STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

MARK DZURENKO,

Appellant,

v. Case Nos. 11-REC-09-0332
11-INV-09-0333

DEPARTMENT OF REHABILITATION & CORRECTION,
LORAIN CORRECTIONAL INSTITUTION,

Appellee

ORDER

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, including 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 is **AFFIRMED**.

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, February 06, 2013.

Clerk

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

2-6-13 ec

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Mark Dzurenko	Case Nos. 11-REC-09-0332 11-INV-09-0333
Appellant	
v.	December 7, 2012
Department of Rehabilitation & Correction, Lorain Correctional Institution and Department of Administrative Services	
Appellees	Marcie M. Scholl *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on July 11, 2012. Present at the hearing were the Appellant, Mark Dzurenko, represented by Michael A. Moses, Attorney at Law; Appellee Department of Rehabilitation & Correction designee Ron Stevenson, Deputy Warden of Operations at Lorain Correctional Institution, represented by Matthew J. Karam, Assistant Attorney General; and Appellee Department of Administrative Services designee Ashley Hughes, Human Capital Management Manager.

The subject matter jurisdiction of the Board was established pursuant to sections 124.03 and 124.14 of the Ohio Revised Code.

STATEMENT OF THE CASE

Appellant Dzurenko testified he has been employed by Appellee Lorain Correctional Institution since January 1990 and with the Department since April 1986. He is currently classified as an Activity Therapy Administrator and has held that classification since January 1990. His immediate supervisor is Ron Stevenson and he has been supervised by him since November 2011. Appellant Dzurenko supervises General Activity Therapists 2 and works at Lorain and Grafton Correctional Institutions. He explained that Lorain is a reception center and he works there in the recreation area. He sets up programs to keep the inmates active. The inmates come to the recreation center one unit at a time and participate in volleyball, basketball, work out stations and watch movies. The programs are

available from 7:00 A.M. to 8:30 P.M. Inmates who work are called Cadre, and it is those inmates who run the activities in the evenings, early mornings and on weekends. They also have softball, basketball, and horseshoe leagues. Appellant Dzurenko testified his hours vary, as he is on an eighty hour flex schedule, but typically he works from 8:00 A.M. to 5:30 P.M.

Appellee's Exhibit B was identified by Appellant Dzurenko as his job audit packet. He testified the packet was still accurate and he stated he performs all of the job duties of his current classification of Activity Therapy Administrator. With regard to the classification specification, Appellant Dzurenko testified he performs all of the duties listed on the specification with the exception that he has no duties associated with the hospital.

Appellant Dzurenko testified that while he is at Lorain, he supervises three General Activity Therapists and a Recreation Officer. The inmates come with two officers and he supervises them. He approves leave time for the General Activity Therapists, completes their performance evaluations and can effectively recommend discipline. Appellant Dzurenko testified he does not create the budget for the recreation facility but he does complete requests to purchase. He signs off and justifies the purchase, takes it to the Warden for approval and then forwards it to the Business Office. Once the product is delivered, he signs off on the bill and turns it into the warehouse. He stated he works with vendors and liaisons with other agencies to obtain boxing or wrestling programs or other entertainment. Annually he reviews the policies and procedures for the recreation department. Since Lorain houses Level 3 inmates, he makes recommendations as to when the working inmates can participate. He also is a member of the Security Threat Group, which meets once a month and he supervises the barber shop for the inmates.

Grafton is across the street from Lorain and since June, 2008, Appellant Dzurenko has supervised two General Activity Therapists and one Recreation Officer at that location. He spends the afternoon at Grafton and while there, he is supervised by Linda Briggs. He testified he set up the music program and classes are offered. The inmates can form their own bands and he authorizes the purchase of band equipment for them. They are also permitted to have weight machines and he orders that equipment also. Appellant Dzurenko explained he has organized a yard day for the inmates, which is a large picnic with hot dogs, hamburgers, entertainment and recreation. He follows the same procedure at Grafton for the requests to purchase as he does at Lorain, with the only difference being that the

request also goes to the Deputy Warden. He testified he does more projects at Grafton than at Lorain and deals with a lot more groups, such as the Volunteers of America and the Red Cross. He also does yearly goals and objectives and quarterly reports for both locations.

Appellant Dzurenko testified he revises and develops policies more at Grafton then Lorain and he identified Appellant's Exhibit 30 as the policy on musical instruments. He stated he developed ninety percent of the policy and made recommendations as to what instruments the inmates would be permitted to have. Appellant's Exhibit 28 was identified as a memo recognizing him as the chairperson of a committee to review musical instruments. In looking at Appellant's Exhibit 7, he stated it is an inaccurate position description for his position. He testified he also goes to the camp, where inmates can go outside and work and it is physically separated from Grafton. He tries to get to the camp one or two times a week. Appellant Dzurenko stated he sets up programs at the camp as there is a lot of downtime there and he tries to keep it as active as possible. He testified his position description is not accurate as it does not list the two locations where he works.

Appellant Dzurenko testified he has been told he can buy what he needs and to use the I & E funds, which are generated by the commissary. He is part of an interview committee which recommends new hires. Appellant Dzurenko testified all of the applicants he recommended have been hired. He identified Appellant's Exhibit 2 as the classification specification for an Administrative Officer 2. Appellant's Exhibit 8 was identified as his position description at Grafton and he stated he performs all of the duties listed. Appellant's Exhibit 10 was identified as a layoff rationale that as a result of an employee being laid-off, Appellant Dzurenko was assigned duties at Grafton. Appellant's Exhibit 15 lists what inmates are permitted to do at the different institutions according to their levels. Appellant's Exhibit 16 was identified as an email to him from the Warden at Grafton in reference to an audit. Appellant Dzurenko testified he has five or six audit files at each institution which shows the activities offered to the inmates. Appellant's Exhibits 18 and 19 lists all of the equipment Appellant Dzurenko is responsible for at both institutions and the camp. Appellant's Exhibit 20 show the I & E funds which he and four others sign off on. Appellant's Exhibits 21 and 22 are performance evaluations which he completed and Appellant's Exhibits 23 and 27 are documents regarding staff time adjustments. Appellant's Exhibit 25 is an email Appellant Dzurenko wrote explaining new initiatives for reducing violence and Appellant's Exhibit 31 shows

that he is the only employee at Grafton who can authorize the purchase of shoes for the inmates.

Appellant Dzurenko confirmed that the General Activity Therapists only supervise inmates. He explained that the policy changes are done by committee, as no one person can change a policy. Appellee's Exhibit B was identified as his job audit packet, Appellee's Exhibit D was identified as a rebuttal to the audit and Appellee's Exhibit F was identified as the notification of the audit determination. Appellee's Exhibit H was identified as his job audit request form.

Ronald Stevenson testified he is employed at Lorain as the Deputy Warden of Operations and has held that position since approximately January 2011. He has been Appellant Dzurenko's immediate supervisor since November 2011. Mr. Stevenson testified there is an average of 1,400 inmates at Lorain, which is a reception institution with Level 3 inmates. That level of inmate requires more security, as there are five levels of security, with level one requiring the least security and level five requiring the most. There are approximately 500 long term offenders housed at Lorain. At Grafton, the camp consists of approximately 700 inmates.

Ashley Hughes is a Human Capital Management Manager with the Department of Administrative Services and is the manager of the audit section. She supervised Mr. Howard who retired after he completed the job audit of Appellant Dzurenko's position. Ms. Hughes identified Appellee's Exhibit A as Mr. Howard's report which determined that Appellant Dzurenko is properly classified in his current classification of Activity Therapy Administrator. She stated it was determined that Appellant Dzurenko could not meet the supervisory requirement of an Administrative Officer. She identified Appellant's Exhibit 1 as the classification specification for the Administrative Officer series. Ms. Hughes identified Appellee's Exhibits C, E and G as the questionnaire completed by Mr. Stevenson, the management designee position completed by Ms. Freeman and a letter from DAS to Director Mohr, respectively.

FINDINGS OF FACT

Since there was no discrepancy in any of the testimony of the witnesses as to the duties performed by Appellant Dzurenko, I find that the duties as described are the duties performed.

CONCLUSIONS OF LAW

After thoroughly reviewing the testimony of the witnesses and the documents admitted into evidence, it is clear that Appellant Dzurenko is properly classified in his current classification of Activity Therapy Administrator.

There is no dispute that Appellant Dzurenko performs all of the duties of an Activity Therapy Administrator and meets the classification concept of such. All parties agree that he performs those duties. The question then becomes if Appellant Dzurenko performs additional duties which would better place him in a different classification. After reviewing the classification specification for the Administrative Officer 2 classification, which is the classification Appellant Dzurenko believes is a better description of his duties, it is clear that he is properly classified as an Activity Therapy Administrator.

The class concept for an Administrative Officer 2 states as follows:

> The second managerial level class works under administrative supervision & requires extensive knowledge of management principles/ techniques, supervisory principles/techniques & public relations in order to plan, direct &coordinate activities of major division, section or bureau of state agency & supervise assigned staff.

The definitions of "section" and "division" are also defined and are as follows:

> Section: Comprised of two or more work units, with each unit having a minimum of two full-time permanent employees. At least one unit must be headed by a supervisory employee.
>
> Division: Comprised of two or more sections, with each section comprised of two or more work units as defined above. Each section must be headed by a subordinate supervisory employee, one of whom must be classified as Administrative Officer 2, 63132 or like exempt, classification compensated at Pay Range 14. Each section must carry out a different function.

One has to look no further than the supervisory requirement to realize that Appellant Dzurenko cannot meet the requirements of the class concept. He does not "...plan, direct & coordinate activities of major division, section or bureau...." as those terms are defined above. In order for him to supervise a "section" as that term is defined, he would have to supervise a supervisory employee and he does not. None of his subordinates are supervisors. While both he and his subordinates supervise inmates, inmates are not considered full-time employees like those employees who receive performance evaluations and leave time. Therefore, the supervision of inmates cannot be used to meet the definition of a "supervisory employee". Appellant Dzurenko cannot be said to supervise a "division" either as he does not supervise a section "headed by a subordinate supervisory employee".

Appellant Dzurenko argued that such interpretation cannot be correct, as applying the definition of "division" to an Administrative Officer 2 could mean that the Administrative Officer 2 would be supervising another Administrative Officer 2, which does not make much sense. While his argument does have merit, this Board cannot change the wording of a classification specification as it has no jurisdiction to do so. This Board must apply the wording of a specification as it is. In this case, in order to be classified as an Administrative Officer 2, the class concept state that one has to "coordinate activities of a major division or section" and this Board must abide the definitions given. Because Appellant Dzurenko does not supervise a subordinate supervisory employee, he cannot meet the requirements of the specification.

Another reason that the classification series of Administrative Officer does not apply to Appellant Dzurenko is the sentence which states:

> This classification series may not be used to cover any functions currently described by another existing classification specifically designed for the function.

The classification of Activity Therapist is another classification which is "specifically designed" for the function of providing and supervising activity programs for a special class. Therefore, the classification series of Administrative Officer cannot be used. The series purpose of the Activity Therapist classification specification states as follows:

> **SERIES PURPOSE**:
> **The purpose of the activity therapy occupation is to conduct, organize, coordinate and administer recreational programs (e.g., physical education, arts and crafts)** or medically approved specialty area programs (e.g., occupational, structured therapeutic, pre-vocational, vocational, adaptive sports activities, interactive computer access, card games, adapted aquatics, music therapy, art therapy, movement therapy, animal-assisted therapy (AAT), special events, outings, performing arts, evening group programs, video viewing) **for specific therapeutic and/or goal reaching purpose**. (Emphasis added).
>
> **At the managerial level**, incumbents plan treatment program or act as facility-wide administrator in institution and/or community; or **in adult correctional facility, plan, direct and coordinate the entire activity therapy program for special needs population or the entire general activity/recreation program for all inmates in general population.** Note: this series may be used in an institution and/or in a community setting. (Emphasis added).

As can be seen from reading the series purpose, it describes the job duties of Appellant Dzurenko. There is no other classification which describes his job duties better or more thoroughly.

Appellant Dzurenko argued that he is doing the work of two or three Activity Therapy Administrators since he works at Grafton, Lorain and the camp. He testified that this came about due to a previous abolishment by Appellee and that the additional duties he is performing were supposed to be assigned to someone else as stated on the rationale for the job abolishment. This Board does not have any jurisdiction to enforce the Appellee's rationale for the abolishment of another employee's position. Appellant Dzurenko does not have any standing to come before this Board and argue a deficiency in the rationale of another's position abolishment or to argue that the Appellee did not follow what was stated in its rationale. This was essentially the basis of Appellant Dzurenko's request for investigation. Since this Board has no jurisdiction to review the previous abolishment, it is my **RECOMMENDATION** that the investigation be **TERMINATED**.

It appears that Appellant Dzurenko has taken on and accepted his additional duties and has performed them in an exceptional manner. Unfortunately, the classification plan does not reward an employee for doing more of the work that is encompassed in a specification – the employee is still performing the duties of the specification, albeit two or three times over. Beyond commending Appellant Dzurenko for stepping up to the challenge and performing his additional duties well, this Board cannot reward him with a higher classification and higher pay range for doing the same duties, just at different locations.

Therefore, inasmuch as the evidence has established that Appellant Dzurenko meets all of the job duties and requirements of his current classification of Activity Therapy Administrator, it is my **RECOMMENDATION** that the job audit determination be **AFFIRMED**.

Marcie M. Scholl

Marcie M. Scholl
Administrative Law Judge

:mms