STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Jason Saintenoy,

Appellant,

v. Case Nos. 2015-INV-02-0018
2015-MIS-02-0019

Massillon Civil Service Commission,

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 the instant request for investigation and related miscellaneous case are **DISMISSED**.

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, May 05, 2016.

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 May 12, 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: 2015-INV-02-0018 and 2015-MIS-02-0019

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: May 20, 2016

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Jason Saintenoy	Case Nos. 2015-INV-02-0018 2015-MIS-02-0019
Appellant	
v.	March 31, 2016
Massillon Civil Service Commission	
Appellee	Marcie M. Scholl *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon a Judgment Entry by the Stark County Court of Common Pleas, issued on February 1, 2016, in the matter of *Massillon Civil Service Commission, et al., v. F.O.P. Henderson Lodge No. 105, et al.,* Case No. 2015 CV 00795.

Appellant Saintenoy filed an investigation request with this Board, explaining that he was promoted to Police Sergeant after taking a promotional exam on October 23, 2012. He stated that a dispute evolved following the ranking of the candidates due to the fact that the Civil Service Commission (CSC) did not award seniority points to Ptl. Rogers, thereby placing Ptl. Maier in the second slot and Ptl. Rogers in the third slot. Ptl. Rogers filed suit to have his seniority points awarded to him so that he could be second on the list for any future vacancy. The following April, 2013, Ptl. Maier was promoted to the vacant Sergeant position since he was ranked second on the list. Subsequent to that promotion, the Stark County Common Pleas Court ruled that Ptl. Rogers should have had his seniority points awarded to him, (that decision was upheld by the Fifth District Court of Appeals) so the CSC then promoted Ptl. Rogers to the Sergeant's position held by Maier and then placed Maier into another Sergeant's position in April, 2014, that was going to be vacant due to an upcoming retirement. Another lawsuit was filed alleging that the list used to promote Maier in April, 2014, had expired. The court held that the list had expired and should not have been used to promote Maier.

On January 10, 2015, a promotional exam for the position of Lieutenant was held and Sergeants Maier and Saintenoy took the test. Sergeant Saintenoy alleges that Sergeant Maier should not have been deemed eligible to take that test since it is his belief that Sergeant Maier was found by the court to have been wrongly placed in the position of Sergeant. A Declaratory Judgment action was then filed by the CSC and the City of Massillon to determine if Sergeant Maier should be eligible to take the promotional exam for Lieutenant.

The court held in the Declaratory Judgment action, that:

> Based upon undisputed facts, the Court finds, as a matter of law, that Maier is a permanent employee who has completed his probationary period as a Sergeant; that he was fully eligible to take the examination for promotion to Lieutenant; and that he is eligible for promotion to Lieutenant in accordance with R.C. section 124.44 and any applicable terms of the CBA, consistent with this decision. (*Massillon Civil Service Commission, et al., v. F.O.P. Henderson Lodge No. 105, et al.*, Case No. 2015 CV 00795, February 1, 2016).

The Court has addressed Appellant Saintenoy's concerns in his request for an investigation. Therefore, there is no longer any issue to investigate by this Board. Thus, I respectfully **RECOMMEND** that the instant request for investigation be **DISMISSED**.

Marcie M. Scholl

Marcie M. Scholl
Administrative Law Judge