

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

John A. Amburgey,

Appellant,

v.

Case Nos. 2014-REC-08-0220
2014-MIS-08-0221

Attorney General,
and
Department of Administrative Services,

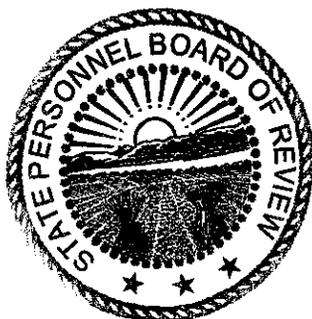
Appellees,

ORDER

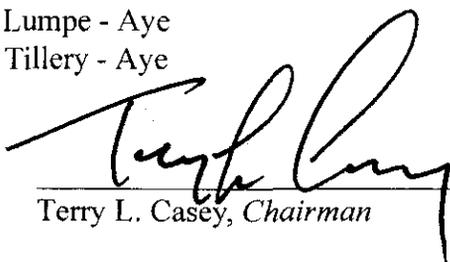
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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.

Wherefore, it is hereby **ORDERED** that the Office of the Attorney General's motion is **GRANTED** and the two instant appeals are **DISMISSED**, pursuant to R.C. 124.03, R.C. 124.14, and O.A.C. 124-11-07 (A) (2) and (C).



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.


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 Numbers: 2014-REC-08-0220 and 2014-MIS-08-0221

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: March 12, 2015

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

John A. Amburgey

Case Nos. 2014-REC-08-0220
2014-MIS-08-0221

Appellant

v.

December 31, 2014

Office of the Attorney General

and

Department of Administrative Services,

James R. Sprague

Appellees

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes come on due to Appellant's (Mr. Amburgey) August 14, 2014 filing of appeals from his July 21, 2014 notification that his position, which was classified as Charitable Activities Major Case Investigator, Class Number 26342 AG, would remain so classified. This followed a review of Mr. Amburgey's position conducted by Appellee, Department of Administrative Services (DAS). Mr. Amburgey was one of a number of employees in the Charitable Law Section of the Office of the Attorney General (OAG) who were so notified and who thereafter availed themselves of the opportunity to file appeals with this Board.

On or about August 25, 2014, this Board issued its standard reclassification Questionnaire to the OAG, Mr. Amburgey's employer. On September 6, 2014, the OAG filed its response to the Questionnaire. That response indicated, among other things, that Mr. Amburgey sought to have his position reclassified to Medicaid Special Agent, "2614 AG".

Mr. Amburgey is a member of a collective bargaining unit (namely, FOP Unit 46). Thus, the classes that this Board could review in the instant appeals are limited to the classes found in the pertinent Collective Bargaining Agreement (CBA) covering Mr. Amburgey's position and to any classes the CBA incorporates by

reference. Unfortunately, for Mr. Amburgey, the Medicaid Special Agent class falls within a different bargaining unit from Mr. Amburgey's and, so, that class cannot be considered by this Board in the two instant appeals.

On October 16, 2014, a Pre-hearing was conducted to review with the parties therein their respective rights and burdens. Mr. Amburgey attended that Pre-hearing. Also attending the Pre-hearing were representatives from the OAG and DAS, as well as several other Appellants who serve with Mr. Amburgey in the Charitable Law Section.

At the conclusion of the Pre-hearing, the undersigned instructed each Appellant who attended (including Mr. Amburgey) to file a pleading (on or before December 2, 2014) regarding whether the Appellant wished to proceed to hearing. Further, the undersigned instructed each Appellant who attended to file a pleading (on or before December 2, 2014) that identified any pertinent class the Appellant believed to be more appropriate than Charitable Activities Major Case Investigator.

The record reflects that Mr. Amburgey did not file those pleadings with this Board.

Accordingly, on December 17, 2014, the OAG filed Appellee's Motion to Dismiss, a Memorandum in Support, and the Affidavit of Timothy M. Miller. Mr. Miller is the Assistant Attorney General who served as lead counsel in these matters and who was present and represented the OAG at the October 16, 2014 Pre-hearing.

Mr. Amburgey was given the requisite time to file a Memorandum *Contra* to Appellee's Motion to Dismiss, but, to date, has not done so.

O.A.C 124-11-07 (A)(2) and (C) control the motions practice before this Board and call for an opposing party to file a pertinent response to a properly filed and supported motion to dismiss. In its motion to dismiss, Appellee OAG correctly notes that Mr. Amburgey did not utilize his opportunity to further communicate with this Board as instructed at Pre-hearing.

To summarize, Mr. Amburgey did not file his required pleadings as instructed at Pre-hearing and did not file his required response to Appellee OAG's motion to dismiss. Thus, we must presume that Mr. Amburgey no longer wishes to pursue the

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two instant appeals. Accordingly, Mr. Amburgey's two instant appeals should be dismissed.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** the Office of the Attorney General's motion and **DISMISS** the two instant appeals, pursuant to R.C. 124.03, R.C. 124.14, and O.A.C. 124-11-07 (A) (2) and (C).



James R. Sprague
Administrative Law Judge