STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Michaela Johnson,

Appellant,

v. Case No. 2013-REC-11-0380

Bureau of Workers Compensation, and
Department of Administrative Services, Human Resources Division,

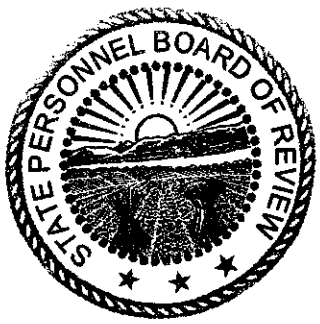
Appellees,

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 **RECLASSIFED** to Management Analyst, 63211, 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, July 30, 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

Michaela Johnson	Case No. 2013-REC-11-0380
Appellant	
v.	
Bureau of Workers' Compensation	June 25, 2014
and	
Department of Administrative Services	James R. Sprague *Administrative Law Judge*
Appellees	

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This case came to be heard on May 22, 2014. Present at the hearing was Appellant, who appeared *pro se*. Appellee Bureau of Workers' Compensation (BWC) was present through its designee, John Jester, BWC Underwriter Supervisor and Appellant's supervisor. Appellee Department of Administrative Services (DAS) was present through its designee, Morgan Webb, Human Capital Management (HCM) Senior Analyst. At the conclusion of the hearing, the parties were offered the opportunity file written closing statements. On or before June 6, 2014, BWC filed its example of policy and affidavit regarding the approval process of policy. On or before June 17, 2014, DAS submitted its optional written reply. On or before June 20, 2014, Appellant filed her optional written reply and closing statement and the instant record was then closed.

This cause comes on due to Appellant's November 12, 2013 timely filing of an appeal from a DAS Class Plan Review Determination that was issued October 10, 2013, received October 11, 2013, and effective October 20, 2013. Appellant's position was previously classified as Management Analyst Supervisor 1, 63215 and has now been reclassified to Management Analyst, 63211. Appellant believes that Program Administrator (PA) 2, 63123 (Pay Range 12), PA 3, 63124 (Pay Range 14), or BWC Underwriter Consultant, 63531 (Pay Range 14) are Classifications that better describe Appellant's job 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.

First to testify was **Appellant, Michaela Johnson**, whose position is currently classified as Management Analyst.

Next to testify was **John Jester**, BWC Underwriter Supervisor for BWC's Self-Insured (SI) Department, which falls within the Division of Employer Services. Mr. Jester serves as Appellant's immediate supervisor.

Last to testify was **Morgan Webb**, DAS HCM Senior Analyst, who was familiar with and who testified concerning DAS' Class Plan Review Determination that is the subject of the instant appeal.

Appellant serves in BWC's Division of Employer Services' Self-Insured Department. Appellant currently serves in a position classified as Management Analyst. Appellant's immediate supervisor is John Jester, BWC Underwriter Supervisor, who oversees the Underwriting unit of the department. He reports to Self-Insured Administrator Paul Flowers, who oversees the Underwriting and Auditing units. Mr. Flowers reports to the Chief of Employer Services, Kevin Abrams, who oversees the entire division.

Joint Exhibits 1. through 4. constitute the Class Plan Review submission from Appellant, Appellant's supervisor, and a BWC management designee.

In Joint Exhibit 1., under the instruction: "Briefly describe the purpose of your position in 1-2 sentences in the box below:" (emphasis added), Appellant wrote the following:

> Analyzes and evaluates assigned programs, policies and procedures (processes) and recommends changes when necessary. Answers technical questions (program and non-program specific) or internal/external customers, agency official and department/division personnel; researches and responds to inquiries, prepares/directs correspondence to internal/external customers.

Appellant stated that the duties she most frequently performs in an average work week or day are the duties surrounding the Self-Insured Professional Employers Organization (SI PEO), so named because the SI Department oversees these entities.

When a State Fund (SF) employer signs with an SI PEO, the SI PEO then provides that pertinent employer with payroll information and human-resources-related services. Appellant processes new SI PEO lease agreements or terminations with

these State Fund employers and handles all correspondence associating with new leases and terminations for services that these SI PEOs perform for SF entities who have retained them. In order to avoid any conflicts, SI PEOs may only service State Fund employers, Appellant averred.

Appellant testified that she services 11 SI PEOs and the State Fund employers who are associated with those SI PEOs. Appellant assists SI PEOs in any manner regarding their client employers. The areas in which Appellant provides such assistance include: payroll issues; claims questions; claims reassignment; program compatibility; legislative changes; coverage statuses; and other non-program questions.

Appellant stated that the next most frequent duty she performs is working on Qualified Health Plans (QHP). A QHP is a claims management program in which an SI employer proposes to take care of its respective injured employees; by providing those workers not only with a network of available providers but also with an appeals process. Appellant determines whether the SI employer has a QHP and whether there are claims that are paid out. In order to facilitate this review, Appellant sends and receives correspondence to determine which employers are actually administering QHPs and which are not.

Appellant stated that the remaining part of her duties involves other departments for all SI PEOs, SI in general, Claims reserving, and SI-40. With SI-40s, Appellant stated, since SI employers are responsible for claims management for their injured workers, these same SI employers are required to report what they have paid out to their injured workers. Appellant testified that she reviews the information from those reports. With claims reserving, Appellant stated, she reviews client list information and claims information on a quarterly basis.

Appellant testified that she promulgated policy; because she reviewed pertinent Ohio Revised Code and Ohio Administrative Code provisions to check for statutory requirements. **Additionally, she offered, any changes made to policy as a result of that review are sent to the director as well as to her supervisor. BWC's submission and affidavit regarding BWC's policy formulation process, in conjunction with Appellant's reply to same, are highly illuminating regarding that process.**

John Jester testified that the main purpose for the QHP was to provide a structure and detailed medical management to assist an employer's injured workers. When SI employers were no longer required to have QHPs, BWC ceased recertifying the QHP programs, he offered. Accordingly, Mr. Jester averred, it was difficult to ascertain which employers were still participating.

Mr. Jester stated that, when Mr. Flowers took over the SI Department, it was severely understaffed. He further stated that Appellant was hired to resolve how best to

service PEOs and QHPs, as well as to help determine the amount of funds needed to protect the pertinent SI fund.

Mr. Jester stated that Appellant's position was assigned the task to develop the policy that addresses the services provided to the PEO community and QHP community; by using the pertinent afore-mentioned statutory provisions. Mr. Jester testified that, in his position as Underwriter Supervisor, he is responsible for policy for Appellant's unit and that Mr. Jester reviews and approves drafts of the policy before the director signs off.

Morgan Webb, HCM Senior Analyst, testified on behalf of DAS. Ms. Webb offered that Appellant was best classified as Management Analyst. This was because, Ms. Webb averred, the record did not clearly reflect that Appellant promulgated programmatic policy.

Ms. Webb noted that, in Joint Exhibit 4, management's response indicated that Appellant's "...position evaluates programs and makes recommendation on associated policy ...". Ms. Webb further offered that this management statement indicated to Ms. Webb that Appellant was not developing policy.

Ms. Webb stated that, if it were to become clear that Appellant developed policy, then Appellant's position would be better reclassified to Program Administrator 2. This is because, Ms. Webb declared, Appellant relieves her supervisor of difficult duties.

Ms. Webb stated, as well, that BWC Underwriting Consultant is an exempt Classification; because it has the potential for supervising employees and/or for drafting policy, as stated in the Job Duties component of that pertinent Specification.

Ms. Webb offered that the policies that direct Appellant's functions are outlined in BWC's pertinent statutory provisions and that Appellant's policy mirrors those provisions without exception. Ms. Webb stated that most programs that have a policy development component would mirror the content of the pertinent statutory provisions associated with those functions. Yet, she also stated, as a general rule, these pertinent code provisions would be accompanied by *other policies* that the employee wrote that were supplemental to these main policies.

While it appears Mr. Jester has considerable authority to approve policy, from Appellant's written reply, we find that Appellant appears to have been given broad latitude to create the draft policy for review by management and that Appellant indicated that she was not aware of any significant changes that may have been made to the several policies she initially drafted for her unit.

Appellee BWC supplemented the record with an affidavit and with an attached draft of a Qualified Health Plan policy by the Appellant. In Appellee's affidavit, the BWC

Self-Insured Department Director stated that he does not consider Appellant's draft to constitute a BWC policy nor was it implemented in the respective department.

Appellee DAS responded to BWC's affidavit by reiterating DAS's initial Determination that Appellant's position should be classified as Management Analyst. DAS referenced OAC 123:1-3-01 (D), which establishes that duties being performed by an employee must satisfy the Class Concept at least 20 percent of the time. As well, DAS stated in its response that Appellant monitors and analyzes operations for the QHPs, the SI PEOs and for Claims Reserve Verification and researches legislation and existing policies to make recommendations for improvements. DAS acknowledged that Appellant performs the aforesaid duties at least 20 percent of the time but was reluctant to state that Appellant developed any policy required by the requested reclassifications.

Based upon the testimony presented and evidence admitted at hearing, as well as upon BWC's, DAS's and Appellant's respective supplementations of the record, I make the following Findings:

First, I note that I incorporate, herein, any finding set forth, above, whether express or implied.

Next, I find that the percentages offered into the record by the parties accurately reflect the breakdown of Appellant's time and duties.

The question of whether Appellant formulates program policy is critical to determining the most appropriate Class for Appellant's particular duties. Accordingly, further discussion regarding that question is deferred to the Conclusions of Law found, below.

CONCLUSIONS OF LAW

This case presents this Board with the question of whether Appellant's position is most properly classified as **Management Analyst, Program Administrator 2, Program Administrator 3, or BWC Underwriter Consultant**? Based on the findings set forth, above, and for the reasons set forth, below, this Board should find that the **Management Analyst Class** best fits Appellant's job duties in accordance with the applicable Specifications.

Appellant's position is currently classified as **Management Analyst**, 63211.

The Series Purpose for the Management Analysis Series 6321 states: "The purpose of the management analyst occupation is to ensure optimum productivity, efficiency & quality of agency operations &/or services."

The Class Concept for Management Analyst states:

> The full performance level class works under general supervision & requires considerable knowledge of business or public administration in order to monitor & analyze operations, systems or procedures of assigned agency to determine needed improvement & research proposed programs, policies &/or legislation to determine feasibility or impact of implementation.

Appellant works under the general supervision of John Jester, who is her immediate supervisor. Additionally, Appellant has considerable knowledge to monitor and analyze BWC operations, systems, or procedures. Appellant has researched proposed programs, policies and/or legislation regarding SI PEOs, QHPs, and Claims Reserve Verification to determine the feasibility or impact of implementation; consistent with applicable provisions of the Ohio Revised Code and Ohio Administrative Code.

Appellant has requested that the **Program Administrator 2**, 63123 Class (Pay Range 12) or **Program Administrator 3**, 63124 Class (Pay Range 14) be considered.

The Series Purpose language for the Program Administrator 6312 Series (in which the Program Administrator 2 and 3 fall) contains a prohibition against using any Class in the PA Series, when the function at issue is currently described by another existing Class that is specifically designed to encompass that function.

Additionally, the record must demonstrate that Appellant's duties achieve the requisite level of difficulty in relieving her superior. Further, the record must demonstrate that Appellant formulates and implements program policy; in order for Appellant's position to be reclassified under any Classification within the PA Class Series.

Although Appellant drafts policies by closely monitoring the requirements in the Ohio Revised Code and Ohio Administrative Code and the changes to those requirements, the level of knowledge that Appellant must possess and the level of initial discretion that she enjoys in performing her functions (including policy drafting) qualify her duties as "difficult".

According to Mr. Jester, Appellant must submit the drafts to the director for review. She must then revise them as instructed for approval by the director.

Appellant's background knowledge of self-insured employers, professional employers, employer program, compliance, and preparation of policy extends to mirroring and following pertinent statutory provisions yet still appears to reflect some level of initial discretion on the part of Appellant. Ms. Webb's testimony indicated that DAS does not see this activity as crossing the threshold in order to qualify this activity as policy formulation. Appellant does not share DAS's view. **Even if we find that Appellant does not formulate program policy, such a determination should in no**

way be seen as minimizing the importance of Appellant's contribution to the overall successful operation of the BWC.

The pivotal issue in this case centers upon whether the policies discussed above effectively recommend a direction/procedure that is essentially mandated by the Revised Code.

Certainly, Appellant does actively participate in policy formulation by providing drafts to her supervisors for review. This is demonstrated by the attached draft policy supplemented in the BWC affidavit as well as the proposed examples of policy that Appellant submitted in her June 20, 2014 reply (and as previously accepted into the record).

Each paragraph in the draft that BWC submitted refers to a corresponding statutory provision, and the language is rooted therein, as opposed to supplemental language that extends to enhance the mission of the BWC. The BWC affidavit of Appellant's superior asserts that Appellant's draft of the QHP 'policy' is not BWC policy.

DAS's June 17, 2014 response references O.AC. 123:1-3-01 (D), which establishes that duties being performed by an employee must satisfy the Class Concept at least 20 percent of the time. **It is important that this Board note that O.A.C. 123: 1-3-01 (D) does *not* require that the entire 20 percent of Appellant's duties consist exclusively of formulating program policy.** However, because formulation of program policy is a requirement in the Class Concept for both the PA Series and BWC Underwriting Consultant Series, Appellant must discernibly demonstrate that function to qualify for any Class under either of those two Class Series.

As DAS noted, Appellant monitors and analyzes operations and researches legislation and existing policies to make recommendations, collectively, at least 20 percent of the time.

The record is still not entirely clear regarding whether Appellant formulates program policy, even after the parties have supplemented the record regarding same. Accordingly, there is insufficient evidence in the extant record to support a finding (by a preponderance of the evidence) that Appellant does formulate program policy, as required by all Classifications in the PA Class Series.

Further, since the MA Class describes the majority of Appellant's duties, it appears that we are prohibited from using either the PA 2 or the PA 3 Classifications in the instant appeal.

Appellant has also requested that the **BWC Underwriting Consultant**, 63531 Class (Pay Range 14) be considered.

The Series Purpose language for the BWC Underwriting Consultant Series contains a Glossary. "Employer Management Services section" is defined in the Glossary as:

> Operational area within the BWC housing work units that design programs & set policy related to underwriting & premium audit (i.e., Black Lung Fund, Marine Fund, NCCI Classification System & Jurisdictional Issues), business development & management, self-insured employers, professional employer organizations (PEOs), employer programs (e.g., group rating, retro rating, one claim program, premium cap, drug-free safety program), & employer compliance.
>
> Note: This class is designed exclusively for use within the Employer Management Services section of the Bureau of Workers' Compensation.

The Class Concept for BWC Underwriting Consultant states:

> The expert level class works under general direction & requires comprehensive knowledge of insurance & risk management in order to plan, direct, monitor & evaluate effectiveness, timely service & cost effectiveness of operations for assigned area(s) within Employer Management Services section.

Based on Appellant's significant involvement and knowledge with self-insured employers, PEOs, employer programs, and compliance with the QHP, she could serve in the Employer Management Services section. (See Appellant's Exhibit 5, page 7). As stated above, Appellant works under general direction of her immediate supervisor, Mr. Jester, and the SI Department Director, Mr. Flowers. However, according to the supplemented BWC affidavit, she does not design programs or set BWC policy necessary to meet the threshold qualifications for the BWC Underwriting Consultant Specification.

Here, designing programs or setting policy can be analogous to formulating and implementing policy referenced above in the PA Series. Ms. Webb's testimony indicated that Appellant's policy appears to mirror pertinent statutory provisions, and here, the draft of the QHP 'policy' attached to the BWC affidavit consists of paragraphs which reiterate the statutory provisions in simplified terms. The evidence demonstrates that Appellant has sufficient knowledge of these programmatic policies in order to interpret and abridge or amplify the applicable elements of the statutory provisions.

Ms. Webb also stated that these pertinent statutory provisions would be accompanied by other policies that the employee wrote that were supplemental. In order to comply with pertinent legislative mandates and other pertinent provisions, Appellant inserts essential language from the statute and further recommends amplified language, she averred.

Appellant's draft in the BWC affidavit illustrates this work by Appellant, yet Appellant's draft does *not* dictate a particular direction for the programs beyond statutory obligation, according to SI Department Director Paul Flowers. It appears that this Board should give due deference to the Director of the department under whom Appellant serves. As such, the BWC Underwriter Consultant Series **does not appear** to be the best possible fit with Appellant's overall job duties.

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 **RECLASSIFIED** to Management Analyst, 63211, pursuant to R.C. 124.03 and R.C. 124.14.

James R. Sprague
Administrative Law Judge