

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

Amy Kyte,

and

Mary Arroyo

Appellants,

v.

Case Nos. 2014-ABL-07-0172

2014-ABL-09-0241

2014-ABL-07-0169

Youngstown State University,

Appellee,

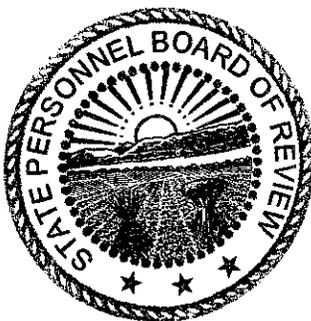
ORDER

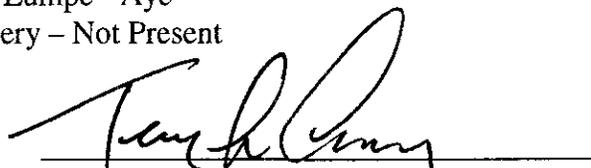
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, 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. While Appellants' counsel has posed an interesting argument regarding whether Appellants should have a right to challenge their respective displacements into positions in the same classification as the ones they exited, extant case law does not appear to accept that proposition at this time.

Wherefore, it is hereby **ORDERED** that the instant appeals be **DISMISSED**, as Appellants did not suffer any adverse employment action of which this Board could offer a remedy if they were to prevail at hearing, rendering these cases moot as there is no justiciable issue before the Board.

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

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 November 6, 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 Numbers: 2014-ABL-09-0241 and 2014-ABL-07-0169

Transcript Costs: N/A Administrative Costs: \$25.00

Total Deposit Required: * \$25.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: November 16, 2015

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

Amy Kyte

Case No. 2014-ABL-07-0172

Appellant

v.

September 10, 2015

Youngstown State University

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellant's Response to a Questionnaire, filed on May 22, 2015.

As the record reflects, Appellant Kyte was employed by Appellee as a full-time Administrative Assistant prior to her job abolishment. She was given proper and timely notice of her job abolishment and chose to exercise her displacement rights. By exercising her displacement rights, Appellant Kyte was able to displace into another full-time Administrative Assistant position (Appellee's Response to Board Questionnaire, filed on September 16, 2014). By doing so, she did not suffer any adverse employment action, as she remained in the same classification and retained the same pay (Appellant's Response to Board Questionnaire, filed May 22, 2015). Even if the hearing were to go forward and the job abolishment would be disaffirmed by this Board, there would be no remedy to offer Appellant Kyte. If the abolishment were to be disaffirmed, the only remedy the Board could offer would be to reinstate Appellant Kyte to her position. Since she displaced into the same classification she held prior to her job abolishment, without any loss of pay, there would be nothing to gain by going to a hearing, as once again, even if she prevailed at hearing, she would not be in any better position than she currently is in.

While Appellant Kyte argues that the job abolishment was not in accordance with the procedures found in the Ohio Revised Code for the implementation of job abolishments, that argument is moot. In evaluating the case in the best light for Appellant, and assuming she would prove at hearing that the job abolishment

should be disaffirmed, there is still no remedy that this Board can offer her which would place her in a better position than the position that she is currently in. The case is essentially moot. Black's Law Dictionary, Fifth Edition, 1979, offers the following definitions of the term "moot":

A subject for argument; unsettled; undecided. A moot point is one not settled by judicial decision.

A case is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy. Leonhart v. McCormick, D.D.Pa., 395 F.Supp. 1073, 1076. Question is 'moot' when it presents no actual controversy or where the issues have ceased to exist. Matter of Lawson's Estate, 41 Ill.App.3d 37, 353 N.E.2d 345, 347.

Generally, an action is considered 'moot' when it no longer presents a justiciable controversy because issues involved have become academic or dead. Sigma Chi Fraternity v. Regents of University of Colo., D.C.Colo., 258 F.Supp. 515, 523. . . .

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** as Appellant Kyte did not suffer any adverse employment action of which this Board could offer her a remedy if she were to prevail at hearing, rendering this case moot as there is no justiciable issue before the Board.



Marcie M. Scholl
Administrative Law Judge