

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Bruce E. Goff,

Appellant,

v.

Case No. 2013-MIS-08-0221

Environmental Protection Agency,

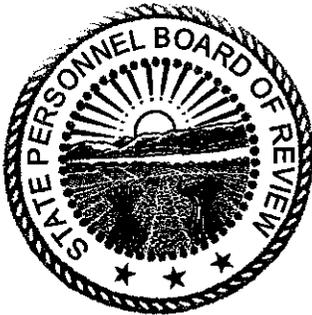
Appellee,

ORDER

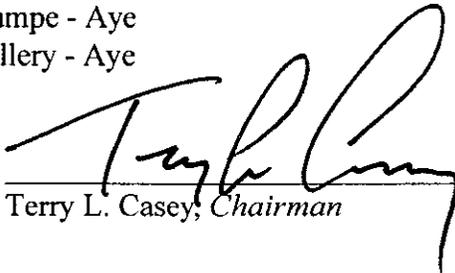
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

The Full Board has thoroughly examined the entirety of the record. This includes conducting 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. And, our Board carefully considered the parties' submissions at the Oral Argument held before the Full Board. *It is noted that Appellee appears to have reconsidered its decision and has re-assigned Appellant the duties that he previously performed.* Accordingly, this matter is now moot and there is no further justiciable issue before the Board.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** as **MOOT**, pursuant to R.C. 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, September 03, 2014.


Clerk

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

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Bruce E. Goff

Case No. 2013-MIS-08-0221

Appellant

v.

April 18, 2014

Environmental Protection Agency

Appellee

Marcie M. Scholl

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon the filing of a Notice of Appeal by Appellant Goff on August 27, 2013; Appellant Goff's December 19, 2013, filing of a request that a change be made to his Notice of Appeal; and Appellee's Response to Appellant's request to change his appeal notice, filed on January 22, 2014.

Appellant Goff submitted his Notice of Appeal on a pre-printed form. The form contains several boxes for the Appellant to check in order to let this Board know what action the Appellant is appealing. Appellant Goff checked several boxes on his Notice of Appeal form, one being "Retaliatory Discipline Whistleblower" and a case number of 2013-WHB-08-0224 was assigned to that appeal. He also checked another box, "Other" and typed in "Change PD Change of position description-duties". That appeal was assigned the above-referenced case number and a Notice of Appeal form was mailed by this Board to the parties on September 10, 2013, to inform them of the case number and designation assigned to this appeal.

On December 19, 2013, Appellant Goff filed with this Board a request to change his appeal designation from "Other" to that of "Reduction in Pay or Position". He stated he "did not carefully review the applicable laws and rules and did not know the legal meaning of 'Reduction in Position'. I thought this meant in a simple reading, that my classification or pay range had been reduced." The problem with Appellant Goff's argument is twofold, as pointed out in Appellee's Response. First, Appellant Goff waited approximately three months to request a change in the appeal designation. If he truly thought his designation was wrong, he had notice in September of the designation, but waited until December to request a change, thus making his appeal untimely. Secondly, his initial thought that a "Reduction in Pay or Position" means that his "classification or pay range has been reduced" is correct. In his request to make a change, Appellant Goff is confused about the application of administrative rule 123:1-31-01 of the Ohio Administrative Code. That provision would only apply if Appellant Goff was reduced for a disciplinary reason and was

given a section 124.34 of the Ohio Revised Code Order of Reduction. That is not the case here. Therefore, his statement that he was not given notification and notified of his appeal rights do not apply in this instance.

Instead, Appellant Goff is alleging his position description was changed with no change in his pay. (There has been no allegation of any reduction in his pay). That is exactly what an alleged reduction in classification is. If the case would proceed to hearing, evidence would be taken on if Appellant Goff's duties were changed enough that if an audit were to be performed on his position, it would result in a lower classification. Therefore, Appellant Goff's initial belief that a "Reduction in Position" meant that his classification had been reduced, is correct. He could have checked that box at the time he filed his appeal. Instead, he waited an additional three months, thereby making him untimely. An alleged reduction case must be filed within three months of receiving notice. According to his Notice of Appeal form, he received verbal notice on August 19, 2013, thereby giving him until November 19, 2013, to file an appeal. Once again, this would have been approximately two months after he was notified by this Board that his appeal was designated as "Miscellaneous". Appellant Goff waited an additional month, until December 19, 2013, to request a change. That was an untimely appeal.

Appellant Goff checked a box and even wrote additional information that his position description was changed. An appointing authority always has the authority to change an employee's duties as long as such change does not result in a reduction. Since Appellant Goff did not timely indicate an alleged reduction in position, this Board does not possess any jurisdiction to review an employee's position description. Appellant Goff cannot argue he did not know what the term "reduction in position" meant when in his request to change his appeal form, he states exactly what it is. The bottom line is that he is untimely with his appeal.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** due to a lack of subject matter jurisdiction and that Appellant Goff's request to change his appeal be **DENIED** due to untimeliness.



Marcie M. Scholl
Administrative Law Judge