STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Denise Morrison,

Appellant,

v.

Case Nos. 2016-REC-07-0126
2016-MIS-07-0127

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** for lack of jurisdiction pursuant to R.C. 124.03 and 124.14.

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, September 22, 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 September 29, 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: 2016-REC-07-0126 and 2016-MIS-07-0127

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: October 7, 2016

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Denise Morrison

Appellant

v.

Dept. of Rehabilitation and Correction

and

Dept. of Administrative Services

Appellees

Case Nos. 2016-REC-07-0126
2016-MIS-07-0127

July 13, 2016

Raymond M. Geis
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These matters came on for consideration upon Appellant's filing of appeals to protest that the Correction Lieutenant classification, Pay Range 11 did not receive additional steps in the pay schedule like that of the Correction Captain, Pay Range 12.

In her notice of appeal, Appellant states in pertinent part,

> The original request that I made was **not for a re-classification**...it was made **seeking to gain 1 step increase in pay**, the same as the position of corrections captain received. Gaining this step increase would bring the position of Corrections Lieutenant back to being one step behind corrections captain instead of the current two steps. ...I respectfully ask you to **reconsider** the decision rendered **based on the step** increase in pay and **not** the **job classification**. (emphasis added)

It is apparent that the Ohio Dept. of Administrative Services (DAS) treated Appellant's original request as a job audit, and determined that her current classification was appropriate. However, Appellant makes clear in her appeals that she never disputed her classification, but only the failure of DAS to add steps to her Pay Range.

It is important to note that this differs from a *reduction in pay* [which] "means an action which diminishes an employee's pay." OAC 124-1-02.

Unlike a court, the State Personnel Board of Review ("SPBR") has jurisdiction only when it has been explicitly conferred upon it by the Ohio General Assembly. The power to set compensation of state employees is a legislative, not administrative function. R.C. 124.03 grants SPBR jurisdiction to review a limited number of certain employment actions:

> ...The state personnel board of review shall...[h]ear appeals...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**...(emphasis added)

This language makes clear that the Board's jurisdiction does not extend to reviewing compensation legislation enacted by the General Assembly. This Board is a creature of statute and not a court of general jurisdiction with the power of judicial review.

R.C. 124.14 prescribes that "[t]he director [of DAS] shall assign each classification, either on a statewide basis or in particular counties or state institutions, to a pay range established under section 124.15 or section 124.152 of the Revised Code."

I take administrative notice that the classifications mentioned in the instant appeals are paid pursuant to R.C. 124.152 Schedule E-1 (D) as amended by 2016 Ohio Laws File 117 (Sub. H.B. 390). DAS publishes the E1 Exempt Pay Range Schedule (beginning July 2016) at das.ohio.gov in the Human Resources tab.

From this it is apparent that the Director of DAS acted to fulfill his duties to assign pay ranges to the classifications and that these decisions are not within the jurisdiction of this Board.

Therefore, I respectfully **RECOMMEND** that these instant appeals be **DISMISSED** for lack of jurisdiction pursuant to R.C. 124.03 and 124.14.

Raymond M. Geis
Administrative Law Judge