STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

PHYLLIS DENNIS-SMITH,

Appellant,

v.

Case Nos. 12-INV-04-0054
12-MIS-04-0055

HAMILTON COUNTY JOB AND FAMILY SERVICES,

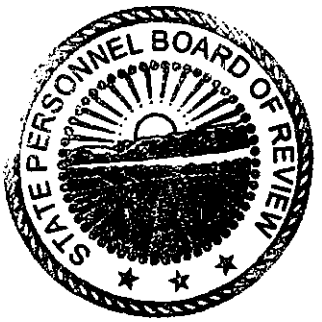
Appellee

ORDER

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

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 appeals be **DISMISSED** for lack of subject matter jurisdiction pursuant to Ohio Revised Code § 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, November 2, 2012.

Clerk

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

11-2-12

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Phyllis Dennis-Smith	Case Nos. 12-INV-04-0054 12-MIS-04-0055
Appellant	
v.	September 21, 2012
Hamilton County Job & Family Services	
Appellee	Marcie M. Scholl *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

Appellant Dennis-Smith filed a request for an investigation on March 21, 2012, and also checked the box marked "other" on the notice of appeal form, stating "EEO/disposition failure to follow policy and procedure related to job promotion". On May 2, 2012, this Board issued a letter to Appellant Dennis-Smith informing her that she failed to allege with particularity any violation of the civil service law. She responded on May 16, 2012, stating that a section chief position was posted on June 22, 2011 and that Appellee did not follow their policies and procedures in the interview process. Appellee was asked to respond to Appellant Dennis-Smith's allegations and they filed their response on June 8, 2012. Appellant Dennis-Smith was then given an opportunity to reply to Appellee's response and she did so on June 29, 2012.

Appellant Dennis-Smith also filed an internal grievance relating to the promotion process. The documents submitted by Appellee show that the grievance was investigated and heard by a Juvenile Court Human Resources Director and she found there was no violation of the Appellee's policies. Appellant Dennis-Smith also raised issues of discrimination but this Board does not possess jurisdiction to consider issues of discrimination. Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute and pursuant to section 124.03 of the Ohio Revised Code, allegations of discrimination do not fall within this Board's purview.

As for the allegations of abuses within the promotional process or with regard to the denial of a promotion, this Board also does not possess jurisdiction over such allegations. The Board derives it's authority from section 124.03 of the Ohio Revised Code, which states, in pertinent part, as follows:

> 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 the denial of a promotion. The courts have also stated in several opinions before them that this Board does not have any authority to investigate or to hear appeals of alleged abuses of promotion. The case of *Ketron v. Ohio Department of Transportation* (1991), 61 Ohio App.3d 657, concerned two employees of the Department of Transportation who filed an investigation request with this Board alleging that the Department was not adhering to the promotion process as described in Chapter 124. of the Ohio Revised Code. This Board reviewed the request and terminated the investigation on the basis of a lack of subject matter jurisdiction. The Appellants appealed and the Court of Appeals held that:

> . . . The legislature did not include the term "promotion" in R.C. 124.03(A), and we decline to engage in judicial legislation by inserting the word "promotion" into the statute . . . (*Ketron* at pg. 661).

The Court continued on to state the terms "assignment" and "reassignment" as found in section 124.03(A) of the Ohio Revised Code, are not synonymous with the term "promotion" and, therefore, section 124.03(A) of the Ohio Revised Code does not provide a right to appeal to this Board in the case of an alleged abuse of promotion. See also *Singh v. State* (1982), 7 Ohio App.3d 269.

Also, in the present case, Appellee correctly points out that Hamilton County has a County Personnel Department which administers civil service and has created its own administrative regulations related to examination, recruitment, application and appointment, which take precedence over the Ohio Revised Code sections pertaining to these matters.

Since Appellant Dennis-Smith has not alleged any of the specific areas over which this Board has jurisdiction, it is my **RECOMMENDATION** that these appeals be **DISMISSED** for a lack of subject matter jurisdiction pursuant to section 124.03 of the Ohio Revised Code.

Marcie M. Scholl

Marcie M. Scholl
Administrative Law Judge

:mms