STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

DEBRA K. PAYNE,

Appellant,

v.

Case Nos. 12-ABL-05-0093
12-REC-05-0094
12-MIS-05-0095

DEPARTMENT OF HEALTH,

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 appeals are **DISMISSED** for lack of jurisdiction, pursuant to Ohio Revised Code Section 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, January 16, 2013.

Clerk

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

FILED
1-16-13 ec

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Debra K. Payne,	Case Nos. 12-ABL-05-0093 12-REC-05-0094 12-MIS-05-0095
Appellant	
v.	November 6, 2012
Department of Health,	
Appellee	Jeannette E. Gunn *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on pursuant to Appellee's Opposition to Appellant's Motion for Discovery, filed with this Board on August 17, 2012. Appellee asserted in its attached Memorandum in Support that the Board lacks jurisdiction to consider the above-referenced appeals, and attached documentation to its memorandum in support of such assertion. Appellant filed no response to Appellee's Opposition and Memorandum.

The information contained in the record indicates that Appellant was employed by Appellee as an Affirmative Action Manager 1. That position was unclassified, and Appellant executed an Acknowledgement and Waiver prior to her appointment to the position in 1999, acknowledging that the position fell within the unclassified civil service. Appellant was notified that her unclassified appointment was being revoked on or about May 4, 2012. She subsequently filed an appeal with this Board on May 14, 2012, requesting a review of the abolishment of her position (SPBR Case No. 12-ABL-04-0093), her reclassification (SPBR Case No. 12-REC-05-0094) and "retaliation" (SPBR Case No. 12-MIS-05-0095).

As a result of the revocation of her unclassified Affirmative Action Manager 1 position, Appellant exercised her fallback rights and was placed in her previously-held classification of Labor Relations Officer 3. Appellant argued in supplemental information provided to the Board that the duties she performs in the Labor Relations Officer 3 position exceed those which are proper for the classification.

CONCLUSIONS OF LAW

Civil service employment in the State of Ohio is divided into the classified and unclassified services. This Board does not generally possess subject matter jurisdiction over an appeal of an adverse job action brought by an unclassified employee, since Ohio Revised Code Section 124.03 limits this Board's jurisdiction to actions concerning classified employees. Appellant was an unclassified employee at the time of the revocation of her appointment, therefore, this Board lacks jurisdiction to review either the revocation of that appointment or whether Appellee acted properly in processing Appellant's fallback rights. *State ex rel. Asti v. Ohio Dept. of Youth Servs.*, 107 Ohio St.3d 262, 2005-Ohio-6432. The Board also lacks jurisdiction to consider Appellant's general claim that the revocation of her appointment was retaliatory.

No information is contained in the record to indicate that Appellant's position was abolished or that her position was reclassified, as those terms are utilized in Chapter 124 of the Revised Code. See, O.A.C. 124-1-02(B) and (X). Should Appellant contend that she is working outside her present classification, she may request that the director of the Department of Administrative Services or an individual authorized to perform the director's functions review the classification of her position, pursuant to O.A.C. 123:1-3-01(B), unless otherwise prohibited by a collective bargaining agreement. A subsequent job audit decision or refusal to audit Appellant's position might then form the basis of a new appeal to the Board.

Accordingly, because Appellant occupied a position in the unclassified service at the time of the adverse job action from which the above-referenced appeals arise, I respectfully **RECOMMEND** that they be **DISMISSED** for lack of jurisdiction, pursuant to R.C. 124.03.

Jeannette E. Gunn
Administrative Law Judge

JEG: