STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Julia Kempher,

Appellant,

v.

Case Nos. 2015-REC-03-0037
2015-MIS-03-0038

Department of Rehabilitation & Correction,
and
Department of Administrative Services,

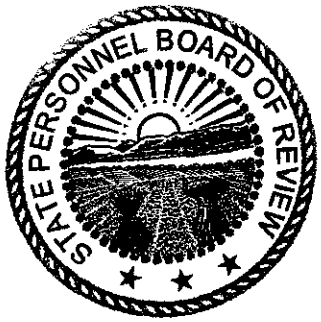
Appellees,

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 instant appeals are **DISMISSED** due to a lack of subject matter jurisdiction.



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, June 04, 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 June 11, 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: 2015-REC-03-0037 and 2015-MIS-03-0038

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: June 19, 2015

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Julia Kempher

Appellant

v.

Central Office
Department of Rehabilitation & Correction
Human Resource Division/Compensation and Workforce Planning
Department of Administrative Services,

Appellee

Case Nos. 2015-REC-03-0037
2015-MIS-03-0038

May 13, 2015

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon the filing of an appeal by Appellant Kempher on March 30, 2015. On her notice of appeal, Appellant Kempher checked the box marked "Reclassification" and in the "Other" box, she wrote "Prepositioning No Progression Ladder Inaccurate Job Descriptions Review, Selection & Promotion of Applicants".

With regard to the reclassification appeal, according to the information in the file which was attached to Appellant's appeal and Appellee's response to a questionnaire that was sent out by this Board, Appellant Kempher received a new classification title as a result of a change to the entire classification plan. In a letter to Appellant Kempher from the Bureau of Personnel Assistant Chief, Cathy Simerl, dated January 16, 2015, Appellant Kempher was notified that "the classification you currently hold will have a Title Change as indicated below: From 63235 Correctional Records Management Supervisor 1 PR 12 to 63235 Correction Records Management Supervisor PR 12". In a memorandum to all HCM Administrators, from the Department of Administrative Services (DAS), dated January 9, 2015, titled "Implementation of Class Plan Changes", DAS states it has amended the state

classification plan by changing the Job Titles of several classifications, one of those being Correctional Records Management Supervisor 1 to Correction Records Management Supervisor. It is this title change which Appellant Kempher is appealing.

This Board does not possess jurisdiction to hear appeals of an amendment to the state classification plan by DAS when the only action is that of classification title change. DAS is statutorily charged with the maintenance of the classification plan and this Board does not have jurisdiction to review the decisions of DAS in implementing a title change to one of the classifications. A title change does not meet the definition of a "reclassification" as found in administrative rule 124-1-02(X), which defines that term as "the assignment of a different classification to a position." In the instant appeal, there is no different classification as the classification number has remained the same, as well as the pay range – the only thing that has changed is the name of the classification. The duties as listed on the classification specification have not changed – only the name of the classification. There has been no adverse effect to Appellant Kempher as nothing has changed but the title of her classification.

With regard to her appeal alleging a "pre-positioning of employees" so that those employees would receive placement into a higher pay range and the allegation that she should have been placed into one of those positions, this Board does not possess jurisdiction to hear appeals of employees who were not promoted. Unlike a court, the State Personnel Board of Review has jurisdiction only when it has been explicitly conferred upon it by the Ohio General Assembly. Ohio Revised Code Section 124.56 grants this Board authority to make an investigation only when the Board has reason to believe that:

> . . . any officer, board, commission, head of a department, or person having the power of appointment, layoff, suspension or removal, has abused such power by making an appointment, layoff, reduction, suspension, or removal of an employee under his or their jurisdiction in violation of this chapter [124.] of the Revised Code . . .

This Board has no jurisdiction to investigate an individual's failure to be promoted. See *Ketron v. Ohio Dept. of Transportation* (1991), 61 Ohio App.3d 657; *Singh v. Ohio Dept. of Transportation* (1982), 7 Ohio App.3d 269, and will not

substitute its judgment for that of Appellee in determining either the best candidate to fill a position or how best to examine applicants for a position. *State, ex rel. King v. Emmons, et al.*, supra. An appointing authority has discretion in whom it hires and may employ a variety of methods of competitive examination, including the review of an employment application, to determine an applicant's eligibility for appointment to a position. No requirement is made by any section of R.C. Chapter 124. that a written examination be administered to applicants; no requirement is made by any section of R.C. Chapter 124. that the same method of competitive examination be employed for each position within an agency.

Therefore, I respectfully **RECOMMEND** that the instant appeals be **DISMISSED** due to a lack of subject matter jurisdiction.

Marcie M. Scholl

Marcie M. Scholl
Administrative Law Judge