

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Surendra Adhikari,

Appellant,

v.

Case No. 2014-REC-09-0253

Department of Mental Health and Addiction Services,
and
Department of Administrative Services,

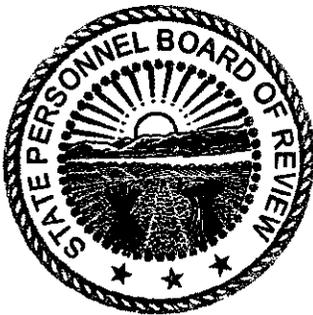
Appellees,

ORDER

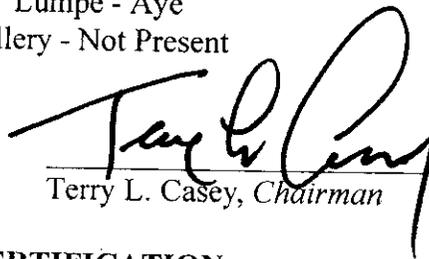
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Department of Administrative Services' job audit determination, which reclassified Appellant's position to Mental Health Administrator 4, 65224, is **AFFIRMED**, pursuant to R.C. 124.03 and R.C. 124.14.



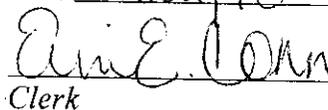
Casey - Aye
Lumpe - Aye
Tillery - Not Present


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, July 10, 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 July 17, 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 Number: 2014-REC-09-0253

Transcript Costs: \$135.00 Administrative Costs: \$25.00

Total Deposit Required: * \$160.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: July 27, 2015

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

Surendra Adhikari

Case No. 2014-REC-09-0253

Appellant

v.

May 20, 2015

Department of Mental Health and Addiction Services

and

Department of Administrative Services,

James R. Sprague

Appellees

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This case came to be heard on May 14, 2015. Present at hearing was Appellant, who was represented by Marc E. Myers, Attorney at Law. Appellee Department of Mental Health and Addiction Services (MHAS) was present through its designee, Kelly Gray, Human Capital Management (HCM) Administrator, and was represented by Wendy K. Clary, Assistant Attorney General. Appellee Department of Administrative Services (DAS) was present through its designee, Laura Sutherland, HCM Senior Manager.

This cause comes on due to Appellant's September 23, 2014 timely filing of an appeal from Appellant's August 28, 2014 receipt of a DAS determination letter dated August 26, 2014. DAS determined that Appellant's position, which was previously classified as Research Administrator 2, 66927 (Pay Range 14) was more properly classified as Mental Health Administrator (MHA) 4, 65224 (Pay Range 14). This constitutes a lateral move. Appellant believes that either MHA 5, 65225 (Pay Range 15) or Health Services Policy Supervisor, 65215 (Pay Range 15) would provide a better fit with 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

First to testify on direct and cross examination was **Appellant, Surendra Adhikari, Ph.D.**

Next to testify was **Kraig Knudsen**, Ph.D., Bureau Chief of Research and Evaluation within MHAS' Office of Quality, Planning and Research (QPR). Dr. Knudsen has served as Appellant's supervisor for all times pertinent to this appeal.

Last to testify was DAS HCM Senior Analyst **Laura Sutherland**.

Appellant currently serves as an MHA 4 under Dr. Knudsen in the Bureau of Research and Evaluation, Office of QPR. Dr. Knudsen serves as a Health Services Policy Program Administrator, which falls within Pay Range 16. Dr. Knudsen reports to Deputy Director Sanford Starr, who heads MHAS' Office of QPR.

Appellant's doctorate is in the field of Medical Sociology. A principal component of this field involves looking at the effects of social inequality on the overall health and health care of pertinent populations. The focus here is to study these at-risk populations in regard to disease, morbidity, and mortality.

Appellant conducts considerable monitoring and directing, particularly of personnel external to MHAS. These individuals may be employed by an agency such as a major university or by a particular ethnic/socio-economic geographically specific or other non-profit community agency. MHAS may be passing through or otherwise administering grant money for these entities and/or may be offering assistance to the grantee during the application process.

Appellant's work has included evaluating, monitoring, and assisting researchers studying tobacco use and abuse among Asian Americans and an ongoing statewide study regarding the effects of social inequality on Bhutanese refugees. Appellant frequently attends regional, national, and international conferences and has presented at various conferences. This includes presenting in Shanghai, which is considering adopting a new smoking cessation program that was designed through the assistance of and the grant administration and monitoring of MHAS.

Appellant's recent functional oversight and, to a degree, functional supervision of grantee research included the topics of mental health, suicidal ideation, and PTSD in the above-referenced Bhutanese refugee community. Dr. Knudsen allowed Appellant to use MHAS staff, including Appellant's former subordinate, Dr. Richard Massatti, to complete this work. Appellant also used the clinical and case worker staff of refugee service providers and worked in a collaborative partnership with the Bhutanese refugee community. The final draft of the report of this research is currently being prepared.

Appellant's other more recent projects included performing as the principal evaluator for a study to assist the Ohio Board of Pharmacy (OBP) to obtain grant

money regarding OBP's rollout of a streamlined statewide automated pharmacy prescription reporting/distribution system. Apparently, there was considerable doubt regarding whether OBP would receive the grant. Thus, OBP sought assistance from MHAS and DD Starr assigned Appellant to better align OBP's request with what the grantor was seeking. It is noted that the face page of the report that was issued concerning these activities lists Appellant as principal investigator. (Please see Appellant's Exhibit A.)

Appellant's also acted as principal evaluator in assisting Wright State University to obtain a grant to provide technology assisted care to disabled populations. Further, Appellant acted as lead evaluator to assist various county ADAMH Boards to prepare and provide additional information to federal grant providers; to increase the probability of receiving a favorable response to the ADAMH Boards' request to fund assessments of county housing needs.

About 60 percent of Appellant's time has been spent on special projects (such as set forth, above), about 40 percent has been spent on work for the OBP, and about 10 percent has been spent acting as an MHAS expert, liaison, and agency representative. Appellant noted that he serves on two statewide boards, serves as an advisor to one national committee, and serves on more than three national committees.

Dr. Knudsen averred that MHAS performs functions that involve "*programs*". These particular programs are run *internally* by MHAS. In the vernacular, MHAS "owns" these programs.

The Office of QPR, itself, performs wide-reaching "*evaluation*" of other programs that are *external* to MHAS. In doing so, the Office/Bureau assists potential grantees with grant writing. Further, the Office/Bureau acts as a principal evaluator.

They help the grantor and grantee to make informed decisions regarding the effectiveness of an external program and regarding whether the program is fulfilling its stated goals and objectives. *It is in the "evaluation" area that Appellant principally performs his duties.*

Dr. Knudsen stated that it is MHAS DD Joseph Hill who is in charge of the cultural-competence-and-health-disparities subject matter area for the Department and not DD Sanford Starr, who is Chief of the Office of QPR. Dr. Knudsen also indicated that the Bureau's subject matter area is behavioral health and its statutory mission is to provide guidance to Ohio's behavioral health care system. Behavioral health of course includes health disparities, he declared.

Appellant enjoys considerable independence and discretion in carrying out his duties. He provides his supervisor, Dr. Knudsen, with periodic updates and much of the time works independently. Dr. Knudsen also provides Appellant with advice, when asked. Appellant averred that he is considered to be an MHAS' expert regarding health disparities and equities.

Appellant's Bureau utilizes a "team approach" to perform its duties and fulfill its mission. Appellant is part of that team, which collaboratively makes decisions and does its work, within the established chain of command. Each team member brings his or her particular strengths to the team, according to Dr. Knudsen, who noted that working in teams improves the quality of their work.

As part of that team, Appellant is able to offer important and valued contributions to the functioning and success of the Bureau. Correspondingly, the team, collectively, as well as Dr. Knudsen, individually, have a significant, and apparently a salutary, impact on Appellant's work.

Appellant previously served with the Ohio Department of Alcohol and Drug Addiction Services (ODADAS). When the General Assembly merged ODADAS with the Ohio Department of Mental Health, Appellant and other staff from ODADAS became employees of what is now MHAS. At that time, Appellant's position was classified as Researcher Administrator 2. Appellant supervised at least one Research Administrator 1 (Dr. Massatti) until approximately April 2014. Subsequent personnel movement reallocated that position to other functions not under Appellant's direct supervision.

Appellant, MHAS, and DAS all agree that, during the time of the job audit review, Appellant has not performed supervisory duties, as specifically defined in O.A.C. 123: 1-7-15.

Accordingly, I incorporate herein any finding set forth, above, whether express or implied. This includes the general percentages of time set out for Appellant's job duties.

CONCLUSIONS OF LAW

This case presents this Board with the question of whether Mental Health Administrator 4 is the most appropriate classification for Appellant's position? Based on the findings above and the reasons below, this Board should affirm DAS' job audit determination to that effect.

HCM Senior Analyst Laura Sutherland offered testimony that DAS considered four classifications when conducting the audit of Appellant's position: **Research Administrator 2, 66927** (Appellant's former class); **Mental Health Administrator 4, 65224** (Appellant's new class); **Mental Health Administrator 5, 65225**; and **Health Services Policy Supervisor, 65215**. Ms. Sutherland reiterated O.A.C. 123: 1-7-15's requirement that the mandatory duties of a pertinent class concept must be satisfied at least 20 percent of the time unless otherwise specified, in order for the position of the pertinent employee to be eligible for that class. O.A.C. 123: 1-7-15 also sets forth the four requirements for an employee's duties to qualify as supervisory.

R.C. 124.03 (A) (1) requires the decisions of this Board to be consistent with the applicable classification specifications. Thus, if a class requires supervision, particularly if it is required in the class concept and in the class title, then this Board must essentially follow those dictates, in conformance with R.C. 124.03 (A) (1).

Accordingly, the undersigned reviewed the four specifications referenced, above. This Board can rule out Research Administrator 2 and Health Services Policy Supervisor, since both require supervision. Ms. Sutherland agreed that, *if the mandatory supervisory requirement were suspended*, the Health Services Policy Supervisor specification most closely matched Appellant's duties.

Both the MHA 4 and 5 specifications set forth multiple options and combinations. Ms. Sutherland stated that, of the 12 or 13 options set forth in the MHA 5 specification, about nine of the options are inapplicable to Appellant's Department and/or circumstances. For the four that might apply, she averred, Appellant does not: manage and coordinate statewide forensic psychiatry programs; manage all maximum security mental health facilities located in a region; plan, develop, coordinate, and manage statewide programs in safety and hygiene; or manage complex programs on a statewide basis. Thus, Ms. Sutherland offered, Appellant's position could not qualify for the MHA 5 class.

Ms. Sutherland further offered, and I find, that the MHA 4 class provides an option that is a good, but not a perfect, fit. This is the option for the incumbent to plan, coordinate, and implement a specialized program statewide.

It is fairly clear that, when R.C. 124.03 (A) (1)'s and O.A.C. 123: 1-7-15's requirements are given legal effect, the only class of the four considered that would satisfy these provisions is the MHA 4 class. Accordingly, DAS properly assigned the MHA 4 class to Appellant's position.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the Department of Administrative Services' job audit determination, which reclassified Appellant's position to Mental Health Administrator 4, 65224, pursuant to R.C. 124.03 and R.C. 124.14.


James R. Sprague
Administrative Law Judge