

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

John F. Sodt,

Appellant,

v.

Case No. 11-MIS-07-0224

Department of Job and Family Services,

Appellee.

ORDER

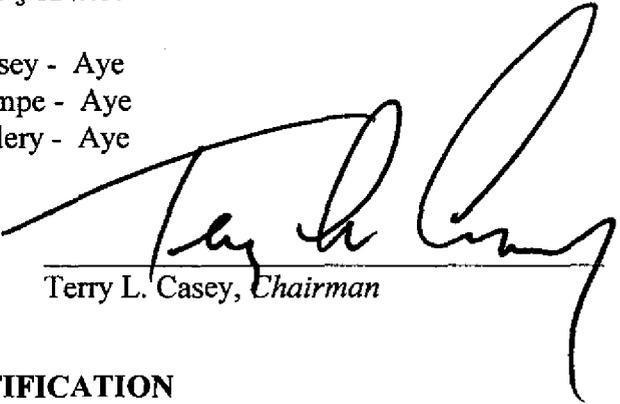
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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.



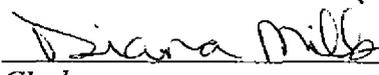
Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *Chairman*

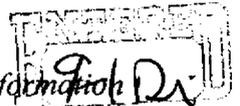
CERTIFICATION

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, September 1, 2011.


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

John F. Sodt

Case No. 11-MIS-07-0224

Appellant

v.

August 4, 2011

Department of Job & Family Services

Appellee

Marcie M. Scholl

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration upon Appellant's June 9, 2011, filing of an appeal from his change or "correction" of status from the classified to the unclassified service. After reviewing Appellant's appeal from his change or "correction" of status, it appears that Appellant, in essence, requests this Board to issue a declaratory judgment stating that Appellant is in the classified service rather than in the unclassified service.

It is true that when an Appellant seeks to invoke the jurisdiction of this Board, it is often necessary to determine initially whether an Appellant's position falls within the classified or alternatively the unclassified service. Yet, such a determination must be precipitated by an adverse personnel action, such as a removal or reduction, which either accompanied or followed an Appellant's change or "correction" of status. Indeed, under R.C. 124.03, the State Personnel Board of Review does not have the authority to issue declaratory judgments determining the classified or unclassified status of an employee's position. There is no other statute in R.C. Chapter 124, which invests such jurisdiction in the State Personnel Board of Review.

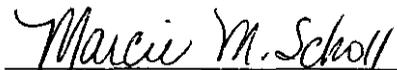
Designating a position as classified or unclassified is in itself a lawful action on the part of an appointing authority. See, in general, *Lawrence v. Edwin Shaw Hospital* (1986), 34 Ohio App. 3d 137; *Shearer v. Cuyahoga Cty. Hospital, Sunny Acres* (1986), 34 Ohio App. 3d 59 (citing *State, ex rel. Store v. Raschig* (1943), 141 Ohio St. 477). See, also, *Spindler v. Medina Cty. Board of Mental Retardation and Developmental Disabilities* (July 19, 1991, State Personnel Board of Review 91-INV-03-0164, Silver, ALJ, affm'd Full Board, August 26, 1992. While that appointing

John F. Sodt
Case No. 11-MIS-07-0224
Page 2

authority may or may not be mistaken in that designation, it is an issue that can only be determined whenever the jurisdiction of the State Personnel Board of Review is invoked in regard to another issue, as noted above.

Therefore, because Appellant has already received actual notice of a change or "correction" in status, should Appellant thereafter be adversely affected by a personnel action, Appellant may file another appeal with the State Personnel Board of Review. The Board, at that time, will determine whether it possesses jurisdiction over the subject matter of that appeal.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** this appeal for lack of subject matter jurisdiction.



Marcie M. Scholl
Administrative Law Judge

:mms