the word “promotion” into the statute . . . (*Ketron* at pg. 661).

The Court continued on to state the terms “assignment” and “reassignment” as found in section 124.03(A) of the Ohio Revised Code, are not synonymous with the term “promotion” and, therefore, section 124.03(A) of the Ohio Revised Code does not provide a right to appeal to this Board in the case of an alleged abuse of promotion. See also *Singh v. State* (1982), 7 Ohio App.3d 269.