

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

Robert Mockler,

Appellant,

v.

Case No. 2013-REC-11-0363

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

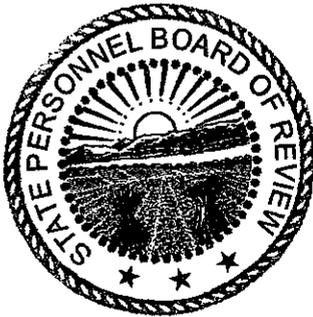
Appellees,

ORDER

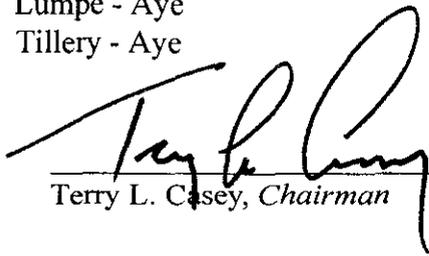
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Class Plan Review Determination of the Department of Administrative Services that Appellant's position be re-classified to Tax Commissioner Agent 4 is **AFFIRMED**, pursuant to R.C. 124.03 and R.C. 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 J. Mockler,

Case No. 2013-REC-11-0363

Appellant,

v.

June 11, 2014

Department of Administrative Services,

and

Department of Taxation,

Appellees.

BETH A. JEWELL

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This case came to be heard on April 30, 2014. Present at the hearing was Appellant, Robert J. Mockler, represented by Marc E. Myers, Attorney at Law. Appellee, Department of Taxation, was present and represented at hearing by Timothy Miller and Alexis Chancellor, Assistant Attorneys General for the State of Ohio. Appellee, Department of Administrative Services, was present through its designee, Jeff Hazelton, Human Capital Management Analyst.

This case comes on due to an appeal timely filed by Appellant on November 6, 2013. That appeal was from a reclassification of his position from Management Analyst Supervisor 1 (63215) to Tax Commissioner Agent 4 (66814), effective with the payroll period beginning on October 20, 2013. This Class Plan Review Determination was a result of DAS's deletion of Appellant's former Class of Management Analyst Supervisor 1 from the State Class Plan. Appellant believes the Classification of Program Administrator 2 or Program Administrator 3 would better fit Appellant's duties.

Jurisdiction over the subject matter of this appeal was established pursuant to R.C. 124.03 and R.C. 124.14.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

At hearing, three witnesses testified: Robert Mockler, Appellant, whose current classification is Tax Commissioner Agent 4; Deborah Smith, whose current classification is Administrator of the Personal Income and School District Income Tax

Division for the Ohio Department of Taxation; and Jeff Hazelton, whose current classification is Human Capital Management Analyst for the Department of Administrative Services. Appellee submitted exhibits numbered 1 through 13. ALJ Jewell submitted ALJ's Exhibit A. The following findings of fact are derived from the testimony and the admitted exhibits. References to the exhibits are indicated parenthetically by "Exh.," followed by the exhibit number.

Appellant has worked for Appellee for 30 years. In October 2013, Appellant's position was reclassified from Management Analyst Supervisor 1 to Tax Commissioner Agent 4 due to the results of a DAS study that determined the Management Analyst Supervisor position would be deleted from the State of Ohio Classification plan. (Exh. 8)

For eight years prior to his reclassification, Appellant reported to Karen Fiske, whose position was classified as Administrative Officer 3. Ms. Fiske reported to Deborah Smith, whose position is Administrator of the Personal Income & School District Income Tax Division. Upon Ms. Fiske's retirement in December 2012, Teakilla Phillips was promoted from Tax Commissioner Agent Supervisor 1 to Tax Commissioner Agent Supervisor 2, and became Appellant's direct supervisor on a temporary basis until a permanent supervisor could fill the position. In April 2014, Jihyun Noble, Tax Commissioner Agent Supervisor 2, replaced Ms. Phillips and is currently Appellant's supervisor on a temporary basis until a permanent supervisor is hired to fill the position.

As part of the Class Plan Review, DAS requested that Appellant and Ms. Fiske both complete separate questionnaires that detailed Appellant's job duties and the percentage of time spent doing those duties. (Exhs. 4, 5) Most of Appellant's questionnaire responses still apply to his current work functions; however, there are duties described in the questionnaire that he no longer completes.

The tasks that Appellant is no longer responsible for include the daily pickup of legacy personal income tax eFile returns, maintaining tax records for audit purposes, updating retention schedules, participating in the eFiling of ODT employee tax returns, and keeping detailed inventory records of department equipment. These tasks have either been eliminated or re-assigned, and Appellant no longer completes any of these functions.

Appellant's primary job responsibility is coordinating the Ohio TeleFile income tax return system. This includes monitoring the system, ensuring the program is functional, diagnosing and troubleshooting taxpayer issues with the program, updating program script to the system and working with the technical department to periodically test the program. Appellant stated that because of the timing of tax season, the time he spends on certain responsibilities may vary depending on the time of the year. Appellant maintains that in the time leading up to tax season, TeleFile tasks account for

approximately 70 percent of his working time, but in other times of the year TeleFile accounts for a smaller percentage. Before updating TeleFile program script, Appellant receives approval from his supervisors. Appellant has no responsibility for formulating the agency's TeleFile system policies.

Appellant responds to taxpayer requests to research missing direct deposit refunds. Appellant, along with other employees in the Personal Income & School District Income Tax Division, coordinates with financial institutions to determine the location of missing tax refunds and payments made by electronic funds transfer. Appellant stated that this task consumes a greater amount of time than the 5 percent allotted in the Tax Commissioner Agent 4 position description.

In addition to these responsibilities, Appellant also completes other tasks such as preparing daily and monthly work output and fiscal reports, maintaining division webpages, and answering inbound calls from taxpayers.

ANALYSIS, DISCUSSION AND CONCLUSIONS OF LAW

This case presents this Board with the question of whether Appellant's position with the Department of Taxation should remain classified as Tax Commissioner Agent 4 or should be upgraded to Program Administrator 2 or Program Administrator 3. Based on the finding set forth above, and for the reasons set forth below, this Board should find that Appellant's position was properly classified as Tax Commissioner Agent 4.

The Class Concept for the Tax Commissioner Agent 4 (66814) reads:

The second full performance level class works under direction & requires thorough knowledge of accounting & applicable state & federal tax laws, rules & procedures & court cases in order to serve as team coordinator over team leaders performing tax service programs; &/or serve as team leader over lower level agents performing office audits; or perform assessment resolution functions; or coordinate one or more taxpayer outreach programs or one or more inter-agency programs.

The Class Concept for the Program Administrator 2 (63123) reads:

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 3 (63124)
reads:**

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.

An employee seeking reclassification to a higher classification must demonstrate that his or her respective job duties substantially satisfy those of the higher classification. Mounts v. Ohio Department of Administrative Services, 17 Ohio App. 3d 125 (1984). This Board reviews the relevant classification specifications to determine which classification best describes the Appellant's actual job duties. Ford v. Ohio Department of Natural Resources, 67 Ohio App. 3d 755 (1990).

Based on the Tax Commissioner Agent 4 Class Concept and the testimony provided, Appellant has been properly classified. The Tax Commissioner Agent 4 Class Concept best encapsulates Appellant's duties and responsibilities, as it includes the coordination of taxpayer outreach programs such as the TeleFile program, as well as the work that Appellant performs with respect to resolving direct deposit issues. While Appellant argues there are aspects of his position that are not outlined in the Tax Commissioner Agent 4 job description, it is the job of this Board to determine which classification most appropriately describes the duties performed by the employee. See Ohio Administrative Code Rule 124-7-03(D).

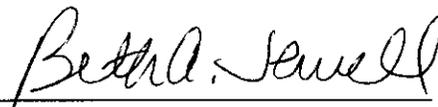
Appellant argues that a classification of Program Administrator 2 or Program Administrator 3 would be more appropriate. However, given the duties outlined in these Class Concepts, Appellant's position does not fall within these classifications. Both of the foregoing Program Administrator Class Concepts call for an employee to formulate policy, relieve one's superior of administrative duties, act on behalf of one's supervisor,

and/or supervise assigned staff. However, the record shows that Appellant does not relieve his supervisor of non-routine administrative duties. While Appellant may implement program policy with respect to the TeleFile system, Appellant does not formulate any of that policy. It is also undisputed by both Appellant and Appellee that Appellant does not supervise any assigned staff. Accordingly, neither the Program Administrator 2 nor Program Administrator 3 Classes are appropriate for Appellant's current duties.

Therefore, because the scope and nature of the job duties performed by Appellant are most accurately described by the job description and Class Concept of Tax Commissioner Agent 4, this Board should find that Appellant has been properly classified.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the **CLASS PLAN REVIEW DETERMINATION** of the Department of Administrative Services that Appellant's position be re-classified to Tax Commissioner Agent 4, pursuant to R.C. 124.03 and R.C. 124.14.



BETH A. JEWELL
Administrative Law Judge

BAJ: