

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Shari Ma,

Appellant,

v.

Case No. 10-REC-04-0085

Cuyahoga County Office of Human Resources,

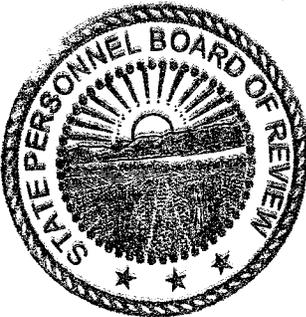
Appellee.

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**, since Appellant was **PROPERLY CLASSIFIED** as a Program Officer 2, during the relevant time period in question.



Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

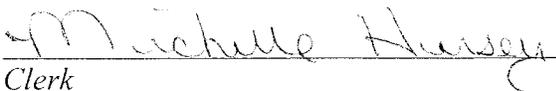


J. Richard Lumpe, *Chairman*

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, September 3, 2010.



Michelle Hursey
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**

Shari Ma,

Case No. 10-REC-04-0085

Appellant

v.

August 6, 2010

Cuyahoga Co. Board of Commissioners and
Cuyahoga Co., Office of Human Resources,

Appellee

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 July 19, 2010, at 10:30 a.m. Present at the hearing was the Appellant, Shari Ma, who was represented by David Neel, Attorney at Law, and the Appellees the Cuyahoga County Board of Commissioners and the Cuyahoga County Office of Human Resources were present through its designee, Albert Bouchahine, Personnel Manager and represented by Appellee's counsel Ms. Barbara Marburger, an Assistant Prosecuting Attorney. The Appellant's direct supervisor, Ms. Paula Young, the Manager of Grants and Training Division of the Cuyahoga County's Department of Justice Affairs, was present at the hearing, as well.

On or about November 13, 2009, the Appellant, Shari Ma filled out a Comprehensive Position Questionnaire of her position as a Program Officer 2, classification specification number 1052412. Subsequently, on or about March 24, 2010, the Appellant received the results of the audit request which notified her that her proper classification for her position was that of a Program Officer 2, classification specification number 1052412. After receiving the Cuyahoga County Office of Human Resource's decision, the Appellant timely filed her appeal to this Board on or about March 29, 2010. It should be noted that the aforementioned was stipulated to, as well as, the subject matter jurisdiction of this Board was established pursuant to O.R.C. sections 124.03 and 124.14.

Juvenile Accountability block grant totals approximately \$240,000 and to ensure the biggest bang out of their buck, they typically focus on one or maybe occasionally a second area. The witness testified last year they focused on two areas those being: accountability and juvenile re-entry. The witness testified that various agencies and/or stakeholders would submit proposals and/or applications and that she in her position helps respond to those proposals. Further, the witness testified that when she began her employment in February 2007 the Juvenile Accountability block grant was already in place, and explained that she would review application packets of various stakeholders and or community programs to ensure that the monies that were sent out were utilized in the way it was meant to be.

When questioned, the witness testified under the Juvenile Justice and Delinquency Prevention Block Grant (JJDP) there are four main categories, and that the Disproportionate Minority Contact category is the only one that is funded under this block grant. As previously explained, the witness stated that she was on the steering committee wherein various stakeholders such as Executive Directors, Directors of Juvenile Courts and Directors of Intake would focus on the assessment that was done by Kent State University marking criteria regarding referrals to Juvenile Courts from parents with the overall goal to keep the minority youth out of the incarceration side of the justice system or not to have their cases go in front of a magistrate, usually utilizing diversion programs. Further, the witness explained that she put all the documents together along with solicitations made to the community, along with deadlines in a request for proposal, that was explained by the Department of Youth Services' staff at a bidders conference, wherein she put together her own presentation, as well. The witness testified that this process began in 2008, and continued through 2009 and will last until 2010 as the grant calls for a three-year time process, and a new request for proposal will be written in 2011. The witness testified that she also had to go to the juvenile courts, specifically into the intake division to study its needs, to create linkage between the courts and the community services that were funded under the JJ DP block grant, as part of her job duties, as well.

The witness identified Appellant's exhibits A and B, as copies of her work product regarding the Disproportionate Minority Contact Technical Assistance program that she put together in November 2008 and the Disproportionate Minority Contact program and or demonstration that she put together in August 2008 at the bidder's conference. The witness explained that she independently put these two programs together utilizing PowerPoint computer software without being directed to

do so. The witness then identified Appellee's Exhibit 3, the CPQ, and under the essential position tasks testified that she still performs all of these essential tasks located on pages 5 and 6, but that if you have to modify anything, it would be that she's spending time traveling to the state capital. Additionally, the witness when questioned, testified that the most important job function in her position is to oversee the programs that are in the community, making sure that they are doing what they said they would do, by visiting the community sites via field servicing the grant.

Next, the witness was then questioned regarding the Office of Human Resources notification letter dated March 24, 2010 which she received regarding the review of her Comprehensive Position Questionnaire, identified as Appellee's Exhibit 6. When questioned, the witness testified that the Office of Human Resources found that her job functions included:

- Completing JABG grant.
- Developing and designing various program procedures to impact the Juvenile Justice System.
- Designing and coordinating a request for proposal process.
- Coordinating bidder's conference.
- Analyzing and evaluating program proposals.
- Developing and administering technical training sessions.
- Analyzing current procedures to promote efficiency.
- Coordinating and conducting various agencies quarterly site visits.
- Overseeing and managing programs for Juvenile Justice Improvement.
- Creating and managing files.

However, the witness testified that the Office of Human Resources did not list her work within the Juvenile Justice and Delinquency Block Grant regarding the Disproportionate Minority Contact program, along with her calling meetings of all the stakeholders to collaborate to work out any linkage issues.

Upon questioning by Appellant's counsel, the witness testified that she in fact calls the meetings which, includes all the community stakeholders that are required to be there, to ensure that the correct linkage is made between the courts expressing their needs and the agencies understanding as to what they are to provide. The witness testified that if changes are to be made and/or requested or

required it is the agency's responsibility to implement, but that she is there to oversee and ensure that they are performing within the guidelines of the grant.

The witness then identified Appellant's exhibit B as material which she presented to the community at the August 2008 Bidder's Conference as a visual aid regarding the Disproportionate Minority Contact grant guidelines. The witness testified that no one directed her to put this together and that she simply did this on her own. The witness explained that the information discussed above contains an analysis done by Kent state University and that she as part of the Disproportionate Minority Contact steering committee was responsible to implement and disseminate this information, as well. The witness then identified Appellant's exhibit C, as a scoring matrix which she also designed, at her own direction to assist her in awarding the grant monies. Further, the witness identified Appellant's exhibit G and I, as an example of a cover letter which she set out regarding the Juvenile Accountability Block Grant and a Juvenile Accountability Block Grant Scoring Sheet, respectively. The witness also identified Appellant's exhibits J and K, as agendas that she sends out to the community stakeholders and agencies as to when and where they are to conduct meetings. Lastly, the witness when questioned identified Appellant's exhibit Q, as a memorandum which she prepared regarding the Disproportionate Minority Contact Program Plan, noting that it was required to be done to submit it to the Ohio Department of Youth Services. Additionally, the witness stated that she is continually trying to improve the programs, as well.

Upon questioning by Appellee's counsel, the witness reaffirmed that there are four employees in her unit those being: (1) program officer 1; (2) program officer 2s and (1) program officer 3. The witness stated that there are no program officer 4s in her unit. Moreover, when questioned, the witness testified that with respect to the work that she performed on the Disproportionate Minority Contact Block Grant, the bulk of that work and the initial setup was done in 2007 and 2008 where she often work weekends. However, the witness attested presently she is not working weekends regarding this type of work.

With respect to the Application Review Board, as noted by the application scoring summary previously identified as an Appellant's exhibit C the witness testified that she did not create the review board, which totals 10 individuals, but that she does sit on it. Further, when questioned, the witness testified she has appointed 2 to 3 of the individuals on the review board as they are to review proposals and score the applications to determine where grant monies will be

funneled. Moreover, the witness testified that no manager or director ever asked her about her appointments, or the process itself.

With respect to the Disproportionate Minority Contact Steering Committee, the witness testified that this committee is required by the Ohio Department of Youth Services to be in place before Cuyahoga County can receive grant monies. When questioned as to who decides who is going to be on the committee, the witness explained that the chair and the co-chair make appointments, not her. Further, when questioned the witness explained that the steering committee sought representatives from local school districts, law enforcement officials, social services and the juvenile court officials, as well as other local experts to gather and have input into how to reduce disproportionate minority contact with the justice system. The witness explained that the juvenile court made the recommendation that parental referrals was the number one target and its goal was to focus to have the minority youth go through the justice system with anything other than adjudication.

When questioned, the witness testified that within the last year she has had to redesign and/or modify the Disproportionate Minority Contact original program plan, as changes to the program is an ongoing evolving process. The witness explained that some providers upon site visits aren't doing what they're supposed to be doing and therefore changes and modifications will be needed. When questioned as to the Cuyahoga County Justice Reform Board, the witness explained that the board is headed by Commissioner Hagan and the board's purpose is to select the focus for the year for the block grants. Lastly, the witness re-identified Appellant's exhibit I and stated that the pending on the focus, at least from 2006 up until the present, the questions on the form, she can change and/or update on a yearly basis, as well, but that she did not originally design it.

The next witness to testify was Ms. Paula Young, the Manager of Grants and Training Division of the Department of Justice Affairs. Further, the witness testified she is in fact the direct supervisor of the Appellant, as she has supervised Ms. Ma since March 29, 2010, only the last three and a half months, but is familiar with Ms. Ma's job duties. Specifically, when questioned, if the Appellant's testimony regarding her job duties and/or responsibilities were accurate, Ms. Young answered in the affirmative, as she was in the hearing room and heard the same. Ms. Young had no further comments or corrections to make regarding Ms. Ma's testimony.

Upon questioning by Appellant's counsel the witness identified Appellee's Exhibit 5, the Cuyahoga County's Office of Human Resources letter notifying the Appellant of the completion of the review of her Comprehensive Position Questionnaire. When questioned, the witness testified that she is familiar with the above noted document and that she agreed that the Appellant performed the essential functions listed on the document, with the exception that she did not design the request for proposal process, but did coordinate the request for proposal process.

Upon questioning by Appellee's counsel, the witness re-identified Appellee's Exhibit 5 and explained under the second bullet point, "developing and designing various program procedures to impact the Juvenile Justice System", that the Appellant, if it was determined by various boards and/or agencies that the situations had changed or the compliance requirements had changed as part of the grant, she would in fact develop and design a new programs or processes that would meet that need.

The last witness to testify in Ms. Ma's case was Mr. Albert Bouchahine, the Personnel Manager for the Cuyahoga County Office of Human Resources, a position which he has held for approximately the last five and a half years. The witness testified that initially the Archer Company performed the job audit of the Appellant's position in this case and that he reviewed the audit and is familiar with the rationale. The witness explained that after he received it and reviewed the same he made a recommendation to the Human Resources Director, Ms. Deborah Southerington. The witness testified that based upon the essential functions Ms. Ma listed in her CPQ under duties and responsibilities of her position, the Cuyahoga County Office of Human Resources determined that the Appellant was most constantly classified as a Program Officer 2 on or about March 24, 2010.

However, the witness testified that although the Program Officer series are somewhat similar, there are some differing factors. The witness stated that what stood out as a difference between the Program Officer 3 and that of a Program Officer 2 was the level of independence and the developmental time frames as stated in the Classification Functions. The witness noted that in Ms. Ma's CPQ on page 12 (See Appellee's exhibit 3) she indicated that her developmental time frame for establishing her programs and/or procedures, at most, took two to three months. Whereas, the witness pointed out that in the Program Officer 3's classification function it calls for one to be have six months or more developmental timeframes.

Upon questioning by the Appellant's counsel, when referring to Appellee's exhibit 3, page 12 under the planning/scheduling requirements the witness testified that although the CPQ does not specifically list developmental time frame, he equates planning/scheduling time frames to be the same, as that is how the County interprets this type of question.

Upon questioning by the Appellee's counsel, the witness reiterated his understanding of the planning/scheduling developmental time frame as to how the County interprets the same. Moreover, when questioned, the witness testified that when analyzing the term "independently" as noted in the Program Officer 3's classification function, the County Office in Human Resources looks at the level of independence, including the complexity of the work, the level of the grant amount, including the budget of the grant amount, and the dollars allocated to the same and the reporter requirements considered under the grant. The witness testified that in this situation Ms. Ma had the approximate amount of \$500,000 in grant monies, more consistent with that of a Program Officer 2s level of responsibility, and that in his experience Program Officer 3s have a greater responsibility level usually over \$1 million. Furthermore, the witness testified that under the County's own promulgated County classification plan is noted therein that an employee must perform the mandatory duty stated in the classification function section of the classification specification for at least 20% of his or her work time.

Upon further questioning by Appellant's counsel, the witness testified that if the Appellant had been responsible for grants totaling over a \$1,000,000.00 or more, that could have made a difference in determining her classification, in his opinion.

FINDINGS OF FACT

There was no real discrepancy between the Appellant's characterization and the duties that she performed and of the testimony of her direct supervisor, Ms. Young, the Manager of Grants and Training Division of the Department of Justice Affairs. Therefore, I find as a matter of fact, the Appellant performed the duties about which she testified.

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 classification 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 effected 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.

This Board must consider the relation between the classification specifications at hand and testimony presented and evidence admitted. This Board's consideration, however, is not limited solely to the duties contained in the classification specifications, but may also embrace other relevant facts submitted by any of the affected parties. *Gordon v. Dept. of Admin. Services*, No. 86AP-1022, slip op. (Ohio Ct. App. 10th Dist., March 31, 1988).

County personnel departments may either devise and utilize their own classification plan, upon proper compliance with the requirements of the Ohio Revised Code and Administrative Code, or may utilize the classification plan established by the Department of Administrative Services for county use. Appellee has promulgated its own county classification plan, therefore, the classification specifications considered in this appeal are those promulgated by Appellee. Appellee's Rule 4, contained within its classification plan, notes that an employee must perform the *mandatory duties stated in the classification function section of the*

classification specification for at least twenty percent of his or her work time.
(Emphasis Added).

The classification specifications considered by the undersigned Administrative Law Judge were the Program Officer 2, classification number 1052412, and the Program Officer 3, classification number 1052413, in making the determination on this instant reclassification appeal. Thus, one has to look at the classification function of both of the above noted classifications to determine if the Appellant is properly classified as a Program Officer 2, or in the alternative a Program Officer 3.

The classification function for the Program Officer 2 classification states that the purpose of the classification is to:

. . . assist higher level administrators and/or function as County's representative on outside boards, committees, or commissions to develop or revise operations, systems, policies and/or procedures of County programs.

The classification function for the Program Officer 3 classification states that the purpose of the classification is to:

. . . independently develop new operations, systems, policies and/or procedures for existing County programs. This classification differs from lower level program officers in that there is a greater independence during developmental phase, development timeframes are six months or more, and issues encountered are characterized by several unknown variables.

As previously mentioned, the Appellant, Shari Ma, stated that although she is presently classified as a Program Officer 2, she is seeking to be reclassified to the position of a Program Officer 3. After a thorough review of the above mentioned classifications, it is my recommendation that the Appellant was properly classified as a Program Officer 2.

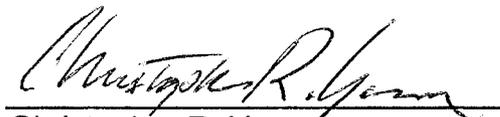
Based upon the testimonial and documentary evidence, in reviewing specifically the classification function statement of a Program Officer 3, the undersigned finds and concludes that the Appellant did not differentiate to the

degree needed with respect to the development phase and developmental time frames of her work product of six months or more, as called for in the classification function of this position. In this regard, the evidence revealed that the Appellant's work product with respect to developing a program was at most 2 to 3 months in length as was revealed by the Appellant's own admission in her comprehensive position questionnaire, as well as having only done this one time. Moreover, the evidence revealed that while the Appellant worked independently to put together the Disproportionate Minority Contact Program, the bulk of that work took place back late 2007 and 2008, and that presently she is only revising operations and programs or procedures for this program, as well as the same for the Juvenile Accountability Block Grant. Thus, the Appellant has not met her threshold of performing duties as called for in this higher classification of at least 20% of her time. Therefore, the undersigned rejected this classification specification of a Program Officer 3 as being the best fit for the Appellant herein.

With respect to the classification specification of a Program Officer 2, the evidence revealed that the Appellant performed the duties of this classification to sufficiently meet what is called for in the specification of a this classification. Thus, the undersigned after careful consideration of the evidence presented at the record hearing, and by preponderance thereof, concludes that the classification specification of a Program Officer 2 best describes the duties which the Appellant, Shari Ma, performed in her job.

RECOMMENDATION

Therefore, it is my **RECOMMENDATION** that the Appellant, Shari Ma, was **PROPERLY CLASSIFIED** as a Program Officer 2, during the relevant time period in question, and that the Appellant's appeal **DISMISSED**.


Christopher R. Young
Administrative Law Judge

CRY: