

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

Cheryl Levy,

Appellant,

v.

Case No. 2013-REC-10-0262

Youngstown State University,

Appellee,

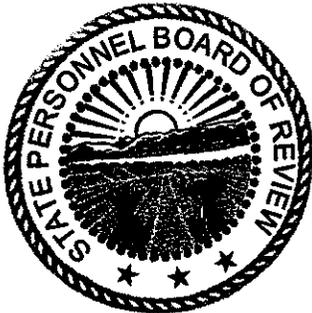
ORDER

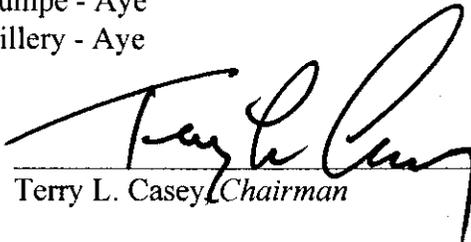
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, 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 Appellee's determination that Appellant's position is properly classified as Administrative Assistant 1 is **AFFIRMED**, and that Appellant's position be **RETAINED** in that classification.

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 28, 2015.


Clerk

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

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE February 4, 2015. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then **YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.**

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2013-REC-10-0262

Transcript Costs: \$175.50 Administrative Costs: \$25.00

Total Deposit Required: * \$200.50

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: February 12, 2015

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

Cheryl Levy,

Case No. 2013-REC-10-0262

Appellant

v.

October 28, 2014

Youngstown State University,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on April 7, 2014. Appellant was present at the hearing and was represented by Stanley J. Okusewsky III. Appellee Youngstown State University was present through its designee, Steve Lucivjansky, and was represented by Assistant Attorney General Timothy Miller.

The subject matter jurisdiction of the Board was established pursuant to sections 124.03 and 124.14 of the Ohio Revised Code.

**CONSOLIDATED STATEMENT OF CASE
AND FINDINGS OF FACT**

Appellant has been employed by Appellee since 1993; in January 2012 she was appointed to an Administrative Assistant 1 position in Appellee's Office of Equal Employment Opportunity and Diversity (Office of EOD). The Director of the Office of EOD resigned in October 2012; Appellant remained as the only employee in that Office for approximately five and one-half months until the Office was reorganized to its present form as the Office of Diversity and Multi-Cultural Affairs and a new Director was appointed. Appellant requested a position audit in April 2013.

Prior to the appointment of a new Director, Appellant maintained the activities of the Office of EOD by publicizing and obtaining facilitators and speakers for events and committees sponsored by the Office, including the Hispanic Heritage

Planning Committee and other community outreach programs. She completed and maintained the Equal Opportunity and Affirmative Action compliance reports in the absence of the Director, although she did not sign the reports on behalf of Appellee.

Pursuant to the reorganization of the Office of EOD, some of the activities formerly performed by staff of the Office of EEO and Diversity were reassigned to employees in other Offices. Appellant was responsible for providing both hard copy and electronic files and data regarding those reassigned activities to the appropriate individuals. She also served as the liaison for the search committee tasked with hiring Directors for the newly reorganized Offices, and maintained the search committee's files.

Following the reorganization and creation of the Office of Diversity and Multi-Cultural Affairs (Office of Diversity), and the April 2013 appointment of Appellant's current supervisor, Dr. Sylvia Imler, as Director, Appellant retained responsibility for facilitating specific community outreach groups and committees. She prepares agendas and correspondence for several committees and attends some committee meetings as Dr. Imler's representative. Appellant created and implemented a Hispanic Heritage Planning Committee policy for the selection of award recipients.

Appellant monitors and oversees four different office budgets, including the Office of Diversity's departmental budget, which utilizes University funds; the community service budget, which holds community program funds; the diversity leadership budget, which holds funds specific to that activity; and the unrestricted funds budget, which holds grant funds. Appellant reviews bills and other expenses to be paid, however, Dr. Imler retains approval authority.

In Dr. Imler's absence, Appellant answers questions and provides information regarding the Office of Diversity's programs. Appellant does not supervise full-time employees but does oversee two student workers.

Appellant researches and analyzes existing activities within the Office of Diversity and makes recommendations regarding those activities and their associated policies and procedures. Appellant researches and has input into the development of new activities and events, as well as policies and procedures for those activities, but Dr. Imler is the individual who makes the final decision regarding their implementation.

CONCLUSIONS OF LAW

The primary criteria for this Board to consider when determining the most proper classification for a position are classification specifications, including the function statement, the job duties outlined, and the percentages of time devoted to each job duty. *Klug v. Dept. of Admin. Services*, No. 87AP-306, slip op. (Ohio Ct. App. 10th Dist., May 19, 1988). Unless there is a dispute as to what constitutes the classification specification, no factual issues arise with respect to the classification. Rather, as in all cases of construction, the question becomes one of law as to how the relevant facts relate to the classification specification. *Klug, supra*.

In the instant appeal there is no debate as to what comprises the pertinent classification specifications. Therefore, this Board must consider the relation between the classification specifications at hand and 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 any of the affected parties. *Gordon v. Dept. of Admin. Services*, No. 86AP-1022, slip op. (Ohio Ct. App. 10th Dist., March 31, 1988).

As a general rule, Appellants seeking reclassification to a higher position must demonstrate that they meet substantially all of the qualifications of the higher position. *Harris v. Dept. of Admin. Services*, No. 80AP-248, slip op. (Ohio Ct. App. 10th Dist., September 25, 1980); *Deist v. Kent State Univ.*, No. 78AP-28, slip op. (Ohio Ct. App. 10th Dist., May 23, 1978.) The incumbent need not perform every duty enumerated within the body of the specification for his or her position to fall within a particular classification specification; it is sufficient if all of the job duties actually performed fall within those specified for the classification. See *Klug, supra*. The class concept and/or series purpose of each classification title, however, sets forth the mandatory duties that must be performed by an incumbent for at least twenty percent of his or her work time.

* * * * *

The classification series considered in this appeal was Administrative Assistant, series 6312.

The series purpose for the Administrative Assistant series is to assist in program direction by relieving superior of administrative duties and assisting in

program direction. The Administrative Assistant 1 and 2 classifications require, respectively, that incumbents perform "routine" and "non-routine" duties on their supervisor's behalf. The Administrative Assistant 2 classification further requires incumbents to formulate and implement program policy.

* * * * *

Appellant's position is currently classified as Administrative Assistant 1. The parties agreed that, at a minimum, Appellant performs duties sufficient to place her in the Administrative Assistant 1 classification.

The class concept for the Administrative Assistant 1 classification provides that employees must "... assist in program direction by relieving superior of routine administrative duties & make recommendations & assist in developing new procedures & programs." The class concept for the Administrative Assistant 2 classification provides that employees must "... assist in program direction by relieving superior of non-routine administrative duties & formulate & implement program policy ..."

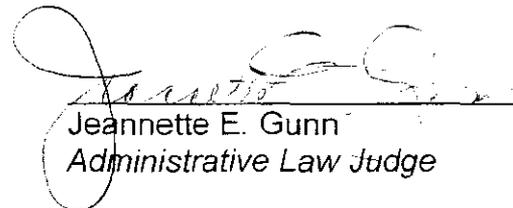
In the context of the Administrative Assistant classification series, I find that "program direction" refers to the overall mission or operation of the Office of Diversity. I further find that "program policy" refers to policies related to the overall mission or operation of the Office of Diversity, i.e. departmental policies.

Testimony and evidence presented at record hearing was sufficient to demonstrate that Appellant devotes the majority of her working time to relieving her supervisor of administrative duties to assist in program direction as required by the series purpose for the class. Information presented at hearing demonstrated that Appellant provides information and feedback to Dr. Imier regarding the overall departmental policies and procedures of the Office of Diversity and Multi-Cultural Affairs, but does not independently formulate and implement departmental policies. Although testimony demonstrated that Appellant has created and implemented policy for at least one community outreach group that works with Appellee, the Hispanic Heritage Planning Committee, a policy adopted and used by that committee is not a departmental policy of the Office of Diversity.

I find that the duties performed by Appellant require discretion and knowledge of the goals and activities of the Office of Diversity and are non-routine in nature. In order to properly be placed in the Administrative Assistant 2 classification, however, Appellant must also formulate and implement program policy. Upon an examination and consideration of all of the information contained in the record, I find that Appellant does not formulate and implement program policy as required by the class concept for the Administrative Assistant 2 classification.

The record also reflects that Appellant was responsible for maintaining the operations of the Office of EOD during the five and one-half month reorganization process which eventually resulted in the creation of the Office of Diversity. No evidence was presented, however, indicating that Appellant formulated or implemented department policy during that time period which would warrant her being placed a higher classification on a temporary basis during the reorganization period.

I find that Appellant does not perform all of the mandatory duties required by the Administrative Assistant 2 class concept and her position may not be properly placed in that classification. Therefore, I respectfully **RECOMMEND** that Appellee's determination that Appellant's position is properly classified as Administrative Assistant 1 be **AFFIRMED**, and that Appellant's position be **RETAINED** in that classification.



Jeannette E. Gunn
Administrative Law Judge