

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Debra Rable,

Appellant,

v.

Case No. 2015-MIS-06-0078

Department of Rehabilitation & Correction,
Toledo Correctional Institution,

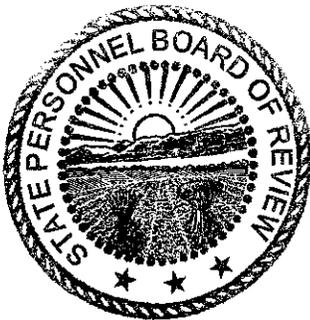
Appellee,

ORDER

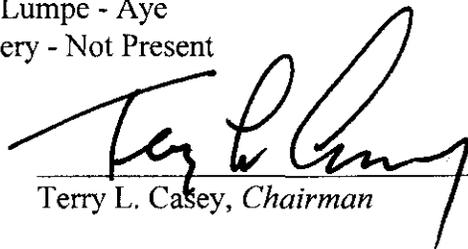
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 appeal is **DISMISSED** for a lack of subject matter jurisdiction pursuant to section 124.03 of the Ohio Revised Code.



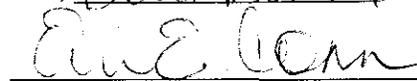
Casey - Aye
Lumpe - Aye
Tillery - Not Present


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, December 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 December 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.

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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: December 21, 2015

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

Debra Rable

Case No. 2015-MIS-06-0078

Appellant

v.

October 30, 2015

Toledo Correctional Institution
Department of Rehabilitation & Correction

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on October 30, 2015, upon the filing of an appeal by Appellant Rable on June 8, 2015, and Appellee's Motion to Dismiss, filed on October 8, 2015. To date, Appellant Rable has not filed a memorandum *contra*. Attached to Appellee's Motion to Dismiss are two affidavits. One is from Cindy Linton, Personnel Director at Allen/Oakwood Correctional Institution, stating Appellant Rable has held her position of Program Administrator 2 since July 15, 2012. The second is from Tara Kimball, Labor Relations Officer at Toledo Correctional Institution, stating Appellant Rable applied for the position of Program Administrator 3. She also avers that on February 23, 2015, Brian Weber was promoted to the Program Administrator 3 position

In her notice of appeal and accompanying documents, Appellant Rable states she would like a "qualification review of successful candidate-demonstrably superior?" In a separate mailing of June 24, 2015, Appellant Rable filed a list of documents which she wanted this Board to review regarding the Program Administrator 3/Quality Assurance Coordinator position at Toledo Correctional Institution.

Unlike a court of general jurisdiction, this Board has only the authority granted by statute. This Board has no jurisdiction over appeals of alleged abuses in the promotion or selection of an employee for a promotion or temporary position. This

Board derives its authority from section 124.03(A) of the Ohio Revised Code. That statute states, in pertinent part, as follows:

(A) The state personnel board of review shall exercise the following powers and perform the following duties:

(1) Hear appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities or the director of administrative services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal of the director, or anybody authorized to perform the director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under division (D) of section 124.14 of the Revised Code. As used in this division, "discharge" includes disability separations.

As can be seen from reading the above statute, this Board does not possess jurisdiction over the denial of a promotion or assignment to a temporary position. The above statute does confer jurisdiction on this Board to review the "assignment or reassignment to a new or different position classification" but case law has held that to mean when there has been a job audit requested either by the employee or by the appointing authority. In Appellant Rable's appeal letter and in her attachments, there is no mention of a job audit request or determination.

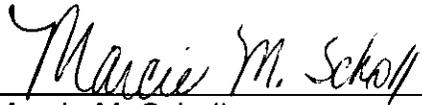
The courts have also stated in several opinions before them that this Board does not have any authority to investigate or to hear appeals of alleged abuses of promotion. The case of *Ketron v. Ohio Department of Transportation* (1991), 61 Ohio App.3d 657, concerned two employees of the Department of Transportation who filed an investigation request with this Board alleging that the Department was not adhering to the promotion process as described in Chapter 124. of the Ohio Revised Code. This Board reviewed the request and terminated the investigation on the basis of a lack of subject matter jurisdiction. The Appellants appealed and the Court of Appeals held that:

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. . . The legislature did not include the term “promotion” in R.C. 124.03(A), and we decline to engage in judicial legislation by inserting the word “promotion” into the statute . . . (*Ketron* at pg. 661).

The Court continued on to state the terms “assignment” and “reassignment” as found in section 124.03(A) of the Ohio Revised Code, are not synonymous with the term “promotion” and, therefore, section 124.03(A) of the Ohio Revised Code does not provide a right to appeal to this Board in the case of an alleged abuse of promotion. See also *Singh v. State* (1982), 7 Ohio App.3d 269.

Since Appellant Rable has not alleged any of the specific areas over which this Board has jurisdiction, it is my **RECOMMENDATION** that this appeal be **DISMISSED** for a lack of subject matter jurisdiction pursuant to section 124.03 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge