STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

GREGORY L. MARR,

Appellant,

v. Case Nos. 12-REC-06-0143
12-INV-08-0180

MONTGOMERY COUNTY BOARD OF COMMISSIONERS,

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 Case No. 12-REC-06-0143 is **DISMISSED**, as Appellant was **PROPERLY CLASSIFIED** as an Associate Engineer during the relevant time period in question; and Case No. 12-INV-08-0180 is **TERMINATED**, as Appellant fails to allege any basis for investigation by which this Board is jurisdictionally permitted either under Sections 124.03(A) or 124.56 of the Revised Code.

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, March 21, 2013.

Clerk

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

3/21/13

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Gregory L. Marr,	Case No. 12-REC-06-0143 Case No. 12-INV-08-0180
Appellant	
v.	February 5, 2013
Montgomery Co., Board of Commissioners,	
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 August 27, 2012 at 10:00 a.m. Present at the hearing was the Appellant, Gregory L Marr, who appeared *pro se,* and the Appellee, the Montgomery County Board of Commissioners, was present through its designee, Charles Schaffer, a Senior Engineer in the Environmental Services Department, the Appellant's immediate supervisor, was represented by Julie A. Droessler, an Assistant Prosecuting Attorney. The Appellant, Gregory Marr and the Appellant's supervisor, Charles Schaffer, along with David Holbrook, a Human Resources Representative who completed the audit offered testimony at this record hearing.

On or about February 29, 2012, the Appellant, Gregory Marr, requested a job audit of his position as an Associate Engineer, classification specification number 85512. On or about June 1, 2012, the Appellant, Gregory Marr, received the of the audit request which notified him that his proper classification for his position was that of an Associate Engineer. After receiving the job audit results, the Appellant timely filed his appeal to this Board on or about June 19, 2012. It should be noted that the aforementioned was stipulated to, as well as, the subject matter jurisdiction of this Board was established.

Before proceeding onto the record hearing, the Appellant, Gregory Marr, stated that although he is presently classified as an Associate Engineer, he is seeking to be reclassified to the position of a Plans Examiner or a Project Coordinator. Further, it should be noted that the Appellant after filing the appeal contesting his reclassification, then filed an investigation request on or about August 10, 2012, surrounding the various issues which were discussed during the

reclassification appeal, and thus is hereby as a matter of judicial economy consolidated into the instant appeal as the same issues were present.

The first witness to testify was Mr. Gregory Marr, who is currently classified as an Associate Engineer for the Montgomery County Board of Commissioners serving in the Environmental Services Department. The witness explained that he began employment with the County in October 1994 as an Assistant Engineer, was later transferred into the Sanitary Engineers Department in October 1996 and was promoted to the position of Associate Engineer in 1997. At some point the witness testified that the Sanitary Engineers Department was reorganized and renamed the Water Services Department on or about in 2006, and was in 2009 merged with the Solid Waste Department and was renamed the Environmental Services Department, which it is today. The witness when questioned testified that Mr. Charles Schaffer was his supervisor from 2009 up until August 2011, approximately six months before his audit request. Further, the witness testified that in August 2011 that due to reorganization in the office Mr. Brian Faruki, a Backflow Meter Services Supervisor, up until July 2012, assigned him duties with the Backflow Prevention/ Cross Connection Control Program. Furthermore, the witness testified that since July 2012 Mr. John Donnelly, an Associate Engineer, but is filling the vacant "Engineering Supervisor" position, has been assigned as his supervisor, and is the main concern for filing the above noted investigation request.

The witness then identified Joint Exhibit 1 as his employee information and specifically on page 5 of said exhibit his position on a questionnaire outlining his job duties as an Associate Engineer. The witness explained in great detail that the main purpose of his job was the Program Management of the Backflow Prevention/Cross Connection Control Program using Tokay backflow software and the Foundation Drain Disconnect (FDD) Program using Microsoft access database. Additionally, the witness explained that his job consisted of plan review of application/drawings for new backflow prevention devices and the input of that data into city works permitting software for the issuance of the permits to the contractors for the installation of the backflow preventers.

With respect to the Program Management of the Backflow Prevention/Cross Connection Control Program the witness testified that this group of task consists approximately 50% of his time which included but, were not limited to, providing consultation to various stakeholders about the backflow prevention requirements, along with reviewing and evaluating the backflow preventer information listed for

each water service for completeness and accuracy in Tokay backflow prevention database software. Moreover, the witness testified that he also has to prepare monthly Test Report recertification letters and forms for the annual recertification of existing backflow prevention devices in their department service area using the Tokay software, as well as serving as the primary contact with the Tokay personnel for updates and changes to the software.

With respect to conducting plan review of the "Application" forms and drawings submitted by contractor/plumbers for new domestic and irrigation backflow preventers at commercial buildings and residential houses the witness explained that this took approximately 20 percent of his time in completing these series of tasks.

With respect to acting as the Program Manager for the Foundation Drain Disconnect Program the witness explained that this took approximately 25% of his time. The witness explained that this program is in place for older homes with no sump pump initially installed, in which they had their foundation drains connected directly into their sanitary sewer drain line, to be converted into having sump pumps installed.

The next line of questioning then centered on Mr. Brian Faruki's involvement in his supervisory role over the Appellant. The witness testified that prior to the reorganization that took place in July 2011 there were approximately 30 people in the group known as the Engineering Group, wherein he was employed as an Associate Engineer. The witness when questioned testified that after the July 2011 reorganization took place Mr. Faruki, a Backflow Meter Supervisor, became his supervisor on or about August 2011 lasting for approximately the next six months. The witness testified that at that time Mr. Faruki supervised approximately 15 subordinate employees in the newly formed Backflow Group, a group organized under the Support Services division within Environmental Services, which was headed up by Ms. Patti Van Arsdale. The witness testified that this group was in later reorganized on or about January 2012 into the Private Development Backflow Group, a group in which he still works in today. Witness explained that there are approximately 7 individuals in this group being headed up by Mr. Charles Schaffer, a Senior Engineer, Mr. John Donnelly, an Engineering Supervisor, himself as an Associate Engineer, Ms. Jennifer Hinch, an Engineering Tech, two Inspector 2s and a clerical processing specialist. It should be noted that Mr. John Donnelly began his employment with the agency on or about June 25, 2012, and began his supervisory

role over the Appellant at that time in the Engineering Supervisor's position. (Look at table of organization in attachment 13 in Appellant's appeal documentation).

Next, the witness testified that he works Monday through Friday from 8:00 a.m.to 5:00 p.m. on first shift. Additionally, the witness testified that the primary mission of the backflow group is the prevention of backflow contaminants. Specifically, when questioned, the witness explained that he does not provide any supervisory duties of any subordinate employees, such as effectively recommending discipline, approving any leave request nor does he act on behalf of his supervisor at any time. However, the witness testified that he did from time to time help train some individuals regarding the Tokay software.

Specifically, when questioned regarding the Associate Engineer's classification specification the witness testified that he did not participate in the development of plans covering long range engineering assignments by conducting research on defined areas, developing engineering designs for specific elements of new construction or modifications to existing facilities, or prepares cost projections, or prepares and maintains relevant project documentation, secures quotations on materials as required, nor assists in the contractor selection process by preparing materials and equipment specifications and securing quotations on the same. Further, the witness testified that he does not monitor price agreements or budgeted expenses, as well. However, the witness testified that he does operate a motor vehicle to conduct field visits to construction sites and visit existing locations to observe progress and contract compliance, and notifies the project manager of any potential issues that may impact the quality, schedule and other key aspects of the project.

When asked questions regarding the Plans Examiner classification specification the witness testified that he did not formulate and implement policies and procedures for plan review and approval, examine or review plans, specifications, and drawings of buildings and structures and altercations or changes to be made in existing structures of commercial and residential construction to ensure compliance with the Ohio Administrative and Revised Codes. The witness testified further that he would not approve plans or inform the owner of violations of any contract but, he would in the reviewing the application for the backflow program make necessary corrections for final approval. Moreover, when questioned, the witness testified that he also did not supervise any Residential Plans Reviewers. Additionally, the witness testified that he also did not provide consultation to the

public, industry, and other agencies regarding engineering, architectural, mechanical or civil problems associated with building designs, but would assist with technical questions regarding any backflow prevention problems. When asked if he has maintained a Master Plans Examiners Certification, something that is considered a minimum class requirement in the classification specification for a Plans Examiner, testified in the negative.

The witness testified when asked if there's any duties that he may have left out in his testimony explained that he does from time to time act as a lead worker over other engineering technicians and that he helped develop the handbook regarding the backflow application, as well some forms regarding the same. Additionally the witness testified he also installed the City Worker software.

Upon questioning by Appellee's counsel, the witness testified with regards to the backflow application forms that he developed, was completed in 1997 and that the Tokay program was more or less a records management device and that he really does not input any data into the Tokay program. Upon further questioning, the witness testified that he is not an architect and that he did not pass his Plans Examiner exam, as well.

The next witness to testify was Mr. A. Charles Schaffer, a Senior Engineer for Montgomery County in the Environmental Services Division. The witness explained that he is been employed for approximately last 22 years by Montgomery County, while during the last 10 years he's held the position of Senior Engineer. Further, when questioned, the witness testified that prior to July 2011 he was the Appellant's immediate supervisor in the Engineering Group, and that after the reorganization Mr. Marr moved into meter services and that Mr. Brian Faruki became his functional supervisor, and that after the "dust settled" Mr. Marr now being in the Backflow Group is now being supervised once again by himself. However, the witness did note that even though there was an Associate Engineer/Engineering Supervisor directly under him and above Mr. Marr on the organizational chart, now recently occupied by Mr. John Donnelly, he still possesses some supervisory duties over the Appellant. Along this line of questioning, the witness testified that he is very familiar with Mr. Marr's job duties with respect to the tasks he performs in Environmental Services.

The witness then identified Joint Exhibit 2, page 2 of 6, and explained that he was the one that actually filled out the audit questionnaire part to be completed by

the supervisor. The witness testified that he did get input from Mr. Faruki and Mr. Denny Horstman, an Inspector 2, when he filled out this form, as well. Specifically, when questioned, if the Appellant's testimony regarding his job duties and/or responsibilities were accurate, Mr. Schaffer answered in the affirmative, as he was in the hearing room and heard the same.

The last witness to testify was Mr. David S Holbrook, a Human Resource Representative for Montgomery County. When questioned, the witness testified that he conducted an on-site audit of the Appellant's position on or about April 12, 2012. The witness testified that after a thorough review of Mr. Marr's job duties and/or responsibilities he found that Mr. Marr was properly classified as an Associate Engineer. The witness identified Exhibit 3, as a series of documents containing among other things a May 30, 2012 letter notifying Mr. Marr that he was properly classified as an Associate Engineer, along with his appeal rights to this Board.

Further, when questioned, the witness testified that he reviewed the classification specification of a Plans Examiner and noted that Mr. Marr did not meet the minimum qualifications for that classification, as he did not have the correct licensure, nor did he provide supervision as called for in the specification. Moreover, the witness testified that he reviewed the classification specification of an Engineer In performing his audit of the Appellant's position, and again noted that Mr. Marr was not a registered professional engineer, something that is called for in the specification, as well. As such, the witness reiterated that Mr. Marr duties and/or responsibilities, while not being the best that of an Associate Engineer, was a proper classification for Mr. Marr to hold.

FINDINGS OF FACT

There was no real discrepancy between the Appellants' characterization and the duties that he performed and those of the testimony of his direct supervisor, Mr. A. Charles Schaffer, Senior Engineer for Montgomery County in the Environmental Services Division. Therefore, I find as a matter of fact, the Appellant perform the duties about which he 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.

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 also consider the relation between the classification specifications at hand and the 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 the effected parties. *Gordon v. Ohio Department of Administrative Services* (March 31, 1988), Franklin Co. 88AP-0122, unreported, 1988 WL37094.

As previously mentioned, the Appellant, Gregory Marr, stated that although he is presently classified as an Associate Engineer, he is seeking to be reclassified to the position of a Plans Examiner or a Project Coordinator's position. However, as was noted by the undersigned the Montgomery County Board of Commissioners Human Resources found that the Appellant was properly classified as an Associate Engineer. After a thorough review of the above mentioned classification specifications, it is my recommendation that the Appellant was properly classified as an Associate Engineer. It should be noted that at the close of the record hearing the undersigned went on the Montgomery County's website to review classification specifications and noted that there was no such classification specification of a Project Coordinator as was requested by the Appellant herein. However, it should be noted that Mr. David Holbrook, the Human Resource Representative for

Montgomery County reviewed the Associate Engineer, Plans Examiner and Engineer classification specifications when providing a rationale for his findings.

As was previously stated when looking up the classification of a Project Coordinator, a classification that the Appellant wished to be placed into, was not found in the classification system for Montgomery County, thus the undersigned Administrative Law Judge rejected this classification as an appropriate classification for the Appellant to be placed.

When reviewing the classification of an Engineer, the classification that Mr. David Holbrook, the Human Resource Representative for Montgomery County reviewed the as result of the instant job audit, the undersigned Administrative Law Judge rejected this classification specification as not being the best fit for the Appellant herein. As can be seen by the classification specification of an Engineer, a person occupying a position must be a registered professional engineer who plans and prioritizes assigned projects involving new construction and modifications to existing facilities, all while assisting in the development of policies guidelines and budget expenses. As was revealed by the evidence, the Appellant did not possess the licensure as a registered professional engineer, nor did he perform the duties outlined in the classification specification of an Engineer.

With respect to the Plans Examiner classification specification, another classification the Appellant wished to be placed into was rejected by the undersigned Administrative Law Judge, as well. Contained within the Plans Examiner classification it calls for one, among other things, to provide supervision to Residential Plans Reviewers and to have a Master Plans Reviewer Certification, both of which the Appellant does not perform or have. Additionally, the evidence revealed that the Appellant did not formulate or implement policies and procedures for plan review and approval, examine and review plans, specifications and drawings of buildings and structures and alterations or changes to be made in existing structures of commercial and residential construction to ensure compliance with the Ohio Administrative or Revise Codes and either approving the plans or informing the owner of any violations and necessary corrections for final approval, as called for in the specification. Moreover, the evidence revealed that he Appellant did not provide consultation to public, industry and other agencies regarding engineering, architectural, mechanical or civil problems associated with building designs, or assist building firms with technical questions on plan designs. However, the evidence did reveal that the Appellant did review application forms for

completeness and answer questions regarding the Backflow Program. Again as previously mentioned the Plans Examiner classification specification was rejected by the undersigned Administrative Law Judge as not being an appropriate classification for the Appellant, as he did not provide supervision for any subordinate staff or hold the correct licensure.

After reviewing Mr. Marr's testimony with regard to his job tasks and/or responsibilities it became apparent when reviewing the Montgomery County Board of Commissioners Human Resources classification specifications for the classification of an Associate Engineer it was the most appropriate fit for the Appellant. The testimonial and admitted documentary evidence revealed that the Appellant for the most part ran the Backflow and Cross Connection Control Program and Foundation Drain Disconnect Program, wherein he conducted field visits to residential and commercial sites to inspect those projects and or sites for compliance and to notify the manager of any potential issues impacting quality, schedule and other key aspects of the program. Again, the evidence revealed that the Appellant did not provide supervision for any subordinate staff, nor was supervision called for in the Associate Engineer's classification specification.

In order to make a determination which classification best fit Mr. Marr, the undersigned considered the testimonial evidence, as well as the documentary evidence contained within the case file regarding his job duties and/or responsibilities. After a thorough review of the above noted classification specifications, it is my recommendation that the Appellant was properly classified as an Associate Engineer. It should be noted that this classification was not a perfect fit, but was the one classification that fit best.

With respect to the Appellant's investigation request it should be noted that unlike a court of general jurisdiction, this court has only the authority granted to it by statute. Specifically, Ohio Revised Code Sections 124.03(A) and 124.56 are the statutes which enable this Board to perform an investigation. Further, it should be noted that the Board has no jurisdiction to investigate claims of how the agency assigns supervisors or whether they are allowed to be supervising subordinate employees, or investigating a reorganization that took place with no layoffs involved, approximately a year ago.

Ohio Revised Code Section 124.03 deals with the powers and duties of the State Personnel Board of Review. Ohio Revised Code Section 124.03 reads, in part:

> The State Personnel Board of Review shall exercise the following powers and perform the following duties:
>
> (A) 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 his functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under division(E) of Section 124.14 of the Revised Code . . .

* * *

Ohio Revised Code Section 124.56 permits this Board to make an investigation only when the Board has reason to believe:

> . . . any officer, Board, commission, head of a department, or person having the power of appointment, layoff, suspension, or removal has abused such power by making an appointment, layoff, reduction, suspension, or removal of an employee under his or their jurisdiction in violation of Chapter [124.] of the Revised Code. . .

Consequently, the Appellant's request for an investigation under Ohio Revised Code Sections 124.03 and 124.56 must, of necessity, focus upon the actions of the appointing authority. In the instant appeal, the Appellant, in essence, does allege an abuse of authority by the appointing authority in connection with its assigning of supervisor whom he believes holds the same classification specification as an Associate Engineer. Additionally, Mr. Schaffer testified that record hearing that while

Mr. Donnelly may provide functional supervision over Mr. Marr, he is in fact his supervisor.

Ohio Revised Code Section 124.56 limits the State Personnel Board of Review's investigatory powers to cases in which an appointment, layoff, reduction, suspension, or removal has been made in the derogation of Revised Code Chapter 124. Where a complaint does not allege in any of these triggering devices, the State Personnel Board of Review is without jurisdiction to proceed with an investigation. *Okapal v. University of Toledo*, (1982) PBR 82-INV-10-3019 and *Logsdon v. University of Cincinnati*, (1982) PBR 82-INV-08-2690. As can be seen by the Appellant's investigation request, none of the above noted grounds trigger this Board's investigatory powers has been alleged. In fact, the Appellant has neither been reduced, laid off, suspended or removed from his position, thus, the State Personnel Board of Review lacks jurisdiction over the subject matter of this appeal with regard to his instant allegation.

RECOMMENDATION

Therefore, it is my **RECOMMENDATION** that the Appellant, Gregory Marr, was **PROPERLY CLASSIFIED** as an Associate Engineer, during the relevant time period in question, and that the Appellant's appeal **DISMISSED.**

Additionally, since the Appellant fails to allege any basis for investigation by this Board which is jurisdictionally permitted either under Sections 124.03(A) or 124.56 of the Revised Code, I respectfully **RECOMMEND** that the State Personnel Board of Review **TERMINATE** this investigation, as well.

Christopher R Young
Administrative Law Judge

CRY: