

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Larry Wiech,

Appellant,

v.

Case Nos. 2013-REC-11-0318
2013-RED-11-0319

Department of Insurance, and,
Department of Administrative Services, Human Resources Division,

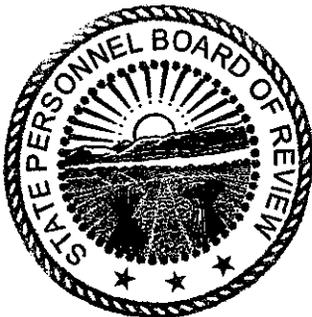
Appellees,

ORDER

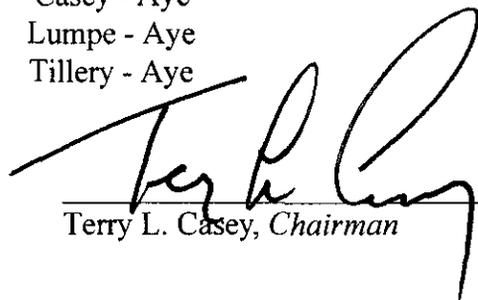
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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 Appellant's position be **RECLASSIFIED** as Program Administrator 2, classification number 63123, pursuant to O.R.C. §§ 124.03 and 124.14 and that Appellant's appeal from an alleged reduction in pay and/or position is **DISMISSED**, since Appellant was not reduced in pay and/or position within the meaning of Ohio Administrative Code Rules 124-1-02(Y) and (Z).



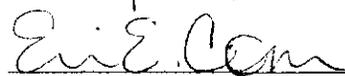
Casey - Aye
Lumpe - Aye
Tillery - Aye


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 22, 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**

Larry M. Wiech,

Case Nos.: 2013-REC-11-0318
2013-RED-11-0319

Appellant

v.

August 19, 2014

Ohio Department of Insurance,
and
Ohio Department of Administrative Services,

Appellees

Elaine K. Stevenson
Hearing Officer

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant Larry M. Wiech's ("Appellant") filing of a notice of appeal from the reclassification of his Management Analyst Supervisor 1 position with Appellee, Ohio Department of Insurance. Appellant also filed a notice of appeal alleging that he was reduced in pay and/or position. The State Personnel Board of Review ("Board") has jurisdiction to hear Appellant's appeals pursuant to Ohio Revised Code (O.R.C.) §§ 124.03(A) and 124.14(D).

A record hearing was held on May 8, 2014, during which testimonial and documentary evidence was presented. Appellant was present at record hearing and appeared *pro se*. Appellee, Department of Insurance, was present through its designee, Human Resources Director Joan Olivieri. Appellee, Ohio Department of Administrative Services, was present through its designee, Human Capital Management Senior Analyst Laura Sutherland. Also present was Appellant's immediate supervisor, David C. Barney. All those present at the hearing offered testimony.

FINDINGS OF FACT

Based upon a thorough review of the testimony of the witnesses and the documents admitted into evidence, and the entirety of the record, I make the following findings of fact:

1. Appellant has been employed by Appellee, Ohio Department of Insurance, for approximately seven years. Appellant's position was classified as Management Analyst Supervisor 1.

2. In 2012, the Ohio Department of Administrative Services notified Appellant of the deletion of the Management Analyst Supervisor classification series from the State of Ohio's classification plan. Appellant completed a job questionnaire ("MAS Classification Project – Information Form") that provided a detailed description of his job duties. Appellant's immediate supervisor, Chief of the Fraud and Enforcement Division, David Barney, and the Department of Insurance's Human Resources Director, Joan Olivieri, reviewed and approved Appellant's completed job questionnaire. Based on the job information collected from Appellant, his supervisor, and the agency management designee, the Department of Administrative Services reclassified Appellant's position as Insurance Investigation Officer 2, classification number 26272. Appellant timely filed an appeal of the reclassification of his position on November 5, 2013.
3. The Table of Organization submitted at hearing indicates that Appellant is assigned to the Department of Insurance's Fraud and Enforcement Division, which investigates allegations of insurance fraud and potential violations of Ohio's insurance laws. The Fraud Unit investigates complaints regarding consumers and providers and the Enforcement Unit investigates complaints regarding insurance agents and agencies. Appellant reports directly to the Chief of the Fraud and Enforcement Division, David C. Barney. Mr. Barney's position is classified as Insurance Investigation Administrator, classification number 26274. Mr. Barney reports to the Deputy Director of Fraud, Enforcement, and Licensing.
4. As intake officer for the Fraud Unit, Appellant conducts preliminary reviews of all allegations received in the Fraud Unit. Appellant reviews each allegation to determine whether the allegation requires further investigation or may be closed. If Appellant's initial review indicates that an allegation may be investigated pursuant to the applicable laws and administrative rules, he forwards the allegation to an investigation supervisor for further review and possible case assignment. If Appellant determines that the allegation cannot be investigated by the Fraud Unit, he closes the allegation and no further action is taken. Appellant reviews approximately 4000 allegations each year and spends approximately 30% of his work time performing these job duties.
5. The Ohio Department of Insurance has access to certain databases maintained by law enforcement entities and private entities. The Ohio Department of Insurance has access to the Law Enforcement Automated Data System ("LEADS"), the Distributed Factual Analysis Criminal Threat Solution ("dFACTS"), and "Accurint." These databases are administered by entities outside of the Ohio Department of Insurance, specifically, the State Highway Patrol, the Ohio Attorney General, and LEXIS/NEXIS. These entities are responsible for establishing all rules and regulations governing access to and use of these databases. Appellant's job duties with respect to LEADS, dFACTS, and Accurint

are to establish internal procedures and processes for the Fraud and Enforcement Division regarding access to and use of these information sources during the investigatory process. Appellant serves as the division's representative and coordinator for LEADS and dFACTS. Appellant acts as the LEADS terminal agency coordinator. In that capacity, Appellant trains users, ensures credentials are current, maintains training records, prepares division for tri-annual audit, and runs LEADS on suspects in new cases and as requested by investigators during the course of their investigations. Appellant coordinates the division's LEXIS/NEXIS "Accurint" account. Appellant reviews investigators' requests for Accurint reports and runs reports that provide essential data for conducting investigations. Appellant represents the division during usage audits of specific data, including LEADS, dFACTS, and Accurint.

6. Appellant serves as assistant evidence custodian for the Fraud and Enforcement Division. Appellant receives, records, secures, and disseminates evidence produced during investigations. Appellant, and two other employees, ensure that evidence is handled in accordance with established guidelines. Appellant manages the division's imprest fund (petty cash). Appellant reviews investigators' requests for reimbursements from the imprest fund for certified court and bank records. Appellant issues checks in accordance with state and departmental policies and maintains records of payments. Appellant provides information during audits of the division's imprest fund. Appellant also serves as information steward on the Sensitive Data Task Force by overseeing development of Privacy Impact Assessments (PIA) for the Fraud and Enforcement Division. Appellant ensures compliance with state data confidentiality statutes and identifies hardware, software and database access necessary for divisional employees.
7. Appellant spends approximately 30% of his work time performing the duties outlined in paragraphs 5 and 6.
8. Appellant maintains data to assist management and facilitate the investigatory process. Appellant updates the case management system to produce data used for statistical reports regarding the activities and status of investigation cases. Appellant provides technical support, including assisting staff with internal databases and other data sources and information systems. Appellant processes subpoenas and alerts appropriate investigator and labor relations, and he maintains a tracking spreadsheet for subpoenas. Appellant identifies new processes to expedite or enhance current processes and coordinates implementation of proposed updates to procedures. Appellant establishes, develops, implements, and monitors reporting guidelines and makes recommendations to ensure consistency in operations. Appellant completes special projects and other duties as assigned. Appellant spends approximately 25% of his work time performing these job duties.

9. Appellant conducts the initial review of annual title filings from agents and agencies. Appellant reviews the information provided to determine whether these filings are in compliance with applicable Ohio Revised Code provisions. Appellant forwards noncompliant filings to an enforcement supervisor for further review and possible action. Appellant reviews approximately 4000 filings annually and spends approximately 15% of his work time performing these job duties.
10. Ohio Administrative Code 123:1-7-15 provides that "supervises" means that an employee must assign and review work, complete employee performance evaluation forms, recommend or authorize leave and recommend or initiate disciplinary action for at least two full-time permanent civil service employees or the equivalent. Appellant does not perform job duties that qualify him as a supervisor pursuant to Ohio Administrative Code 123:1-7-15.

CONCLUSIONS OF LAW

Pursuant to O.R.C. § 124.03(A), the 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*, the reclassification of an employee's position, with or without a job audit under O.R.C. § 124.14(D). O.R.C. § 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 primary criteria for the Board to consider when determining the most proper classification for a position are the relevant classification specifications, including the class concepts, the job duties outlined, and the percentages of time devoted to each job duty. The Board's decision must be consistent with the applicable classification specifications. *Klug v. Dept. of Admin. Services*, No. 87AP-306, slip op. (Ohio Ct. App. 10th Dist., May 19, 1988). See also *Ohio Dept. of Mental Retardation & Dev. Disability v. Ohio Dept. of Adm. Serv.* (1988), 44 Ohio App.3d 144.

Ohio Administrative Code Rule 123:1-7-15 provides that the class concept shall set forth the mandatory duties that must be satisfied at least twenty per cent of the time, unless otherwise stated in the class concept.

The Ohio Department of Administrative Services has determined that the Insurance Investigation Officer 2 classification is the most appropriate classification for Appellant's position. Appellee, Ohio Department of Insurance asserts that Appellant's position should be classified as Program Administrator 2. Appellant asserts that his position should be classified as either Program Administrator 3 or Program

Administrator 2. Upon review of the information contained in the record and the job classifications contained in the state's classification plan, the Insurance Investigation and Program Administrator classification series were examined.

The series purpose of the Insurance Investigation occupation is to conduct insurance investigations or to plan, coordinate, direct and manage insurance investigations to determine potential violations of Ohio insurance laws and take appropriate administrative action. At the first level, incumbents investigate less complex allegations of insurance agent/company misconduct and/or insurance law violations or consumer/provider misconduct. At the second level, incumbents investigate more complex allegations of insurance agent/company misconduct and/or insurance law violations or consumer/provider misconduct. At the third level, incumbents act as lead worker over lower-level insurance investigation officers and conduct investigations. At the fourth level, incumbents plan, coordinate, direct and manage all insurance investigative functions of assigned division and supervise assigned staff. At the fifth level, incumbents administer and coordinate all insurance investigation programs for assigned divisions and supervise assigned staff. Since the evidence established that Appellant does not supervise assigned staff, the first three levels of the Insurance Investigation class series were the only levels considered.

The class concept for the Insurance Investigation Officer 1 states:

The developmental level class works under close supervision & requires working knowledge of state insurance laws & applicable Revised Codes (e.g., Title 29; Title 39) in order to receive, analyze & respond to less complex allegations of insurance agent/company misconduct &/or insurance law violations or consumer/provider misconduct & conduct confidential investigations to ensure compliance with applicable Revised Code [sic].

The class concept for the Insurance Investigation Officer 2 states:

The full performance level class works under general supervision & requires considerable knowledge of state insurance laws & applicable Revised Codes (e.g., Title 29; Title 39) in order to receive, analyze & respond to more complex allegations of insurance agent/company misconduct &/or insurance law violations or consumer/provider misconduct & conduct confidential investigations to ensure compliance with applicable Revised Code [sic].

The class concept for the Insurance Investigation Officer 3 states:

The advanced level class works under direction & requires extensive knowledge of state insurance laws & applicable Revised Codes (e.g., Title 29; Title 39) in order to serve as lead worker over lower-level insurance investigation officers, receive, analyze & respond to most complex allegations of insurance agent/company misconduct &/or insurance law violations or consumer/provider misconduct & conduct confidential investigations to ensure compliance with applicable Revised Codes.

The Insurance Investigation Officer 1, 2, and 3 classification specifications require incumbents to analyze and respond to allegations of insurance agent/company misconduct or insurance law violations or allegations of consumer/provider misconduct *and* conduct confidential investigations to ensure compliance with applicable laws.

The testimonial and documentary evidence reveals that Appellant does not respond to allegations of insurance agent/company or consumer/provider misconduct, nor does he conduct investigations. The primary function of Appellant's position is to perform administrative tasks that support the investigation process in the Fraud and Enforcement Division. One of Appellant's primary job duties involves conducting a preliminary review of all fraud allegations filed with the Fraud Unit to determine whether the allegations require further review by a fraud investigation supervisor for possible case assignment. Appellant also provides administrative support to the investigation process by managing investigative staff members' use of databases, including LEADS, dFACTS, and Accurint. It is noted that these databases are administered by entities outside of the Ohio Department of Insurance, specifically, the State Highway Patrol, the Ohio Attorney General, and LEXIS/NEXIS. These entities are responsible for establishing all rules and regulations governing access to and use of these databases. Appellant's job duties with respect to LEADS, dFACTS, and Accurint, involve implementing internal procedures and processes for the division's use of these information resources during the investigatory process. Appellant also runs critical management reports, issues and tracks subpoenas, and manages the division's imprest fund, which is a petty cash fund for reimbursement of costs associated with obtaining certified copies of court records and other information. Appellant assists staff with internal databases and other information sources, trains staff in use of information sources, and manages evidence compiled and utilized during the investigation process. Appellant also conducts initial content reviews for annual title filings by agents and agencies. While Appellant's job duties facilitate the insurance investigation process, none of these duties involve responding to allegations of misconduct or insurance law

violations or conducting investigations as required by the class concepts for the Insurance Investigation Officer 1, 2 and 3 classifications.

Since the Insurance Investigation classifications are not specifically designed for the functions of Appellant's position, the Board may consider whether one of the Program Administrator classification specifications accurately describes the job duties performed by Appellant. The series purpose of the Program Administrator classification is to provide program direction by relieving superior of administrative duties. At the first level, incumbents relieve superior of non-routine administrative duties and formulate and implement program policy. At the second level, incumbents relieve superior of a variety of difficult administrative duties and formulate and implement program policy. At the third level, incumbents relieve superior of most difficult administrative duties and formulate and implement program policy.

The class concept for the Program Administrator 1 classification states:

The advanced level class works under general supervision & requires considerable knowledge of management principles/techniques, supervisory principles/techniques & agency policies & procedures regarding program activities of unit, section, division or bureau in order to provide program direction by relieving superior of non-routine administrative duties & formulate & implement program policy, or to do all of preceding & supervise assigned staff.

The class concept for the Program Administrator 2 classification states:

The first administrative level class works under administrative direction & requires thorough knowledge of management principles/techniques, supervisory principles/techniques & agency policies & procedures regarding program activities of unit, section, division or bureau in order to provide program direction by relieving superior of variety of difficult administrative duties & formulate and implement program policy, or to do all of preceding & supervise assigned staff.

The class concept of the Program Administrator 3 classification states:

The second administrative level class works under administrative supervision & requires extensive knowledge of management principles/techniques,

supervisory principles/techniques & agency policies & procedures regarding program activities of unit, section, division or bureau in order to provide program direction by acting for superior & by relieving superior of most difficult administrative duties & formulate & implement program policy, or to do all of preceding & supervise assigned staff.

Initially, it is noted that the Program Administrator classification series involves *program* activities of a unit, section, division, or bureau. No definition of "program" is offered in the classification specifications or in relevant case law. Since this principal term is not defined within the Program Administrator class series, the Board may apply the plain and ordinary meaning of this word to determine whether Appellant performs job duties commensurate with any of this series' classification specifications. (*Franklin County Dept. of Human Services v. Foster, et al.* (Mar. 25, 1996), Franklin Co., No. 94CVF12-9168, unreported.) A "program" may be defined as a plan or system under which action may be taken toward a goal. ("Program" Def. 3. *Merriam Webster Online*, Merriam Webster, n.d. Web. 12 Aug. 2014.) Upon review of the evidence and the pertinent Ohio Revised Code sections and Ohio Administrative Code rules governing the activities of the Fraud and Enforcement Division, I find that the investigation activities of the Fraud Unit and the investigation activities of the Enforcement Unit constitute two "programs" within the Ohio Department of Insurance.

The evidence establishes that Appellant reports directly to the Chief of the Fraud and Enforcement Division and performs administrative duties on the Chief's behalf, duties that include acting as a liaison between the Chief and subordinates, transmitting certain decisions, and managing auxiliary functions. Appellant's job duties regarding the initial review of fraud allegations and title filings, his management of information resources including the division's use of criminal and informational databases, his management of the division's imprest fund, and the technical and administrative support he provides staff members closely correspond to the illustrative job duties outlined in the Program Administrator 2 classification. In comparing the illustrative duties set forth in all three Program Administrator classification specifications, I find that the job duties performed by Appellant on behalf of the Chief of Fraud and Enforcement are more complex than the non-routine administrative duties outlined in the Program Administrator 1 classification specification but not sufficient in nature and scope to meet the definition of most difficult administrative duties as outlined in the Program Administrator 3 classification specification.

The remaining class concept requirement for the Program Administrator 2 classification is to formulate and implement program policy. The testimonial and documentary evidence establishes that Appellant's job duties include developing procedures and processes to expedite or enhance current division processes and coordinating implementation of proposed updates to procedures. Appellant also

establishes, develops, implements, and monitors reporting guidelines and makes recommendations to ensure consistency in operations. With respect to the databases utilized by staff in the Fraud and Enforcement Division, Appellant is responsible for ensuring that these information sources are properly used to facilitate the investigation process and to ensure division staff follow all rules and regulations established by the state and private entities that administer these databases. Appellant also ensures division compliance with state data confidentiality statutes. In considering the nature and scope of these duties and their impact on the overall the program activities of the Fraud and Enforcement Division, I find that these duties fulfill the requirement to "formulate and implement program policy" as contemplated by the Program Administrator 2 classification.

With respect to Appellant's appeal from an alleged reduction in pay and/or position, no evidence was presented to establish that Appellant has suffered such an action within the meaning of Ohio Administrative Code Rules 124-1-02(Y) and (Z).

In summary, analysis of Appellant's job duties and the evidence revealed that, Appellant does not perform all of the mandatory job duties set forth in the class concept for the Insurance Investigation Officer 2 classification; the Program Administrator 2 classification most accurately describes Appellant's job duties; and Appellant spends more than twenty percent of his work time performing the mandatory job duties set forth in the Program Administrator 2 class concept, as required by Ohio Administrative Code Rule 123:1-7-15.

Based on the foregoing, I respectfully recommend that Appellant's position be **RECLASSIFIED** as Program Administrator 2, classification number 63123, pursuant to O.R.C. §§ 124.03 and 124.14. I further recommend that Appellant's appeal from an alleged reduction in pay and/or position be **DISMISSED**, since Appellant was not reduced in pay and/or position within the meaning of Ohio Administrative Code Rules 124-1-02(Y) and (Z).


Elaine K. Stevenson
Hearing Officer