

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Yvette Cruz,

*Appellant,*

v.

Case Nos. 2014-REC-11-0284  
2014-MIS-11-0285

Montgomery County Human Resources Department,

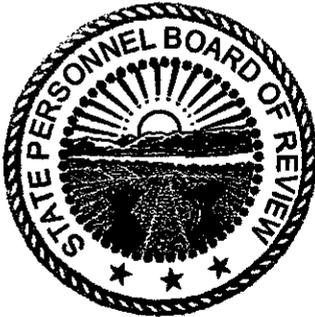
*Appellee,*

**ORDER**

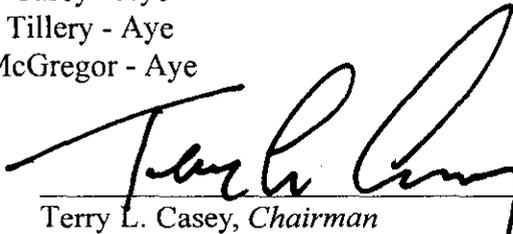
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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.

Wherefore, it is hereby **ORDERED** that these appeals are **DISMISSED** due to untimely filing, pursuant to section 124.03 of the Ohio Revised Code and administrative rule 124-1-03(C) of the Ohio Administrative Code, thereby retaining Appellant in the classification of Human Resources Officer.



Casey - Aye  
Tillery - Aye  
McGregor - 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, June 09, 2016.

  
Eiree Conner  
*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 June 16, 2016.** 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-11-0284 and 2014-MIS-11-0285

Transcript Costs: \$192.00 Administrative Costs: \$25.00

Total Deposit Required: \* \$217.00

Notice of Appeal and Deposit Must  
Be Received by SPBR on or Before: June 24, 2016

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

Yvette Cruz

*Appellant*

v.

Human Resources Department  
Montgomery County

*Appellee*

Case Nos. 2014-REC-11-0284  
2014-MIS-11-0285

January 14, 2015

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on July 21, 2015. Present at the hearing were Yvette Cruz, appearing *pro se* and Appellee Montgomery County Department of Human Resources designee David Holbrook, Assistant Human Resources Director, represented by Todd M. Ahearn, Assistant Prosecuting Attorney.

The subject matter jurisdiction of the Board is one of the issues to be determined as this case was remanded by the Board to further develop the record after a Report and Recommendation was issued recommending dismissal of the appeal due to the appeal being filed untimely.

On the issue of the timeliness of Appellant Cruz's appeal, David Holbrook, Assistant Director, Human Resources, identified Appellee's Exhibit 1 as a letter dated September 29, 2014, to Appellant Cruz notifying her of the results of her job audit and notifying her that if she disagreed with the results, she could file an appeal with this Board within thirty days of receipt of the letter. The letter contained an acknowledgment of receipt signed by Appellant Cruz on October 7, 2014.

Michelle Matthews, supervisor of Appellant Cruz, testified she provided the letter from Mr. Holbrook (identified as Appellee's Exhibit 1) to Appellant Cruz on October 7, 2014 and had Appellant Cruz sign an acknowledgment that she received the letter on that same date.

Appellant Cruz testified that once she received the results of her audit on October 7, 2014, she began to gather documents in an effort to determine whether or not she was going to file an appeal with this Board. She identified Appellant's Exhibit A as documentation evidencing she made a public records request of the Appellee on October 7, 2014 and received all the documents she requested on

October 29, 2014. Appellant Cruz then stated she used the remaining days of that week and the weekend to review the documents and decide if she wanted to appeal. She testified she tried to fax her appeal to this Board on Monday, November 4, 2014, but the fax did not go through. She called the Board offices and was told to wait while someone checked to make sure paper was in the fax machine and to try again. Appellant Cruz stated she tried again with no luck. She had documentation to show that she tried to fax her appeal eight (8) times on November 4, 2014, but the fax never went through. She testified she tried to fax her appeal again on November 5 and 6, 2014, but again with no success. She stated she called the Board offices and was told that the fax machine was working as it was receiving other documents. Appellant Cruz testified it was too late on November 6, 2014, to drive to Columbus to file her appeal, so she put her appeal in overnight mail and it was received in the Board offices on November 7, 2014, one day late.

#### **STATEMENT OF THE CASE WITH REGARD TO JOB DUTIES**

Appellant Cruz testified she is currently classified as a Human Resource Officer and has held that classification since 2005. Her direct supervisor is Michelle Matthews, Human Resource Manager. Appellant Cruz does not have any supervisory duties.

Appellant Cruz explained the Human Resource office has approximately twelve (12) employees and she and two others staff the recruitment part of the office. She stated her most time consuming and primary duty is that of coordinating the actual recruitment process. By auditing the weekly personnel actions, which indicates upcoming vacancies, Appellant Cruz stated she creates the posting requests. She created a form within the system which is sent to each department to review and then the form is returned to her. The weekly vacancy status report and the weekly administrative council summary is gathered by Appellant Cruz each Monday and her supervisor presents these reports at the weekly executive board meeting. Once the submissions are reviewed and approved for posting, Appellant Cruz opens up requisition in two different computer tracking systems.

Once the requisitions are approved by several different people, then Appellant Cruz creates a recruitment folder with all applicable documents and notifies the specific department that the request is being processed. The folders are then distributed to the three recruiters, that being Appellant Cruz and two others. Appellant Cruz monitors the process to ensure the county Human Resources office obtains permission from the Commissioners to post and once that happens, Appellant Cruz is notified by the on-line computer system. Every Thursday she goes through the posting approval for the week, checking to make sure everything is approved and then on Friday, postings go live. At that time, Appellant Cruz pulls up the postings and checks them for accuracy.

The next step is to create a candidate selection packet which consists of a cover sheet, information on the candidate, a sign-off by the interviewers, resume, application and interview sheets. Information is included in the two reports done by Appellant Cruz and then a list is sent to the county Human Resources office to do a minimum qualifications review, background checks, etc., for hire, transfer or promotion.

Each recruiter sends out contingency or regret letters and can do this without first receiving approval from the supervisor. Appellant Cruz uses both computer systems and all three recruiters note what is going on with a particular vacancy and then Appellant Cruz checks all of it. She is the first point of contact with regard to any problems with any posting; however, she does not write the actual posting, as the posting is taken from the on-line classification specifications.

Appellant Cruz testified that her next responsibility is that of actually recruiting candidates for position. She has a conversation with the department manager that is looking to hire and they confer on dates to hold interviews, the location and interview questions. The screening of applications and determining if a candidate meets the minimum qualifications are done by her and the other recruiters. The hiring department then decides who to bring in for interviews. The candidates are then contacted by telephone or email and are scheduled for the interview. Appellant Cruz stated she sits in on some interviews. The hiring department makes the selection of the candidate and then Appellant Cruz submits the necessary paperwork to the vendor who conducts the background checks. She constantly is updating the system to ensure its accuracy and she then creates another packet for the person who conducts the on-boarding of new hires.

Appellant Cruz stated the position description updates that she was responsible for are mostly complete and she is used now as a resource person. Whenever the pay rates change in accordance with a new union contract or the pay scales are adjusted, Appellant Cruz updates those for Job and Family Services positions. The neo-gov applicant tracking system was implemented in 2008 and Appellant Cruz was the system administrator until earlier in the year when she was relieved of this duty.

When asked, Appellant Cruz stated she does not participate in contract negotiations; does not develop the classification or compensation plans, although she is included in some discussion involving those; does not do any benefits work; for EEO work, she pulls reports and/or statistics as needed; she does not do any fact finding/arbitration; does not do any affirmative action; does not do any performance evaluations; and does not do anything with the drug-free workplace program. She confirmed that all of her work only pertains to those employees of Job and Family Services.

Appellant Cruz then identified and explained her Exhibits A through H, with Appellant's Exhibits I and J being proffered.

Michelle Matthews testified she is employed in the Human Resources department of Job and Family Services which consists of approximately fourteen employees. She stated there are approximately 875 employees in the department and there are two bargaining units.

Ms. Matthews opined that the steps described by Appellant Cruz as her duties are administrative in nature and that recruitment is a very high priority at the department. The average weekly number of recruitments is approximately fifty-two to sixty-eight. She explained that the Executive Board is synonymous with the Administrative Council and the report that Appellant Cruz receives is broken up by division. Each recruiter then looks at his or her assigned division and updates the reports and makes comments. Ms. Matthews testified Appellant Cruz has not participated in interviews in approximately one and one-half years and that the postings consist of approximately five common jobs.

Ms. Matthews stated her staff consists of a Human Resources Specialist, a Human Resources Officer, two Human Resources Coordinators and a Human Resources Business Analyst.

Regina Marks stated she has been employed by the Appellee since July, 2014 and is classified as a Human Resources Representative. She testified she completed the job audit for Appellant Cruz. Ms. Marks identified Appellee's Exhibit 3 as her reasons for her decision. She testified she reviewed Appellant Cruz's documentation and the classification specification for the Human Resources series. She also met with Appellant Cruz and interviewed her with regard to her job duties. After reviewing the specification for Human Resources Representative and Coordinator, Ms. Marks stated the main focus of Appellant Cruz's position is that of recruitment and it was her determination that Appellant Cruz is properly classified.

Appellee's Exhibits 4 through 12 were identified and it was noted that administrative notice will be taken of the Human Resources Coordinator specification.

On questioning by Appellant Cruz, Ms. Matthews confirmed she only met with Appellant Cruz once and the question in Appellee's Exhibit 6 were questions she had prior to the submission of Appellant Cruz's questionnaire. She stated it was her determination that Appellant Cruz assists the department of Human Resources as she does not have final approval authority.

### **FINDINGS OF FACT**

With respect to the findings as related to the timeliness of the appeal, I find as follows:

1. Appellant Cruz received notice of her job audit on October 7, 2014. The notice informed her she had thirty days to file an appeal of her job audit with this Board. Thirty days from October 7, 2014, was November 6, 2014.
2. After receiving the job audit determination, Appellant Cruz requested documents from Appellee to review and to assist her in deciding if she wanted to appeal the job audit decision. She received those documents on October 29, 2014.
3. On Monday, November 4, 2014, Appellant Cruz attempted to fax her appeal to this Board but the fax did not go through. She called the Board offices and was told to try again after the fax machine was checked to make sure there was paper in the machine. She tried again to no avail. Appellant Cruz called the Board offices a second time and was told that the Board fax machine appeared to be working properly as faxes from other persons were being received.
4. On November 5 and 6, 2014, Appellant Cruz tried again to fax her appeal to the Board, but once again, the fax did not go through. At that point, Appellant Cruz put her appeal in overnight mail and the Board received her appeal on November 7, 2014, one day late.

With respect to the duties performed by Appellant Cruz, inasmuch as there was no discrepancy or correction to the duties testified to by Appellant Cruz, it is my finding that the duties of Appellant Cruz's position are, in fact, the duties she testified to.

### **CONCLUSIONS OF LAW**

In looking first at the jurisdiction of this Board, it is clear that Appellant Cruz filed her appeal one day late. Unlike a court of general jurisdiction, this Board has only the authority given to it by statute and administrative rule, and is without equity powers. Administrative rule 124-1-03(C) of the Ohio Administrative Code states "Appeals of reclassifications shall be filed within thirty calendar days after receiving the notice of the results of the audit." Appellant Cruz filed her appeal one day late, thereby depriving this Board of jurisdiction to consider her appeal.

While Appellant Cruz testified that she wanted to obtain other documents to review in deciding whether or not to file an appeal, she still could have filed her appeal earlier and then if she decided not to pursue an appeal after she reviewed the requested documents, she could have withdrawn her appeal. Also, she tried to fax her appeal to this Board on November 4, 5 and 6, 2014. After trying on November 4, 2014, to fax her appeal with no success, Appellant Cruz could have put her appeal in the mail on that date or could have overnighted her appeal on that date. On November 5, 2014, when she again had no success, she could have overnighted her appeal and it would have been timely filed on November 6, 2014. Instead, Appellant Cruz waited until she had been unsuccessful three days in a row trying to fax her appeal into the Board before she finally put her appeal in overnight mail. While it is unfortunate and unexplainable as to why her attempts to fax her appeal were unsuccessful, nevertheless, she could have filed her appeal earlier as there was nothing preventing her from doing so.

Therefore, it is my **RECOMMENDATION** that Appellant Cruz's appeal was filed untimely and her case should be **DISMISSED** due to a lack of jurisdiction pursuant to section 124.03 of the Ohio Revised Code and Ohio Administrative Code section 124-1-03.

As for the question of Appellant Cruz's proper classification, after reviewing her duties and the classification specifications, it is the determination of the undersigned that Appellant Cruz is not properly classified as a Human Resources Officer but should instead be classified as a Human Resources Specialist.

The testimony established that Appellant Cruz has no supervisory responsibilities. Therefore, since the classifications of Human Resources Coordinator and Human Resources Operations Analyst both require the holder of those positions to supervise employees, Appellant Cruz cannot meet the requirements of those classifications.

In reviewing the classification specification for Human Resources Representative, Appellant Cruz does not perform the majority of the duties listed in Rank 1 of the specification or the class concept. The specification requires the incumbent to ". . . plan, coordinate and administer human resources and labor relations/collective bargaining and human resources activities (e.g., classification/compensation, collective bargaining, contract administration, EEO/affirmative action, benefits programs, recruitment and development activities, civil service and county rules and procedures). . .".

The testimony established that Appellant Cruz does not participate in contract negotiations, does not engage in fact finding or arbitration, does not have any duties with respect to affirmative action, does not work with benefits, does not do EEO work other than to pull reports and/or statistics upon request if an EEO claim is filed, and does not develop the classification or compensation plans, although she is included in some of those discussions. The requirement of the specification is that the employee holding this classification would have involvement and extensive knowledge of all of those areas in order to administer those programs. Appellant Cruz does not do so.

The rank 1 duty of the specification requires the employee to "Independently handle complex projects in contract administration and negotiations, classification/compensation plan development and maintenance, benefits . . . , special projects, EEO/affirmative action and civil services rules and procedures. . .". Appellant Cruz does none of those duties. She does work on recruitment and provides affirmative action statistics, but does not analyze those statistics. She also does no work with regard to layoffs or retention points or with the Drug-Free Work Place program. While Appellant Cruz does many tasks in the area of recruitment, she does not perform the duties in the other areas as required by the specification. Therefore, she cannot meet the requirements of the Human Resources Representative classification.

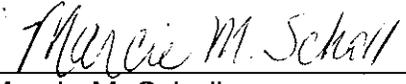
The classification specification for Human Resources Officer, Appellant Cruz's current classification, states in the class concept that the incumbent is ". . . independently responsible for two or more human resources programs. . .". The rank 1 duties state that the employee will ". . . determine, define and assist in development and establishment of broad training or educational programs which will enable attainment of organizational needs, objectives and legal requirements; conducts evaluations for effectiveness and continuous improvement of programs; suggests alternatives or expansions to programs when needed; assists senior level management in defining areas which require attention to conform to policies, procedures, regulations, rules or contracts; assists with investigative processes re complaints or non-compliance with regulations, policies or contracts; assists management to ensure human resources procedures/processes remain compliant with federal, state, county policy, regulations and rules." Appellant Cruz does not do the majority of those duties. She does not train or establish training or educational programs, she does not conduct evaluations of programs and she does not participate in investigations. Appellant Cruz does make suggestions to the recruitment process, but that entire process makes up the Rank 2 duties of the classification. She also ensures that proper procedures are being followed in the area of recruitment, but again, that is covered by the Rank 2 duties.

Since Appellant Cruz does not do the majority of the duties, or do the Rank 1 duties of the classification specification more than fifty percent of the time, the Human Resources Officer classification is not the proper classification for her.

Both the Human Resources Specialist and Assistant classifications are better descriptions of Appellant Cruz's duties. Since Appellant Cruz testified that the majority of her duties are spent in the recruitment area, the best description of her duties are contained in the Human Resources Specialist classification. The Rank 1 duties in that specification lists her duties of interacting with the managers on vacancies, preparing postings and posting them, conducting the preliminary screenings of applicants, answering applicant questions, checking references and initiating background checks, notifying applicants of the decision, processing forms, preparing reports and ensuring compliance with policies and regulations.

The Rank 2 duties describe her work with other departments and her work with rosters, reports and records. While Appellant Cruz is still used as a resource for position descriptions and helps to troubleshoot the Neo-gov system, her primary function is to administer the recruitment process. The classification of Human Resources Specialist is the proper classification for Appellant Cruz.

Therefore, based on the testimony and evidence presented at the record hearing, it is my **RECOMMENDATION** that Appellant Cruz's appeal be **DISMISSED** due to the untimely filing of her appeal, pursuant to section 124.03 of the Ohio Revised Code and administrative rule 124-1-03(C) of the Ohio Administrative Code, thereby retaining her in the classification of Human Resources Officer. In the event that the Board does not accept this recommendation, then it is my **RECOMMENDATION** that Appellant Cruz's position be **RECLASSIFIED** to the proper position of Human Resources Specialist, class number 64622. If that classification is a downgrade, it is further **RECOMMENDED** that she be placed into Step X as per the policy of the Appellee.

  
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Marcie M. Scholl  
Administrative Law Judge