

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

Nancy N. Poelstra,

Appellant.

v.

Case No. 09-REC-01-0030

Department of Mental Retardation and Developmental Disabilities,
Northwest Ohio Developmental Center,
and
Department of Administrative Services,

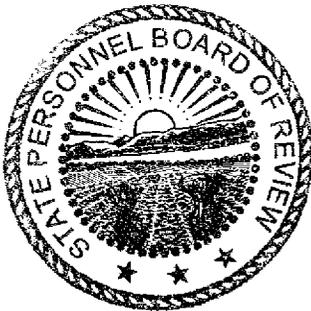
Appellees.

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 job audit determination of Appellee, Department of Administrative Services, that Appellant's position of Occupational Therapist, classification number 44311, be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.14.



Lumpe - Aye

Sfalcin - Aye

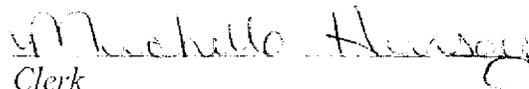
Tillery - Aye


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, July 30, 2009.


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**

NANCY N. POELSTRA,

Case No. 09-REC-01-0030

Appellant

v.

June 1, 2009

DEPARTMENT OF MR/DD,
NORTHWEST OHIO DEVELOPMENTAL CENTER and
DEPARTMENT OF ADMINISTRATIVE SERVICES,

Appellees

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came to be heard on May 7, 2009. Present at the hearing was Appellant, who appeared *pro se*. Appellee Ohio Department of MR/DD (OMR/DD), Northwest Ohio Developmental Center (NWODC) was represented by Pooja A. Bird, Assistant Attorney General. Appellee Department of Administrative Services (DAS) was present through its designee, Karen Benson, Human Resources Analyst.

This cause comes on due to Appellant's January 20, 2009 timely filing of an appeal from a DAS job audit determination that the classification of Appellant's position should be reclassified downward from Occupational Therapy Administrator (OTA) 1, 44315 to Occupational Therapist (OT), 44311. Alternatively, Appellant believes that the OTA 1 classification is more appropriate for her position. On September 19, 2008, DAS received OMR/DD's request for an audit, thereafter conducted an on-site audit (as is its practice after receiving an agency job audit request), and on January 5, 2009 DAS issued the aforementioned job audit determination.

Jurisdiction over the subject matter of this appeal was established pursuant to R.C. 124.03 and R.C. 124.14.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

At hearing, three witnesses testified. First to testify was **Nancy N. Poelstra, Appellant**. Appellant's position was classified as Occupational Therapy Administrator 1 prior to the instant job audit, with a job audit determination of Occupational Therapist, a downgrade placing Appellant's position into the pertinent collective bargaining unit. Next to testify was **Robin Duffin**, Psychiatric/Mental Retardation Nurse Director for the NWODC, who serves as Appellant's supervisor. Last to testify was **Karen Benson**, DAS Human Resources Analyst, who conducted the audit and served as DAS' designee at hearing.

There was essentially no dispute about the duties that Appellant performed during the requisite review period. Appellant essentially functioned as an Occupational Therapist and interacted with other health care professionals and direct client service providers, attended follow-up examinations with clients, and explained and taught direct care providers the appropriate methods to utilize with particular clients and their respective specialized needs. There was no dispute that Appellant, who serves about 33 to 34 hours per week in her position, did not supervise any full-time equivalent employees (or even part-time employees) during any of the audit review period. Prior to February 2008, Appellant had supervised one part-time Occupational Therapist. Yet, even this limited supervision occurred prior to the instant review period.

Based on the testimony presented and evidence admitted at hearing, I make the following Findings:

First, I incorporate, herein, any finding set forth, above, whether express or implied.

Next, I find that, as a matter of fact, Appellant's position is precluded from holding the classification of Occupational Therapy Administrator 1, 44315. This is because Appellant did not supervise any "occupational therapy staff" during the review period as required in the Class Concept for the Occupational Therapy Administrator 1 classification specification. Alternatively, based on the testimony presented and evidence admitted, Appellant's position and current duties clearly fit within the parameters set forth in both the Class Concept and Job Duties section of the Occupational Therapist, 44311 classification specification.

CONCLUSIONS OF LAW

This case presents this Board with the question of whether an employee who clearly performs the duties of an Occupational Therapist but who does not perform any of the supervision required of an Occupational Therapy Administrator 1, should have her position reclassified to Occupational Therapist? Based on the findings set forth, above, and for the reasons set forth, below, this Board should answer this question in the affirmative and, so, should affirm the job audit determination of the Department of Administrative Services to that effect.

O.A.C. 123: 1-7-15 sets forth the general requirements for supervision as well as the minimum percentage of time an employee must perform the most complex duties of a classification in order to encumber a position with that classification. Here, Appellant did not perform supervision over "occupational therapy staff". Accordingly, since Appellant does not perform this function, this Board is precluded from allowing Appellant's position to remain classified as Occupational Therapy Administrator and, thus, should affirm DAS' job audit determination. Should economic times improve and should Appellant find herself called upon to supervise at least two full-time equivalent occupational therapy staff positions, then Appellant could, of course, request that DAS again audit her position.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the job audit determination of the Department of Administrative Services and **RECLASSIFY** Appellant's position to Occupational Therapist, 44311, pursuant to R.C. 124.03 and R.C. 124.14.



JAMES R. SPRAGUE
Administrative Law Judge