

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

Janice Wheatley,

Appellant,

v.

Case No. 2013-REC-11-0342

Department of Insurance,
and
Department of Administrative Services,

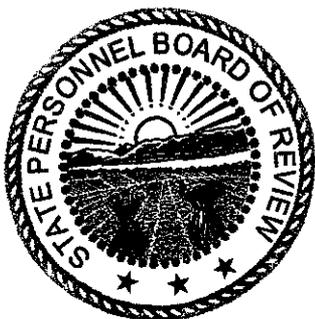
Appellees,

ORDER

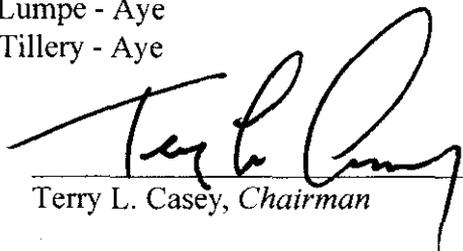
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellee, Ohio Department of Administrative Services' determination that Appellant's position should be reclassified as Program Administrator 2, classification number 63123, is **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.14.



Casey - Aye
Lumpe - Aye
Tillery - Aye

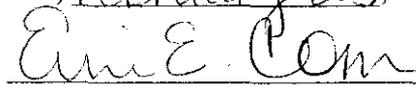


Terry L. Casey, *Chairman*

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, February 25, 2015.



Anne E. Com
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 March 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-11-0342

Transcript Costs: \$63.00 Administrative Costs: \$25.00

Total Deposit Required: * \$88.00

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

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

Janice E. Wheatley,

Case No. 2013-REC-11-0342

Appellant

v.

December 19, 2014

Ohio Department of Insurance
and
Ohio Department of Administrative Services,

Elaine K. Stevenson
Hearing Officer

Appellees

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant Janice E. Wheatley's ("Appellant") filing of a notice of appeal from the reclassification of her Management Analyst Supervisor 2 position with Appellee, Ohio Department of Insurance. The State Personnel Board of Review ("Board") has jurisdiction to hear Appellant's appeal pursuant to Ohio Revised Code (O.R.C.) §§ 124.03(A) and 124.14(D).

The hearing in this matter was originally scheduled to take place on May 13, 2014. On April 15, 2014, Appellant filed a request for a continuance of her case for medical reasons. On April 24, 2014, a procedural order was issued granting the requested continuance and instructing Appellant to file a written notice of her anticipated return-to-work date.

Appellant returned to work in July 2014, and the record hearing in this matter was held on September 30, 2014. Appellant was present at record hearing and appeared *pro se*. Appellee, Ohio 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, Dale Bruggeman. 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 is employed by Appellee, Ohio Department of Insurance. Appellant's position was classified as Management Analyst Supervisor 2.
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 her job duties. Appellant's immediate supervisor, Dale Bruggeman, 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, the Department of Administrative Services reclassified Appellant's position as Program Administrator 2, classification number 63123. Appellant timely filed an appeal of the reclassification of her position.
3. Appellant is assigned to the Ohio Department of Insurance's Office of Risk Assessment, which regulates the financial solvency of Ohio-based insurance companies and monitors financial conditions of out-of-state and foreign insurers. The Office of Risk Assessment is composed of the following four main divisions or sections: (1) Examinations, (2) Analysis, (3) Market Conduct, and (4) Company Licensing and Policy. Each section is managed by a Chief. At present, the Office of Risk Assessment has two administrative support staff, Appellant and another positions classified as Program Administrator 3.
4. Appellant reports to the Chief of Financial Policy Administration and Foreign Analysis, Dale Bruggeman. Mr. Bruggeman's position is classified as Insurance Examiner/Analyst Administrator 1. Mr. Bruggeman reports to Jeff Rupp, who is the Deputy Director of the Office of Risk Assessment. Mr. Bruggeman administers activities of the Examination section of the Office of Risk Assessment and he supervises assigned staff, including Insurance Examiner/Analysts and Appellant.
5. The primary function of Appellant's position is to provide administrative support to Mr. Bruggeman, the other section chiefs and their assigned staff, and the Deputy Director. Appellant has extensive knowledge of regulations, policies and procedures regarding the functions of the Ohio Department of Insurance's Office of Risk Assessment. Appellant spends approximately fifty percent of her work time completing special projects involving insurance documents filed by insurance companies and preparing detailed insurance reports for the Office of

Risk Assessment. Appellant reviews a large volume of documents and information regarding insurance company filings to ensure that the information is accurate and complete pursuant to the agency's established rules and regulations and the pertinent sections of the Ohio Revised Code.

6. Appellant oversees the annual update of the Interim Annual Review report, which is the agency accreditation review submitted to the National Association of Insurance Commissioners (NAIC). This report serves to maintain the Insurance Department's accreditation. Appellant compiles all necessary data and completes a 70-page template to update information in the report. Appellant ensures that the financial analysis is up-to-date and appropriate Ohio Revised Code provisions are cited. Appellant submits the completed form to the Ohio Department of Insurance's legal division, financial analysts, and examiners for review and edits. Appellant ensures that the report is completed and submitted to NAIC by the established due date.
7. Appellant also prepares the Insurance Department Resources report, which is a report for NAIC that is sent to all fifty states to report pertinent insurance statistical information. Appellant generates the Prompt Pay Data report, and the Company Meeting report, which is a report used by the Lieutenant Governor. Appellant also generates the Open Transaction report and updates the Reconciliation report, which tracks all insurance filing transactions.
8. Appellant spends approximately twenty percent of her work time performing administrative tasks as the exam coordinator for the Office of Risk Assessment. Appellant processes company transactions by verifying that company filings are complete, entering information and review dates into the agency database, and routing the filings to the appropriate Analyst for review and analysis. Once all levels of review have been completed, Appellant creates coversheets for the filings and maintains all filings and documents in accordance with established policies and procedures. Appellant also processes "Form B" registrations, which are holding companies statements filed by domestic insurance companies. The volume of company transactions filed varies throughout the year. The highest volume of company transactions are filed during the last three months of the calendar year.
9. In February 2014, Appellant assumed additional job duties. Since February 2014, Appellant has spent approximately twenty-five percent of her work time providing administrative support to the Analysis staff and the Licensing and Policy staff by processing company licensing documents. Appellant verifies that the filings are complete and routes the documents to the appropriate Analyst for review. Appellant also processes insurance companies' requests for re-domestication or a name change. Appellant downloads the notices received regarding re-domestications or name changes and inputs the information into the Ohio Department of Insurance's new licensing computer system, "ODIIS". Appellant

then generates an interoffice communication sent to various individuals at the Ohio Department of Insurance. Should a filing require the addition or deletion of a line of business, Appellant generates a new certificate of authority for that company.

10. Appellant acts as the Information Steward for the Office of Risk Assessment by handling public records requests and determining proper access to information based upon established Ohio Revised Code provisions, rules, and regulations. Appellant updates individuals' roles and responsibilities within the Office of Risk Assessment. Appellant also reviews and updates the retention schedule for the Office of Risk Assessment to maintain compliance with DAS guidelines. Appellant serves as back up for the Program Administrator 3 position. Appellant also completes write-ups for continuing education.

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 ("O.A.C.") 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.

O.A.C. Rule 124-7-03(E) provides that evidence of alleged disparity in the classification of coworkers' positions is not admissible in a reclassification appeal under O.R.C. §§ 124.03(A) and 124.14(D).

The Ohio Department of Administrative Services has determined that the Program Administrator 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 Administrative Professional 4. Appellant asserts that her position should be classified as Program Administrator 3. Upon review of the information contained in the record and the job classifications contained in the state's classification plan, the Administrative Professional and Program Administrator classification series were examined in this case.

The series purpose of the Administrative Professional classification is to perform a variety of clerical, procedural and administrative tasks as principal clerical and administrative support position for supervisor and/or office staff. At the lower level, incumbents provide general secretarial assistance through routine administrative tasks and/or provide secretarial assistance requiring training in technical terminology and/or serve as lead worker over office support staff. At the second level, incumbents relieve superior of routine and administrative duties. At the third level, incumbents perform non-routine administrative tasks and provide secretarial support for the office or perform non-routine administrative tasks and, if assigned, may act as lead worker over lower-level administrative and/or office support staff. At the fourth level, incumbents perform non-routine tasks and provide secretarial support for the office.

The class concept for the Administrative Professional 1 classification states:

The full performance level class works under general supervision & requires considerable knowledge of clerical functions & office procedures in order to provide general secretarial assistance by performing routine administrative tasks &/or to provide secretarial assistance in technical environment by performing routine administrative tasks &/or to act as lead worker over office support staff (e.g., office assistants, clerks, word processing specialists) & provide secretarial assistance through routine administrative tasks (i.e., independently provides explanation, orally &/or in writing, of services or activities of assigned area but does not include formulating interpretation of policies & procedures as they would apply in given situation).

The class concept for the Administrative Professional 2 classification states:

The full performance level class works under general supervision & requires considerable knowledge of agency policies & procedures regarding program activities of unit, section, division or bureau in order to relieve superior of routine administrative duties, make recommendations regarding program activities &

assist in developing new procedures related to established program policy.

The class concept for the Administrative Professional 3 classification states:

The full performance level class works under direction & requires considerable knowledge of administrative policies & procedures, clerical & secretarial procedures in order to provide secretarial & non-routine administrative support (i.e., independently formulates decisions &/or judgments involving non-legal interpretation of policies & procedures as they would apply to given situation to resolve problems, to prepare correspondence &/or reports or to carry out other assignments) & if assigned, acts as lead worker over lower-level administrative &/or office support staff.

The class concept for the Administrative Professional 4 classification states:

The full performance level class works under direction & requires considerable knowledge of administrative policies & procedures, clerical & secretarial procedures in order to provide secretarial & non-routine administrative support (i.e., independently formulates decisions &/or judgments involving non-legal interpretation of policies & procedures as they would apply to given situation to resolve problems, to prepare correspondence &/or reports or to carry out other assignments). NOTE: This classification is restricted to the agency executive staff defined as the top 3 layers (Director and Assistant Director are considered one layer) in the organizational structure of the agency, board or commission....

Appellant's job duties fulfill the class concept of the Administrative Professional 4 classification and Appellant performs a number of the illustrative duties set forth in this job classification, such as reviewing and preparing operational reports, maintaining confidential files and records, and independently formulating decisions that involve non-legal interpretation of agency policies and procedures to carry out assignments. The testimony and evidence establishes that Appellant provides administrative support to the Deputy Director and all four section chiefs and their professional staff in the Office of Risk Assessment. Appellant has extensive knowledge of regulations, policies, and procedures regarding the functions of the Department of Insurance's Office of Risk Assessment. Appellant's immediate supervisor, Dale Bruggeman, testified that

Appellant provides administrative support that encompasses all areas and staff within the Office of Risk Assessment. Appellant testified that she makes independent decisions regarding managing the process of producing reports and ensuring that reports and documents are timely filed.

The evidence further establishes that Appellant spends the majority of her work time completing special projects, maintaining and updating data for various reports, generating reports, and acting as the exam coordinator for the Office of Risk Assessment. Appellant testified that her primary and most important project is the annual update of the Interim Annual Review report, which is a report that is prepared for the National Association of Insurance Commissioners (NAIC). Appellant compiles all necessary data and completes a 70-page template that becomes part of the report manual. Appellant ensures that financial exam analysis is up-to-date and the appropriate Ohio Revised Code provisions are cited. Appellant submits the completed form to the Ohio Department of Insurance's legal division, appropriate financial analysts and examiners, and the Director for review and edits. Appellant ensures that all reviews are timely completed and that the report is submitted to NAIC by the stated due date. Appellant is responsible for preparing a number of other reports. For example, Appellant prepares the Insurance Department Resources report, which is a report for NAIC that is sent to all fifty states to report pertinent information regarding the Ohio Insurance Department. Appellant also maintains data for the Prompt Pay Data report, which tracks insurance companies' payment of claims. Appellant also completes write-ups for continuing education and ensures that certificates are completed.

The evidence further establishes that Appellant spends approximately twenty percent of her work time performing administrative tasks as the exam coordinator. Specifically, Appellant processes company transactions by verifying that company filings are complete, entering information and review dates into the appropriate database, and routing documents and filings to the appropriate Analyst for review and analysis. Once all levels of review have been completed, Appellant creates a coversheet for each company transaction filing and ensures all transaction filings are maintained by the office. Appellant and Mr. Bruggeman testified that Appellant assumed additional job duties in February 2014. Specifically, Appellant provides administrative support to the Analysis staff and the Licensing and Policy staff by processing company licensing documents. Appellant verifies that the filings are complete and routes the documents to the appropriate Analyst for review and analysis. Appellant also processes insurance companies' requests for re-domestication or a name change. Appellant downloads the notices received regarding these requests and inputs the information into the Department of Insurance's new licensing computer system. In comparing these additional duties to the nature of Appellant's other duties, I find that these additional duties are similar in nature to Appellant's other job duties.

Although the Administrative Professional 4 classification's class concept and illustrative duties accurately describe Appellant's job responsibilities, it is noted that this classification references only non-routine administrative duties. The evidence reveals

that Appellant's position is an important support position that involves performing not only non-routine administrative duties, but certain more difficult administrative duties related to preparing complex insurance reports. Given the structure of the Office of Risk Assessment and its limited administrative support staff, it is evident that Appellant does relieve her supervisor of certain difficult administrative duties related to the preparation of complex insurance reports. Therefore, the Program Administrator classification series was also examined to determine whether there is a classification within this series that more 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 Office of Risk Assessment, I find that the activities of the four sections of the Office of Risk Assessment, which include Examinations, Analysis, Market Conduct, and Company Licensing, constitute programs within the Ohio Department of Insurance.

Appellant’s job duties as discussed above correspond to the level of illustrative job duties described in both the Program Administrator 1 and 2 classifications. Appellant responds to programmatic issues and needs of staff by providing staff with direction regarding filing deadlines, document filings, and compiling data for reports. Appellant also manages certain office functions, provides technical assistance related to insurance reports, and communicates decisions to staff. With regard to the Program Administrator 3 classification, it is noted that no evidence was presented to establish that Appellant performs the types of illustrative duties set forth in this classification. Specifically, Appellant does not administer statewide agency programs, advocate for legislation to enhance agency services/programs, conduct staff meetings, or assume full responsibility and authority in administrator’s absence. Therefore, in comparing the illustrative duties set forth in the first and second levels of the Program Administrator classification series, I find that Appellant’s job duties related to preparing complex insurance reports on behalf of her supervisor and the executive staff in the Office of Risk Assessment constitute difficult administrative duties that are best described by the Program Administrator 2 classification specification.

Appellant argues, however, that her position should be reclassified as Program Administrator 3 because she has been assigned additional job duties since the time her position was reviewed and because the Office of Risk Assessment has a Program Administrator 3 who generally performs the same job duties performed by the Program Administrator 1 she replaced. Appellant's argument is not persuasive. As noted above, the nature of the additional job duties performed by Appellant are essentially the same as Appellant's other job duties. With regard to the job duties performed by the Program Administrator 3, it is important to note that the Board's duty in reclassification appeals is to determine the most proper classification for the position under review by comparing the job duties assigned to that position with the relevant classification specifications. The Board may not consider evidence of an alleged disparity in the classification of a coworker's position since that position is not before the Board to determine whether it is properly classified based upon the job duties actually performed by the incumbent employee. See O.A.C. Rule 124-7-03(E).

The remaining class concept requirement for the Program Administrator 2 classification is to formulate and implement program policy. No evidence was presented to establish that Appellant has the responsibility to formulate and implement program policy. However, the testimony presented did establish that Appellant reviews documents and report information to ensure information is accurate pursuant to the agency's established rules and regulations and pertinent sections of the Ohio Revised Code. Appellant ensures division compliance with state data confidentiality statutes. Appellant also ensures compliance with reporting guidelines for reports generated in the Office of Risk Assessment and assists the agency in maintaining its accreditation by reviewing and compiling data for the annual update of the Interim Annual Review report. In considering the nature and scope of these duties and their impact on the overall program activities of the Office of Risk Assessment, I find that these duties sufficient to fulfill the requirement to "formulate and implement program policy" as contemplated by the Program Administrator 2 classification.

Based on the foregoing, I respectfully recommend that Appellee, Ohio Department of Administrative Services' determination that Appellant's position should be reclassified as Program Administrator 2, classification number 63123, be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.14.


Elaine K. Stevenson
Hearing Officer