

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Albert Antoine,

Appellant,

v.

Case No. 09-SUS-10-0444

Department of Transportation,

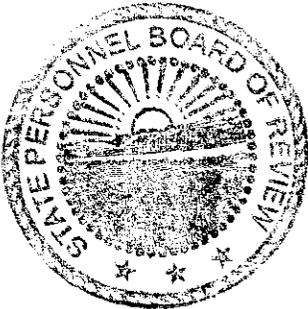
Appellee.

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. § 5501.20(D).



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, March 3, 2010.


Clerk

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

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

Albert Antoine,

Case No. 09-SUS-10-0444

Appellant

v.

November 24, 2009

Dept. of Transportation,

Christopher R. Young

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause goes on for consideration on November 24, 2009, upon the Appellee's motion to dismiss filed on October 28, 2009, and upon the Appellant's extension of time to file a response by November 23, 2009, granted to the Appellant on November 9, 2009. To date, the Appellant has not filed any memorandum in opposition to Appellee's motion to dismiss.

The Appellee asserts its motion to dismiss that this Board lacks jurisdiction to consider this matter pursuant to Ohio Revised Code section 5501.20 because the Appellant as a "career professional service" employee may only appeal to the State Personnel Board Review removal actions, and not suspensions, as in this matter.

For clarification, the Appellant, Albert Antoine, is employed at the Ohio Department of Transportation as a Transportation Engineer 4. In Appellee's motion to dismiss the documentary evidence via attachments and through the affidavit of Nick Nicholson, in a letter dated November 9, 1998, the Appellant was informed that his position would be placed into the career professional service pursuant to Ohio Revised Code section 5501.20 effective November 16, 1998. Additionally, the evidence in the case file also reveals 10 years later, the Appellant received a second letter dated June 30, 2008, that informed him that his position continued to be within the career professional services. The evidence in the case file also reveals that on September 29, 2009, the Appellant received a letter informing him that he incurred a 10 day suspension for a violation of Directive WR -101. Thereafter, the Appellant filed the above caption appeal with the State Personnel Board of Review on October 9, 2009, contesting his 10 day suspension.

Pursuant to Ohio Administrative Code section 5501-2-03 a "Career professional service classification" is defined as:

Positions within the Ohio department of transportation, which are listed in the attached appendix of this rule, are to be included in the career professional service classification created under section 5501.20 of the Revised Code.

* * * * *

Appendix

The Director hereby designates all positions in the following classifications to be Career Professional:

(Just to name a few)

85643 Transportation Engineer 3

85644 Transportation Engineer 4

85645 Transportation Engineer 5

* * * * *

The Appellant in this matter is and has been classified as a Transportation Engineer 4.

Pursuant to Ohio Revised Code section 5501.20 the Department of transportation business plan states in pertinent part:

(A) As used in this section:

(1) "Career professional service" means that part of the competitive classified service that consists of employees of the department of transportation who, regardless of job classification, meet both of the following qualifications:

(a) They are supervisors, professional employees who are not in a collective bargaining unit, confidential employees, or

management level employees, all as defined in section 4117.01 of the Revised Code.

(b) They exercise authority that is not merely routine or clerical in nature and report only to a higher level unclassified employee or employee in the career professional service.

* * * * *

(D) An employee in the career professional service may be suspended, demoted, or removed because of performance that hinders or restricts the fulfillment of the department's business plan or for disciplinary reasons under section 124.34 or 124.57 of the Revised Code. **An employee in the career professional service may appeal only the employee's removal to the state personnel board of review.** An employee in the career professional service may appeal a demotion or a suspension of more than three days pursuant to rules the director adopts in accordance with section 111.15 of the Revised Code. (Emphasis added.)

* * * * *

In the case at hand, the Appellant, Albert Antoine is classified as a Transportation Engineer 4. As the documentary evidence reveals that Mr. Antoine's position is identified within the appendix classification list within the career professional services of the Ohio Department of Transportation, this board does not have jurisdiction to hear the above captioned suspension appeal.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** the Appellee's motion to dismiss and **DISMISS** this appeal for lack of subject matter jurisdiction pursuant to Ohio Revised Code section 5501.20(D).