

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

Karin Carlson,

Appellant,

v.

Case No. 2013-REC-10-0353

Department of Mental Health and Addiction Services,
and
Department of Administrative Services,

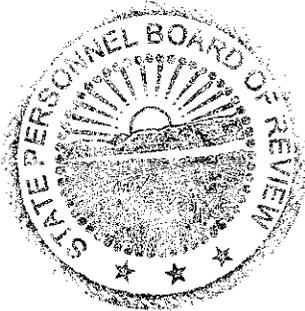
Appellees,

ORDER

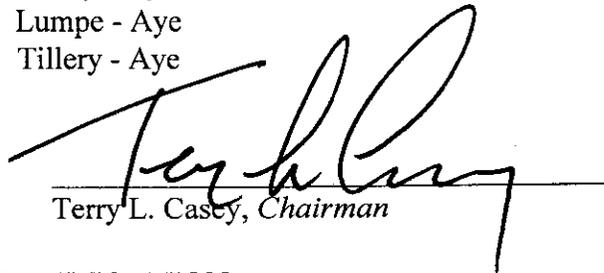
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellant's position be **RECLASSIFIED** to Alcohol and Drug Program Administrator 2 (Prevention), classification number 69386, effective the payroll period beginning October 20, 2013.



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 21, 2016.



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 January 28, 2016. 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-10-0353

Transcript Costs: \$66.00 Administrative Costs: \$25.00

Total Deposit Required: * \$91.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: February 5, 2016

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

Karin Carlson

Case No. 13-REC-10-0353

Appellant

v.

October 13, 2015

Department of Mental Health and
Addiction Services

and

Department of Administrative Services,
Human Resources Division,

Appellees

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's timely appeal of the reclassification of her position. Pursuant to a study conducted by Appellee Department of Administrative Services (DAS), the classifications of Management Analyst Supervisor (MAS) 1 and 2 were removed from the state classification plan and incumbent employees' positions were subsequently reclassified. Appellant's position was reclassified from MAS 1, classification number 63215, to Planner 3, classification number 85313, effective the payroll period beginning October 20, 2013.

A record hearing was held in the instant appeal on December 12, 2014. Appellant was present at the hearing and appeared *pro se*. Appellee Department of Mental Health and Addiction Services (Mental Health) was present at record hearing through its designee, Legal Counsel Julie Smith; Appellee DAS was present at record hearing through its designee, Human Capital Management (HCM) Manager Bobbi Lind.

Jurisdiction of the Board was established pursuant to R.C. 124.03 and 124.14.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

Appellant Karin Carlson presently occupies a position assigned to Appellee's Office of Prevention and Wellness, and classified as Planner 3. Her job title is Synar/FDA Manager. Appellant's immediate supervisor is Tammy Collins, Deputy Director of Appellee's Office of Prevention and Wellness; at the time of DAS' position audit, Appellant's supervisor was Surendra Adhikara.

Appellant provided DAS with information regarding her job duties as part of the MAS study conducted by DAS, however, due to changes within Appellee's organizational structure, Appellant's supervisor and job duties have changed since she completed her initial audit questionnaire. She was transferred to her present assignment in March 2013.

The primary purpose of Appellant's position is to manage the Synar and FDA tobacco compliance programs. These programs monitor retail compliance with restrictions that prevent and enforce youth access to tobacco. Appellant is responsible for ensuring that required compliance checks are carried out by Ohio Department of Public Safety (ODPS) personnel assigned to perform that function and for monitoring compliance with all contractual obligations and federal regulations for both programs. She is responsible for problem-solving and serves as the contact person for both programs.

Since the State of Ohio implemented the FDA program, she has been the individual tasked with developing the system and procedures for implementation. Appellant is responsible for identifying ways to align the requirements and responsibilities of both programs and for problem-solving as needed. Appellant reviews processes, submits reports and approves expenditures for both programs, develops program budgets, writes contracts, creates procedures and protocols, and represents the State of Ohio at federal and state meetings.

Appellant coordinates and submits the Office of Prevention and Wellness' portion of the Substance Abuse Prevention and Treatment (SAPT) block grant, which accounts for approximately twenty percent of the overall grant. Since her March 2013 transfer to her present position, Appellant no longer performs duties related to data analysis or state behavioral health efforts. She does not perform duties directly related to the provision of mental health services. Appellant does not supervise any other employees.

CONCLUSIONS OF LAW

Pursuant to O.R.C. 124.03(A), this Board is empowered to hear appeals of employees in the classified state service from final decisions of appointing authorities or the director of administrative services relative to, *inter alia*, refusal of the director of administrative services, or anybody authorized to perform the director's functions, to reclassify an employee's position, with or without a job audit under O.R.C. 124.14(D). ORC. 124.14(D)(2) provides that the Board is to consider anew reclassifications and may order the reclassification of an employee's position to such appropriate classification as the facts and evidence warrant. The Board's decision must be consistent with the applicable classification specifications.

The primary criteria for this Board to consider when determining the most proper classification for a position are classification specifications, including the class concept, 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*.

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). The Board will consider evidence related to the job duties performed by Appellant from the date the job audit was requested through the date of record hearing.

As a general rule, parties 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*. O.A.C. 123:1-7-15, however, notes that the class concept of each classification title 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 for Planner, Mental Health Administrator, Program Administrator and Alcohol & Drug Program (Prevention) were considered in conducting the review of Appellant's job duties.

The purpose of the Planner occupation is to formulate and implement plans for scientific, technical or professional programs and/or projects. The class concept for Planner 3, which is the classification presently assigned to Appellant's position, states that incumbents perform as principal liaison and project coordinator for planning effort in development, delivery, maintenance and evaluation of planning projects, programs and/or services. Although testimony at record hearing indicated that Appellant does serve as a principal liaison and program coordinator, I find that the Synar and FDA tobacco prevention programs are not "planning projects, programs and/or services," as described in the Planner classification series class concepts or illustrative job duties sections of the classification specifications. Accordingly, I find that Appellant's position is not properly classified as a Planner 3.

The purpose of the Mental Health Administrator occupation is to plan, direct, implement and monitor all non-medical program services to be delivered institution-wide to persons who are mentally ill and/or mentally retarded/developmentally disabled in order to enhance their abilities to function within society. Testimony at record hearing established that Appellant does not perform duties of this nature or deliver services to the identified population, therefore, I find that her position is not properly placed in the Mental Health Administrator classification.

The purpose of the Program Administrator occupation is to provide program direction by relieving a superior of administrative duties. As set forth in the class concept for the classifications included in the Program Administrator classification series, incumbents at all levels are required to formulate and implement program policy. Although testimony at record hearing indicated that Appellant does relieve her supervisor of some administrative budget-related duties, program policies for the Synar and FDA programs are established at the state and/or federal level. Appellant does develop and implement procedures and protocols for the programs she coordinates, but does not formulate program policy. Because Appellant does not perform this mandatory duty, see O.A.C. 123:1-7-15, her position may not properly be placed in the Program Administrator classification series.

The Alcohol & Drug Program (Prevention) classification series is restricted for use by the Department of Alcohol & Drug Addiction Services (ODADAS) only; ODADAS merged with Appellee Department of Mental Health on July 1, 2013. Appellee submitted a table of organization that reflects the organizational structure of the Office of Prevention and Wellness, demonstrating that the classification series is currently in use by Appellee's employees, therefore, I conclude that it is proper to expand availability of the classification series to Appellant.

The purpose of the Alcohol & Drug Program (Prevention) occupation is to monitor and administer drug prevention programs; incumbents monitor drug prevention and/or health and wellness promotion programs and, at the administrative level, develop statewide programs and supervise assigned staff. Testimony and evidence presented at record hearing demonstrated that Appellant is responsible for managing the Synar and FDA tobacco compliance programs; both of these programs may properly be described as health and wellness promotion programs. Appellant develops the system and procedures for implementing the programs within the State of Ohio. I find that the scope and nature of the duties performed by Appellant are sufficient to place her position in the Alcohol and Drug Program Administrator 2 (Prevention) classification.

Karin Carlson
Case No. 13-REC-10-0353
Page 6

Therefore, based upon the above analysis and review, I respectfully **RECOMMEND** that Appellant's position be **RECLASSIFIED** to Alcohol and Drug Program Administrator 2 (Prevention), classification number 69386, effective the payroll period beginning October 20, 2013.



Jeannette E. Gunn
Administrative Law Judge