

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

Tammy A. Brown,

Appellant,

v.

Case No. 2016-REC-01-0005

Department of Administrative Services,

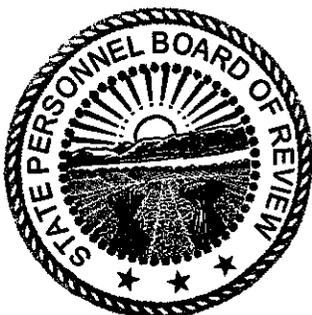
Appellee,

ORDER

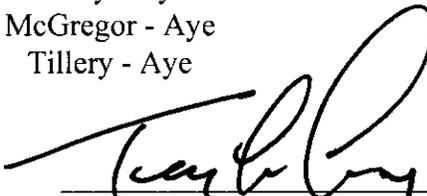
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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



Casey - Aye
McGregor - 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 24, 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 July 1, 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 Number: 2016-REC-01-0005

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: July 11, 2016

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

Tammy A. Brown

Case No. 2016-REC-01-0005

Appellant

v.

May 10, 2016

Department of Administrative Services
Human Resource Division/Compensation
and Workforce Planning

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration upon Appellant Brown's filing of an appeal from a change or "correction" of status from the classified to the unclassified service. After reviewing Appellant's appeal, it appears that Appellant Brown, in essence, requests this Board to issue a declaratory judgment stating that she is in the classified service rather than in the unclassified service.

It is true that when an Appellant seeks to invoke the jurisdiction of this Board, it is often necessary to determine initially whether an Appellant's position falls within the classified, or alternatively, the unclassified service. Yet, such a determination must be precipitated by an adverse personnel action, such as a removal or reduction, which either accompanied or immediately followed an Appellant's change or "correction" of status. Indeed, under R.C. 124.03, the State Personnel Board of Review does not have the authority to issue declaratory judgments determining the classified or unclassified status of an employee's position. There is no other statute in R.C. Chapter 124. which invests such jurisdiction in the State Personnel Board of Review.

Designating a position as classified or unclassified is in itself a lawful action on the part of an appointing authority. See, in general, *Lawrence v. Edwin Shaw Hospital* (1986), 34 Ohio App. 3d 137; *Shearer v. Cuyahoga Cty. Hospital, Sunny Acres* (1986), 34 Ohio App. 3d 59 (citing *State, ex rel. Store v. Raschig* (1943), 141 Ohio St. 477). See, also, *Spindler v. Medina Cty. Board of Mental Retardation and*

Developmental Disabilities (July 19, 1991), State Personnel Board of Review 91-INV-03-0164, Silver, ALJ, affm'd Full Board, August 26, 1992. While the appointing authority may or may not be mistaken in that designation, it is an issue that can only be determined whenever the jurisdiction of the State Personnel Board of Review is invoked in regard to another issue, as noted above. Should Appellant hereafter be adversely affected by a personnel action, Appellant may file a subsequent appeal with the State Personnel Board of Review, at which time the Board will determine not only its jurisdiction over the subject matter of that appeal but, if applicable, whether or not Appellant's position falls within the classified or unclassified civil service.

In the instant case, Appellant Brown filed three appeals – a reclassification appeal, a whistleblower appeal and a removal appeal. In an affidavit of Marissa Walter, attached to Appellant's Motion to Take Depositions, filed on February 25, 2016 in Appellant Brown's whistleblower appeal, case number 2016-WHB-01-007, Ms. Walter, a Human Capital Management Administrator 2, stated Appellant "Brown's civil service status was changed from classified to unclassified status on August 20, 2015." The documentation in the files does not indicate that any accompanying adverse action took place at that time. In Appellant Brown's notice of appeal, she notes that she was removed from her position effective January 7, 2016, and there is currently an appeal of that removal pending with this Board, case number 2016-REM-01-0006.

Since no adverse action accompanied Appellant Brown's designation from classified to unclassified, which took place on August 20, 2015, this Board does not possess jurisdiction over the subject matter of this appeal. Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant appeal for lack of subject matter jurisdiction pursuant to section 124.03 of the Ohio Revised Code



Marcie M. Scholl
Administrative Law Judge