

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

Damita Peery,

*Appellant,*

v.

Case No. 2013-RED-12-0394

Department of Youth Services Central Office,

*Appellee,*

**ORDER**

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

This Board has carefully and thoroughly examined the entirety of the record in this matter. This examination, of course, included all materials supplied by the parties following the issuance of the Report and Recommendation of the Administrative Law Judge. Those materials included objections and responses to objections, two separate Full Board supplementations of the record, and respective counsel's offering of Oral Arguments before the Board.

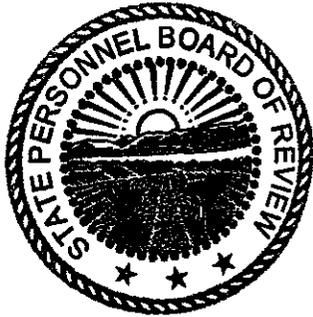
Having reviewed all of the above, we note that Appellant and Appellee have each offered persuasive arguments concerning whether this Board possesses jurisdiction over the subject matter of this appeal. From our review, we agree with Appellee that this Board would have lacked jurisdiction over the pay grade and step into which Appellant was placed *at the time she exercised her "fallback rights"* (upon leaving her position of Assistant Director). However, we are more inclined to agree with Appellant that this Board may possess jurisdiction over the question of whether Appellant is *currently* assigned to the proper step in her pay grade. *This is because Appellant's instant appeal was filed a number of months after Appellant exercised her "fallback" rights and involves issues that occurred well subsequent to Appellee's initial assignment of a pay grade and step to Appellant.*

It is uncontested that Appellant *has* received step increases since she "fell back". The issue, then, as Appellant perceives it, is whether Appellant should currently be about three steps higher in her pay grade.

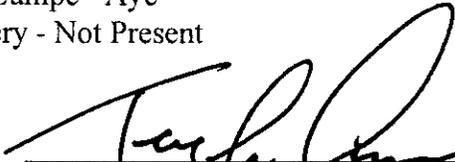
Based on our rather extensive development of the instant record, we can now say (at least in dictum) that it appears Appellee placed Appellant in the proper step when Appellant "fell back". More importantly, it appears that Appellee has properly permitted Appellant to advance from that step and has placed Appellant in the appropriate current step.

Assuming, then, that we can review whether Appellant is currently assigned to her proper step, we can find no error in the actions Appellee took in placing Appellant in that step. Thus, there is no further issue before this Board and the instant matter should be dismissed, accordingly.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED**, pursuant to R.C. 124.03 *et seq.*



Casey - Aye  
Lumpe - Aye  
Tillery - Not Present

  
\_\_\_\_\_  
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, January 08, 2015.

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

Damita Peery,

Case No. 2013-RED-12-0394

*Appellant*

v.

June 26, 2014

Department of Youth Services,  
Central Office,

*Appellee*

Jeannette E. Gunn  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on pursuant to Appellant's Response to Appellee's Motion to Dismiss, filed with this Board on June 9, 2014. Appellee asserted in its Motion that Appellant had no right of appeal to this Board.

Undisputed information contained in the record indicates that Appellant was first employed by Appellee as a Youth Leader on November 16, 1987. Appellant held various classified positions while employed with Appellant and was eventually appointed to the unclassified position of Assistant Director 3. Appellant was notified that her unclassified appointment to that position was revoked effective April 23, 2013. Appellant exercised her fall back rights pursuant to R.C. 124.11(D) and returned to her last classified position as Human Services Program Administrator 2 (HSPA2) that same day. On December 2, 2013, Appellant filed an appeal of her alleged reduction in pay or position with this Board, asserting that Appellee failed to correctly calculate her rate of pay upon her reinstatement to the HSPA2 position.

**CONCLUSIONS OF LAW**

Civil service employment in the State of Ohio is divided into the classified and unclassified services. This Board does not generally possess subject matter jurisdiction over an appeal of an adverse job action brought by an unclassified

employee, since Ohio Revised Code Section 124.03 limits this Board's jurisdiction to actions concerning classified employees.

Appellant was an unclassified employee at the time of the revocation of her appointment and reinstatement to the HSPA2 classification, therefore, this Board lacks jurisdiction to review either the revocation of that appointment or the execution of Appellant's fallback rights. *State ex rel. Asti v. Ohio Dept. of Youth Servs.*, 107 Ohio St.3d 262, 2005-Ohio-6432. Appellee's assignment of Appellant to a specific position and pay grade arose from her exercise of fallback rights and was not a separate action taken once she returned to her former classified position. Because Appellant has no right of appeal to this body, a mandamus action may be a more appropriate manner of seeking redress for Appellee's alleged improper calculations.

Based upon the above analysis, I respectfully **RECOMMEND** that Appellant's appeal be **DISMISSED** for lack of jurisdiction, pursuant to R.C. 124.03.

  
Jeannette E. Gunn  
Administrative Law Judge