

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

Laverne Fudge,

Appellant,

v.

Case No. 11-REC-07-0220

Department of Job and Family Services
and
Department of Administrative Services,

Appellees.

ORDER

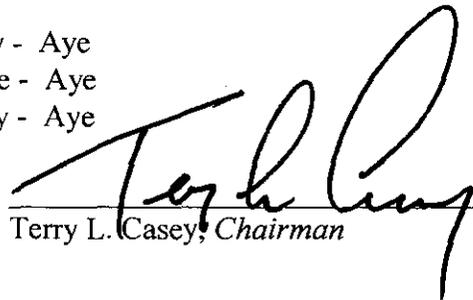
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 instant appeal be **DISMISSED** due to lack of subject matter jurisdiction and untimely filing, pursuant to O.R.C. § 124.03 and O.A.C. § 124-1-03(C).



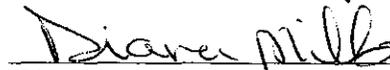
Casey - Aye
Lumpe - Aye
Tillery - Aye

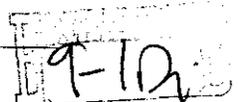

Terry L. Casey, *Chairman*

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**

Laverne Fudge,
Appellant

Case No. 11-REC-07-0220

v.

August 2, 2011

Department of Job & Family Services

and

Department of Administrative Services,
Appellee

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on August 2, 2011 upon the filing of an appeal by the Appellant, Laverne Fudge, on June 27, 2011. In her notice of appeal, Appellant Fudge stated she was appealing a recent reclassification which was received on May 19, 2011, that was effective May 22. On July 6, 2011, this Board sent out a questionnaire to Appellee and on July 21, 2011, Appellee filed its response. The response indicated that Appellant Fudge's classification of Information Technology Manager 2 did not change but that her status changed from classified to unclassified. To date, the Appellant has not filed any response to the previously issued questionnaire.

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Section 124.03 of the Ohio Revised Code establishes this Board's jurisdiction and it states, in pertinent part:

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

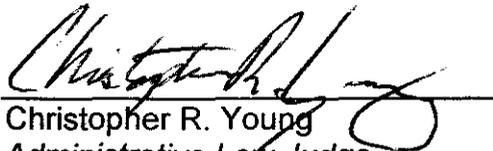
(1) Hear appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities or the director of administrative services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or 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.

As can be seen from reading the above statute, this Board does not possess jurisdiction over a change in an employee's status from classified to unclassified. In order for this Board's jurisdiction to be invoked, Appellant would have had to experience an adverse employment action. A change in Appellant's status from classified to unclassified without an accompanying adverse action does not invoke this Board's jurisdiction. This Board has no authority to issue a declaratory judgment stating that an employee is in the classified service rather than the unclassified service; whether or not an appointing authority's designation of a position is correct is an issue that can only be determined when this Board's jurisdiction has been invoked in regard to an adverse personnel action suffered by an employee. See *Crowley v. Board of Tax Appeals* (Oct. 23, 1991), PBR 91-MIS-08-0541; *aff'd* (Nov. 25, 1991), Full Board; *aff'd* (Feb. 3, 1992), Franklin Co., No. 91CVF12-9937, unreported.

Additionally, it should be noted that I also find that the State Personnel Board of Review is without jurisdiction to hear this appeal because the appeal was not filed within thirty (30) calendar days after Appellant received notice of the results of her job audit, as required by Ohio Administrative Code Section 124-1-03(C).

Therefore, it is my **RECOMMENDATION** that this appeal be **DISMISSED** due to a lack of subject matter jurisdiction and due to the appeal's untimely filing.


Christopher R. Young
Administrative Law Judge

CRY: