

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

Robert Stroup,

*Appellant,*

v.

Case No. 2013-REC-11-0320

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

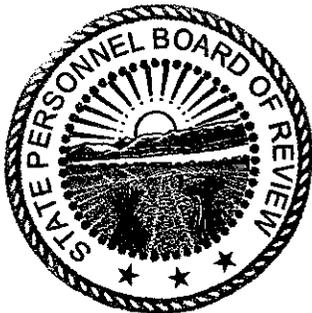
*Appellees,*

**ORDER**

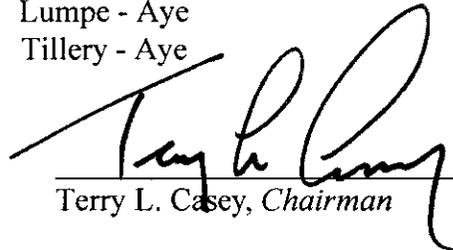
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the Department of Administrative Services' determination that Appellant's position be reclassified to Insurance Examination Data Specialist, classification number 67221, is **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.14.



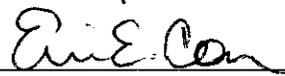
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
\_\_\_\_\_  
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**

Robert Stroup,

Case No. 2013-REC-11-0320

*Appellant*

v.

July 31, 2014

Department of Insurance,  
and  
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 Robert Stroup's (Appellant) filing of a notice of appeal from the reclassification of his Management Analyst Supervisor 2 position with Appellee, Department of Insurance. The State Personnel Board of Review (the Board) has jurisdiction to hear Appellant's appeal pursuant to Ohio Revised Code (O.R.C.) §§ 124.03(A) and 124.14(D).

A record hearing was held on May 6, 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, Department of Administrative Services, was present through its designee, Human Capital Management Senior Analyst Laura Sutherland. Also present was Appellant's immediate supervisor, Angela Yoakum-Dingus.

**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, Department of Insurance, for approximately thirteen years. Appellant's position was classified as Management Analyst Supervisor 2.

2. In 2012, the Department of Administrative Services notified Appellant that the Management Analyst Supervisor classification series would be eliminated 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 Market Conduct, Angela Yoakum-Dingus, 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 to Insurance Examination Data Specialist, classification number 67221. As a result of this job reclassification, Appellant's position is no longer exempt from collective bargaining. Appellant timely filed an appeal of the reclassification of his position on November 7, 2013.
3. Appellant is assigned to the Department of Insurance's Market Conduct Division, which monitors and examines insurance companies for compliance with state and federal insurance laws, rules, and regulations. The Market Conduct Division has established an analysis and surveillance program that monitors all types of products offered by insurance companies in Ohio. Market conduct monitoring and on-site examinations involve review of non-financial business practices in areas such as advertising, sales and marketing, policy rates, agent licensing, underwriting and claims settlement practices for insurance companies authorized to conduct business in Ohio.
4. Appellant reports directly to the Chief of Market Conduct, Angela Yoakum-Dingus. Ms. Yoakum-Dingus' position is classified as Insurance Compliance Manager, classification number 67216. Appellant conducts market analysis and surveillance primarily involving the life insurance and annuity industry. Appellant develops procedures, designs rating and ranking lists and tools, monitors market indicators and trends, and coordinates the analysis and surveillance program as it pertains to the life and annuity industry. Appellant spends approximately 55% of his work time performing these job duties.
5. Appellant collects, interprets, and summarizes market information and indicators from various confidential and public sources, including the National Association of Insurance Commissioners' (NAIC) financial databases, NAIC's Market Conduct Annual Statement (MCAS), and the NAIC Consumer Data Source. Appellant develops and conducts industry surveys and gathers data designed to develop industry norms and detect areas of possible non-compliance with state and federal insurance laws and regulations. Appellant reviews insurance companies' product submissions, including statutory financial statements, policy files, claim files, rating practices, complaint files, underwriting files, and other

information to determine emerging industry issues and trends. Appellant develops procedures for market analysis and surveillance involving the life insurance and annuity industry and he ensures that proper procedures are followed and documented. Appellant spends approximately 20% of his work time performing these job duties.

6. Appellant conducts in-depth analysis of market information to rank insurance companies and to make recommendations regarding future market conduct regulatory activities. Appellant spends approximately 10% of his work time performing these job duties.
7. Appellant provides technical support, including assisting staff with data sources and information systems, and assisting in maintaining databases. Appellant also attends meetings and responds to complex inquiries from insurance companies, consumers, and government staff. Appellant spends approximately 15% of his work time performing these job duties.

#### 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. 10<sup>th</sup> 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.

\* \* \*

Both Appellant and Appellee, Department of Insurance, assert that the Insurance Examination Data Specialist classification does not provide a complete description of Appellant's job duties. Neither Appellant nor the Department of Insurance proposed another job classification as a more appropriate "fit" for Appellant's position. Upon review of the information contained in the record and the job classifications contained in

the state's classification plan, the following class series were considered: (1) Insurance Compliance Examiner, Series Number 6721; (2) Insurance Examiner, Series Number 6672; and (3) Insurance Examination Data Specialist, Series Number 6722.

The purpose of the Insurance Compliance Examiner series is to perform market conduct reviews/examinations of non-financial business practices in areas such as advertising, sales and marketing, policy rates, agent licensing, underwriting and claims settlement practices for insurance companies authorized to conduct business in Ohio to ensure compliance with applicable insurance statutes, rules, and regulations. The purpose of the Insurance Examiner series is to audit insurance companies authorized to conduct business in Ohio in order to assess compliance with state regulations and to determine solvency. A review of the testimony and documentary evidence regarding Appellant's job duties reveals that Appellant does not conduct market reviews/examinations as required by the Insurance Compliance Examiner series, nor does he conduct audits of insurance companies as required by the Insurance Examiner series.

The remaining job classification under consideration is Insurance Examination Data Specialist. Initially, it is noted that this classification series consists only of one full performance level and one supervisory level. The series purpose and class concept for the Insurance Examination Data Specialist classification are as follows:

The full performance level class works under direction & requires considerable knowledge of insurance laws governing general non-financial business practices (e.g., advertising, sales & marketing, policy rates, agent licensing, underwriting, claims settlement) of insurance companies authorized to conduct business in state of Ohio, computer science & systems programming in order to systematically analyze preliminary market conduct review/examination plans to resolve complex data transfer problems, set parameters for divisional computer data to enable insurance compliance examiners to meet review/examination objective to efficiently & effectively test for violations of insurance laws & design complex computer data requests & submit to insurance company management information officer for insurance company production of computer data & documents necessary for completion of review/examinations by compliance examiners.

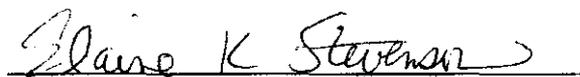
A review of the class concept and illustrative job duties set forth in the Insurance Examination Data Specialist classification indicates that the function of this classification is to monitor and examine insurance companies for compliance with applicable insurance laws, rules, and regulations. This classification is focused on data collection and analysis of market conduct review plans in preparation for the conduct of onsite

insurance company examinations to test for insurance law violations. The testimonial and documentary evidence indicates that the Insurance Examination Data Specialist classification describes, to a limited extent, certain data collection and analytical tasks performed by Appellant. Both Appellant and his immediate supervisor testified that Appellant conducts market analysis and surveillance primarily involving the life insurance and annuity industry. Appellant collects, interprets, and summarizes market information and indicators from various confidential and public sources. Appellant analyzes data to identify and prioritize insurance companies for on-site market conduct examinations performed by insurance compliance examiners. Appellant develops procedures, designs rating and ranking lists and tools, and monitors market indicators and trends. Appellant also develops and conducts industry surveys and collects data to develop industry norms and make recommendations regarding areas of possible non-compliance to state and federal insurance laws and regulations. Appellant spends approximately 75% of his work time performing these job duties.

Given that the aforementioned job duties are centered upon the monitoring and examination of insurance companies to ensure adherence to applicable state and federal insurance laws, rules, and regulations, I find that the Insurance Examination Data Specialist classification describes the focus of Appellant's overall job responsibilities. However, it is noted that both Appellant and his immediate supervisor testified that the Insurance Examination Data Specialist classification does not describe the level of complexity of the market analysis performed by Appellant to identify trends in the industry and prioritize companies for market conduct examinations. Instead, this job classification reflects an outdated work model that is based on limited analysis that is utilized primarily for the purpose of conducting a large number of examinations to test for possible violations. Appellant's immediate supervisor further testified that the Insurance Examination Data Specialist classification has not been updated to accurately reflect the significant changes in technology and the impact those changes have had on the nature of the work performed by Appellant and other employees in the Market Conduct Division.

While I agree that the Insurance Examination Data Specialist classification does not adequately describe the level of complexity of the market analysis and surveillance conducted by Appellant, this Board's statutory authority in a job reclassification appeal is limited to consideration of the existing job classifications. In this case, the evidence contained in the record has established that the Insurance Examination Data Specialist classification describes the focus of Appellant's overall job responsibilities and certain data collection and analytical tasks performed by Appellant. Therefore, since no other job classification provides a more accurate description of Appellant's job duties, the Insurance Examination Data Specialist classification is appropriate for Appellant's position.

Based on the foregoing, I respectfully recommend that the Department of Administrative Services' determination that Appellant's position be reclassified to Insurance Examination Data Specialist, classification number 67221, be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.14.

  
Elaine K. Stevenson  
*Hearing Officer*