STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Audrie Bender,

Appellant,

v. Case Nos. 2012-REC-07-0163
2012-MIS-07-0164

Department of Rehabilitation & Correction, Marion Correctional Institution, and Department of Administrative Services,

Appellees.

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 Appellant be **RECLASSIFIED** to the position of an Administrative Professional 3, classification specification number 16873, following the first pay period after she sent in her audit request.

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, August 23, 2013.

Clerk

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

8/23/13

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Audrie Bender, *Appellant* v. Dept. of Rehab. & Corr., Marion Correctional Institution and Dept. of Administrative Services, *Appellees*	Case No. 12-REC-07-0163 Case No. 12-MIS-07-0164 July 16, 2013 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 February 6, 2013 at 10:00 a.m. Present at the hearing was the Appellant, Ms. Audrie Bender, who appeared *pro se,* and the Appellee, the Department of Rehabilitation and Correction, Marion Correctional Institution, was present through its designee, Ms. Amy Parmi, Staff Counsel, and the Appellant's immediate supervisor was present, Ms. Jennifer Martin, a Labor Relations Officer who were represented by Mr. Timothy M. Miller and Ms. Amanda L. Scheeser, Assistant Attorneys General. The Appellant, Ms. Audrie Bender and the Appellant's immediate supervisor, Ms. Jennifer Martin, a Labor Relations Officer 2, along with Ms. Morgan Webb, a Human Capital Management Senior Analyst, who completed the audit offered testimony at this record hearing.

It should be noted that at the outset of the record hearing Appellee's counsel explained that this appeal arose from the fact that the classification specifications of Secretary and Executive Secretary, a classification that the Appellant held previously herein, were changed and/or modified by the Department of Administrative Services to reflect that individuals holding one of those specifications would be placed into the Administrative Professional classification specification series.

On or about April 26, 2012, the Appellant, Ms. Audrie Bender, requested a job audit of her position as an Administrative Professional 1, classification specification number 16871, previously known as a Secretary's classification specification. On or about July 10, 2012, the Appellant, Ms. Audrie Bender, received the results of the audit request which notified her that her proper classification for her position was that of an Administrative Professional 1. After receiving the job audit results, the Appellant timely filed her appeal to this Board on or about July 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, Ms. Audrie Bender, stated that although she is presently classified as an Administrative Professional 1, she is seeking to be reclassified to the position of an Administrative Professional 4. However, in making a determination in this matter the undersigned Administrative Law Judge reviewed the classification specifications of an Administrative Professional 2 and 3, as well.

STATEMENT OF THE CASE

The first witness to testify was Ms. Audrie Bender, who was held position of Administrative Professional 1 since July 2012. When questioned, the witness testified that previously she held the position of Secretary for the preceding 24 years at Marion Correctional Institution (MCI), and that she is seeking to be reclassified to the position of an Administrative Professional 4. Further, when questioned, the witness explained that Ms. Jennifer Martin, A Labor Relations Officer 2, has been her supervisor since 2011, and that her previous supervisor was the Deputy Warden of Special Services. The witness explained that Ms. Martin only supervises her. The witness then identified Appellee's Exhibit 1, page 1 as an accurate table organization that identifies her position as an Administrative Professional 1 under Ms. Martin, who in turn answers to Warden Jason Bunting. However, the witness testified that the table of organization would probably be most accurate if it described all the people that she worked for, that being; the Deputy Warden of Operations/Security, the Deputy Warden of Special Services, the Warden's Assistant, the Unit Management Administrator and the Warden, along with Ms. Jennifer Martin the Labor Relations Officer 2. Further, the witness testified that she is assigned to work in Labor Relations Office, but that she is physically located Warden's Secretarial office, as she sits with Ms. Hamilton, an Administrative Professional 4, just outside the Warden's office. The witness explained that Ms.

Martin's office is located at the end of the administrative hallway approximately 75 feet down the hall.

Next, the witness testified that she works 40 hours per week full-time on first shift Monday through Thursday, 10 hours a day from 7:00 a.m. to 5:30 p.m. The witness explained, when questioned, if she supervises any individuals, testified in the negative. However, witness did state that she did give work direction to inmates from time to time. Ms. Bender testified that she has oversight of the Community Service Program for MCI, a program which she started, that utilizes inmate manual labor for projects that the institution runs for nonprofit organizations, which she approves as the Warden's designee, although there is no monies involved or exchanged. The witness stated that another program that she runs at the institution, at least for the last twelve years, is the Ohio Wildlife Rescue Program, wherein people from the Ohio Wildlife Rescue provide training to the inmates to provide animal care to rehabilitate injured animals, and again mentioned that there is no monies involved were exchanged. Furthermore, the witness testified that she is also the Chair of the Employee's Activity Committee where there is money involved, as fundraisers are held by the inmates, to raise money for some inmate activities, where she takes the monies raised, gets a receipt from the cashier, puts it on a debit card where she can sign this out.

The witness was then questioned regarding Appellee's Exhibit 2, page 3 of 6, outlining the job duties in order for importance of an Administrative Professional 1. When questioned, the witness testified that she does provide secretarial assistance through routine administrative tasks, as well providing secretarial assistance in a technical environment and transcribes formats and/or assists in formatting, typing and proofing correspondence and reports, not only for Ms. Martin, but for all the individuals that she works for described above. Additionally, the witness explained that while she does not serve as a lead worker over any office support staff she does perform a variety of clerical duties. The witness testified that she, a long ago formulated a "death notice policy", wherein if a family member were to call in to tell the inmate of a member of that family had passed away, she came up with the proper procedures would be utilized to notify that inmate. Further, the witness testified that she does as part of her job tasks and duties, direct a number of phone calls during the day as if someone were to call in and hit the button "inmate affairs", that being line 4, it would come to her to answer. Moreover, the witness testified that as part of her duties in the Labor Relations office she also logs in grievances for Ms. Martin, and gives them to Ms. Martin for resolution. However, when questioned, the

witness testified that she never participates and/or answers the grievances as part of her tasks and/or job responsibilities.

The witness was then questioned regarding Appellee's Exhibit 2, page 4 of 6, outlining the job duties in order for importance of an Administrative Professional 2. When questioned, the witness testified that she does relieve superior of routine administrative duties, makes recommendations regarding program activities and researches and analyzes materials and provides information on programs and provides technical information and advice to administrators to aid in decision-making. However, the witness testified she does not assist in developing new procedures or serve as a liaison between the administrator and his subordinates or transmits those decisions and directives and/or represent the administrator at meetings and/or conferences. While the witness testified that she does manage the business function of the administrator's office sometimes, along with purchases supplies, she does not prepare any budget, does not prepare payroll, does not process bills for payment, or equipment and/or keeps fiscal personnel records and/or interviews prospective employees. Moreover, the witness testified that she did not perform any public-relations duties, but that she did respond to inquiries and complaints and does work on special assignments as directed. The witness testified in regards to recommending program activity she explained that she would talk to the administrator regarding what inmates, where and when those inmates were to be utilized in the program she oversees. Further, the witness testified that she is in charge of accounting for the money received regarding the Ohio wildlife rescue program, if any birds or animals are sold.

The witness was then questioned regarding Appellee's Exhibit 2, page 5 of 6, outlining the job duties in order for importance of an Administrative Professional 3. When questioned, the witness testified that she does perform non-routine administrative tasks in the performance of her job, in addition to routine administrative tasks. When questioned if she independently formulated decisions and/or judgments involving non-legal interpretation policies and procedures, the witness explained that she does prepare for the Warden's assistant inmate visitation restrictions and/or visitor restrictions on inmates after reviewing the Rules Infraction Board's recommendation on an inmate's suspension, wherein she looks at the recommendation, reviews the appropriate penalty should be associated with the infraction, makes that decision and prepares the paperwork for the Warden's assistant to sign. Further, the witness testified in accordance with the job duties in order of importance of an Administrative Professional 3 the witness testified that she

would also monitor the spending and the maintaining of various fiscal records with the programs and committees which she has been assigned, along with preparing a monthly payroll for the offender/inmates if they trade services. However, the witness testified outside of working on the programs or committees which she testified to earlier she did not prepare fiscal and personnel reports, or assist in budget preparation for the labor relations office, or interview job applicants. Further, the witness testified that she also did not act as a lead worker over any lower-level administrative and/or office support staff.

When asked if she performs various secretarial tasks and/or performs clerical tasks, the witness testified that she most certainly does, as she prepares confidential correspondence, takes and transcribes dictation, handles sensitive phone calls and channels various calls to the appropriate parties for their response.

The witness was then questioned regarding Appellee's Exhibit 2, page 6 of 6, outlining the job duties in order for importance of an Administrative Professional 4. When questioned, the witness testified that when reviewing this classification specification it was exactly the same as an Administrative Professional 3, with the exception that it did not have, "and if assigned, acts as lead worker over lower- level administrative and/or office support staff." Further, the witness stated that she would've answered everything the same as she had previously just answered when questioned regarding the job duties under the Administrative Professional 3 classification specification.

When questioned as to what duties that she performs in the her typical day the witness testified that the Warden has asked/assigned her, on occasion, the task of answering "Kites", or complaints/inquiries from inmates, along with keeping protective order files on the inmates, handle transfer requests and handling offender death notices, and if approved, arrange for the transportation of the inmate and handle any accompanying fees which would apply. With respect to the job tasks that Mr. Brinkley, the Warden's assistant, assigns her, testified that she handles the visiting restrictions, and the accompanying gathering of the information thereon, along with talking and gather information for the Assistant Attorney Generals, as Mr. Brinkley coordinates some of the litigation with legal, as well. Moreover, when questioned, the witness testified that with respect to the Deputy Warden Operations, the Deputy Warden of Special Services and the Unit Manager Administrator she would simply perform secretarial duties for those above named individuals.

Next, the witness identified Appellee's Exhibit 6, pages 3 through 5, and agreed when questioned that these are duties that she filled out in the job audit questionnaire packet, duties that she performed back at that time and that she still performs today, with the exception that she no longer sits as a panel member on the Rules Infraction Board.

Upon questioning by counselor Miller, the witness identified Appellee's Exhibit 3, as a position description of her position, which she is never seen before today, but was in agreement with most of the duties listed thereon. When questioned, the witness testified that she's never written or formulated a policy, but that she follows them. The witness also explained, when questioned with respect to channeling phone calls, there are policies in place wherein she follows them to direct calls to the appropriate person or persons.

The next person to testify was Ms. Jennifer Martin, a Labor Relations Officer 2 at MCI, who explained that she is the immediate supervisor of the Appellant herein, a position she's held since January 2011. Specifically, when questioned, if the Appellant's testimony regarding her job duties and/or responsibilities were accurate, Mr. Martin answered in the affirmative, as she was in the hearing room and heard the same. Further, when questioned, the witness testified that she would add to her duties in that she independently recommends the assigning of hearing officers, when she does assign her work regarding disciplinary packets, as she does know the strengths and weaknesses of the hearing officers. Moreover, the witness testified that although she does evaluate Ms. Bender, she does not approve Ms. Bender's leave, as the Warden signs off on those. Additionally, the witness testified that Ms. Bender works under her control for only approximate 25% to 30% of the time while she is there, as others utilize her skills.

Upon questioning by counselor Scheeser, the witness testified that all the Warden's direct reports give leave forms to the Warden.

Upon questioning by the Appellant, Ms. Martin testified that she thought the audit package and the duties listed therein were accurate.

The next person to testify was Mr. Jason Bunting, the Warden at MCI, a position he's held for the last 14 months. The witness explained that he has worked at MCI for approximately last 16 years, and that his prior position he held was that of a Deputy Warden of Special Services for approximately 4 years. Along this line of

questioning, the witness testified that he is very familiar with the Appellant and the job duties that she performs. The witness then identified Appellee's Exhibit 1, the table of organization for the administrative staff on page 1, and testified that Ms. Hamilton reports directly to him, not Ms. Bender, although she would perform work for him.

The last person to testify was Ms. Morgan Webb, a Human Capital Management Senior Analyst within the Classification and Compensation Unit a position she's held for the Department of Administrative Services, for approximately last 2 1/2 years. When questioned, the witness explained that she is familiar with the results of the instant reclassification appeal. The witness testified that after a thorough review of Ms. Bender's job duties and/or responsibilities she found that Ms. Bender was properly classified as an Administrative Professional 1, classification specification number 16871.

Ms. Webb testified when reviewing the classification of an Administrative Professional 4, a position which Ms. Bender wanted to be reclassified into, she found that as stated in the class concept there is a reporting structure that was not met for her to be placed into the above noted classification. Moreover, the witness testified that she also reviewed the classification specifications of Administrative Professional 2 and Administrative Professional 3 and found that the Appellant did not meet the class concepts of either one of those classification specifications, and thus rejected those as being appropriate fit for the Appellant herein. When questioned, the witness identified Appellee's Exhibit 7 as her audit recommendation.

FINDINGS OF FACT

There were no real discrepancy between the Appellants' characterization and the duties that she performed and those of the testimony of her direct supervisor, Ms. Jennifer Martin, a Labor Relations Officer 2. Therefore, I find as a matter of fact, the Appellant performed the duties about which she 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, Ms. Audrie Bender stated that although she is presently classified as an Administrative Professional 1, she was seeking to be reclassified to the position of an Administrative Professional 4. However, as was noted by the undersigned the Ohio Department of Administrative Services, through its designee, Ms. Morgan Webb, a Human Management Capital Senior Analyst found that the Appellant was properly classified as an Administrative Professional 1, classification specification number 16871. After a thorough review of the above mentioned classification specifications, it is my recommendation that the

Appellant was not properly classified as an Administrative Professional 1, but should have been reclassified to an Administrative Professional 3.

As an alternative to the Administrative Professional 1, the undersigned has reviewed, in addition to the Administrative Professional 4 classification specification, both the Administrative Professional 2 and 3 classification specifications in fashioning a remedy in this instant appeal.

The Series Purpose language for the Administrative Professional series reads, "the purpose of the administrator professional occupation is perform a variety of clerical, procedural and no straight of task as principal clerical and administrative support position for supervisor and/or office staff." At the lower level, incumbents provide general secretarial assistance through routine administrative tasks and/or provide secretarial systems for requiring training and technical terminology and/or served as a lead worker over office support staff. At the second level, incumbents relieve superior of routine and administrative duties. At the third level, incumbents perform non-routine administrative tasks and provide secretarial support for the office or perform non-routine administrative tasks and act as a lead worker over lower-level administrative and/or office support staff. Lastly, at the forth level, incumbents perform non-routine administrative tasks and provide secretarial support for the office, and also act as person in charge over lower-level secretarial and/or clerical employees in the office. However, it was noted in the forth level, incumbents holding this classification is restricted to the agency executive staff defined as the top three layers.

After reviewing the testimony of Ms. Bender with regard to her job tasks and/or responsibilities it became apparent the classification specification of an Administrative Professional 1's classification specification it was not the most appropriate fit or "best fit" for the Appellant. When reviewing the classification specification of an Administrative Professional1's class concept it revealed that an incumbent holding that position provides general secretarial assistance by performing routine administrative tasks. Further, under the first and second job duties in order of importance of the above noted classification specification one is to provide secretarial assistance and/or to provide secretarial assistance in technical environment and transcribes formats and/or assists in formatting, types and proofs standard correspondence and reports. While the evidence in this case revealed that the Appellant herein performed these tasks embodied in the classification

specification noted above, she simply had more responsibility in what is called for in this classification.

Ohio Revised Code Chapter 124 does not define "routine". However, the American Heritage Dictionary does define "routine" to mean:

> ... a prescribed and detailed course of action to be followed regularly; standard procedure. A set of customary often mechanically performed procedures or activities.... American Heritage Dictionary, at page 1074 (Second College Edition)

The evidence at the hearing revealed that the Appellant performed routine administrative tasks as defined above, but in addition the Appellant also performed non-routine administrative tasks, as well. The evidence revealed, by a preponderance thereof, in addition to performing general secretarial duties, the Appellant's job duties included non-routine administrative tasks, by serving as the Chairman for the Community Service Program; serving as the Chairman of the Wildlife Program; serving as the Chair for the Employee Activity Committee; serving as a committee member for the Employee Recognition Committee. Serving on all of these committees called for the Appellant to independently formulate decisions and or come to judgments on the same. Additionally, the evidence also revealed the Appellant independently recommended the assigning of hearing officers regarding disciplinary packets, as she did know the strengths and weaknesses of the hearing officers, along with answering "Kites", or complaints/inquiries from inmates, along with keeping protective order files on the inmates, handle transfer requests and handling offender death notices, and if approved, arrange for the transportation of the inmate and handle any accompanying fees which would apply. With respect to the job tasks that Mr. Brinkley, the Warden's assistant, assigned her, her job tasks also revealed that she handled the visiting restrictions, and the accompanying gathering of the information thereon, along with talking and gather information for the Assistant Attorney Generals, as Mr. Brinkley coordinates some of the litigation with legal, as well.

With respect to the classification specification of an Administrative Professional 2, which calls for one to relieve superior of routine administrative tasks, this also was rejected by the undersigned has not been appropriate fit as the evidence revealed that the Appellant perform non-routine administrative tasks, in addition to routine administrative tasks.

With respect to the classification specification of an Administrative Professional 3, which calls for one perform non-routine administrative tasks *and if assigned* (Emphasis Added), act as a lead worker over lower-level administrative and/or office support staff. Again, as noted above the Appellant performed non-routine administrative tasks by independently formulating decisions and judgments regarding the serving on the various committees, along with handling a variety of duties from a variety of individuals, which all called for her to independently formulate decisions and/or judgments, all outside of what would be considered a "routine" administrative task. While the evidence revealed that the Appellant herein did not act as a lead worker over lower-level administrative and/or office support staff, that within itself does not make it so that the Appellant cannot be placed into this classification, as the classification specification only calls for it, "and if assigned", a task that she was not assigned. Moreover, when looking at the second and third paragraphs of the job duties in order for importance calling for one holding this classification specification to perform secretarial tasks and clerical tasks, this is exactly what she did in addition to performing non-routine administrative tasks. Therefore, after reviewing the testimonial and documentary evidence regarding Ms. Bender's job tasks and/or responsibilities it became apparent that the classification specification of an Administrative Professional 3 was the "best fit" for the Appellant.

When reviewing the classification specification of an Administrative Professional 4, which also calls one to perform non-routine administrative tasks, is different than the Administrative Professional 3's classification specification, as it calls for one in that position in the series purpose at the forth level, that incumbents holding this classification is restricted to the agency executive staff. The evidence in this case revealed that the Warden had a number of direct reports, along with an Administrative Professional 4, who answered directly to him. The Appellant did not solely answer directly to the Warden, as her immediate supervisor, Ms. Jennifer Martin, as a Labor Relations Officer 2, who was herself one of the Warden's direct reports, was the one who she reported to on a day-to-day basis. Thus, the classification specification of an Administrative Professional 4 was rejected by the undersigned Administrative Law Judge as not being an appropriate classification for the Appellant to be placed into.

RECOMMENDATION

Therefore, it is my respectful **RECOMMENDATION** that the Appellant, Ms. Audrie Bender should be **RECLASSIFIED** to the position of an Administrative Professional 3, classification specification number 16873, following the first pay period after she sent in her audit request.

Christopher R. Young
Administrative Law Judge

CRY: