

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

Christine Murgida,

Appellant,

v.

Case No. 2016-REC-01-0009

Department of Transportation,
and
Department of Administrative Services,

Appellees,

ORDER

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

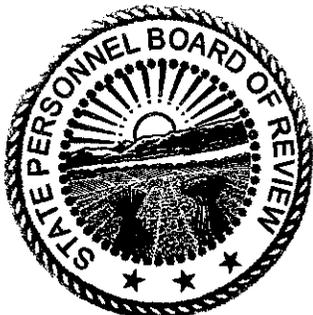
The Board has carefully reviewed the entirety of the record. This includes a review of: the Report and Recommendation of the Administrative Law Judges; any objections and responses to objections to that report which have been timely and properly filed; and the parties' issues presented prior to, during, and subsequent to Oral Argument before the Board. After conducting this review, the Board hereby adopts the Recommendation of the Administrative Law Judges.

The Board acknowledges that it would have been more appropriate for ODOT to have sought a formal reclassification of Appellant's position some four years ago, when ODOT chose to informally but substantially alter Appellant's duties. That would also appear to have been the appropriate time to provide Appellant with formal notice of such a reclassification (if DAS agreed at that time to reclassify Appellant).

Giving Appellant a formal notice at that time would have provided Appellant with actual notice of that reclassification. Moreover, it would have provided Appellant with clear notice regarding her appeal rights and would have left little doubt about the appeal time line that Appellant was under.

There were other issues raised in this appeal that might be of interest to some parties. But, certain of these questions do not appear to fit within the instant reclassification review. Nor, do we find, that this Board's powers and duties directly enable it to consider many of these personnel areas/questions.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED**, pursuant to R.C.124.03 and O.A.C. 124-1-03 (E).



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 23, 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 30, 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-01-0009

Transcript Costs: \$207.00 Administrative Costs: \$25.00

Total Deposit Required: * \$232.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: October 11, 2016

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

Christine Murgida

Case No. 2016-REC-01-0009

Appellant

v.

April 18, 2016

Department of Transportation

and

Department of Administrative Services

Appellees

James R. Sprague
Chief Administrative Law Judge
Raymond M. Geis
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on due to the April 14, 2016 occurrence of a record hearing in this matter. Present at hearing was Appellant, who appeared *pro se*. Appellee Department of Transportation (ODOT) was present through its designee, Renee Szymanski, Human Resources Manager. Appellee Department of Administrative Services (DAS) was present through its designee, Jessica Gerst, Senior Human Capital Management Analyst.

This matter came on for consideration upon Appellant's timely filing of the appeal regarding the *reclassification* component of her appeal. In this case, ODOT requested that DAS conduct a job audit of Appellant's position, which DAS did. DAS then issued its job audit determination and Appellant's position was correspondingly reclassified from Transportation Engineer 5 ("TE 5"), Class Number 85645 to Transportation Engineer 3 ("TE 3"), Class Number 85643, effective July 27, 2015. Appellant's notification letter was dated December 11, 2015 and the parties stipulated that the letter was delivered January 4, 2016.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

Appellant is a TE in ODOT District 11 with 31 years of service.

In this case, Appellant has specifically requested this Board disallow her reclassification pursuant to R.C. 124.14 (D) (2) which states, in pertinent part:

The board shall disallow any reclassification... of any employee when it finds that changes have been made in the duties and responsibilities of any particular employee for political, religious, or other **unjust reasons**. (emphasis added)

Appellant expressly waived her opportunity to have this Board review the merits of her job audit determination and concomitant reclassification. (Please see O.A.C. 124-7-03 (D))

Moreover, Appellant essentially concedes that she does not currently meet the job duties requirements for a TE5. Instead, Appellant's sole request is that this Board disallow her reclassification on the basis that changes made to her duties and responsibilities were allegedly made for unjust reasons.

These reasons, Appellant argues, allegedly include ODOT's direct (or imputed) efforts in 2012 to circumvent the layoff/abolishment provisions of R.C. 124.321. That alleged action, she asserts, deprived her of her due process rights to appeal the "de facto" abolishment of her position.

At hearing, Appellant argued that District 11 Deputy Director Lloyd McAdam ("Deputy McAdam") unjustly targeted her for demotion because she was female and made more money than did Deputy McAdam. She recounted that Deputy McAdam took many of her duties away in 2012 and transferred them to a newly created unclassified position of District Construction Administrator ("DCA"). She argues, *inter alia*, that this reduction of duties was in violation of R.C. 124.321's statutorily-mandated layoff procedures and (as noted) that she was denied due process protections as a result.

In furtherance of her argument, Appellant proffered Appellant's Exhibits A through H which were admitted with only two objections. Specifically, ODOT objected to the tables of organization in Appellant's Exhibit G and H on the bases of accuracy and relevance.

Appellant's Exhibits are labeled alphabetically. Appellant offered the following Exhibits for the following stated reasons:

Appellant's Exhibits A and B

Purporting that, Deputy McAdam originally asked for an audit in 2012, which was denied. In 2015 Deputy McAdam put forth his second request that Appellant's position be audited, this time in order to attempt to deny Appellant progression to Step 7.

Appellant's Exhibit C

Purporting to show that another TE5 making less money than Deputy McAdam was allowed to retain her classification even though that TE 5's duties were also reduced

Appellant's Exhibit D

Purporting to show the ODOT plan to move away from classified engineers occupying the title of District Construction Engineer ("DCE") within the TE classification, in favor of unclassified DCAs in the districts;

Appellant's Exhibit E

Purporting to show Appellant applied for jobs to restore her duties and protect her pay level, but to no avail;

Appellant's Exhibit F

Purporting to show that three women previously functioning as DCEs were returned to the construction office with less authority and influence while three men were promoted to the new unclassified DCA;

Appellant's Exhibit G

Purporting to show Appellee published Appellant's demotion on the website but did not immediately update the tables of organization;

Appellant's Exhibit H

Purporting to show a table of organization where TE 4s are used for each area, following reorganization. (Appellant was demoted to TE3)

DAS introduced DAS Exhibit 1, which constitutes the job audit package. The parties stipulated as to its authenticity.

Based on the statements of the parties and the evidence admitted at hearing, we make the following Findings:

1. First, we incorporate, herein, any finding set forth, above, whether express or implied.

2. Appellant was aware that her duties were being transferred to an unclassified position in 2012 resulting in an alleged reduction of her own duties.
3. Appellant did not file an appeal with this Board within 90 days from the date which she had reason to know her duties were reduced.
4. Appellant was reclassified in 2015 from TE5 to TE3.

CONCLUSIONS OF LAW

This case presents this Board with the question of whether Appellant should be time-barred from seeking review of an alleged reduction that occurred in calendar year 2012, (well outside the typical 90 days provided for an appeal from such actions)? Based on the findings set forth, above, and for the reasons, below, this Board should dismiss the instant appeal.

However, this Board may choose to extend the filing deadline for the approximate three and one-half years necessary to accept this appeal as timely filed. Should this Board do so, then this Board could remand this matter for further consideration.

O.A.C. 124-1-03 (E) provides this Board with the authority to extend the 90-day deadline for filing an alleged reduction appeal with this Board and states:

Appeals from alleged reductions in pay or position which do not involve a "section 124.34 order" shall be filed within ninety days after receipt of notice of the reduction or if no notice is given, within ninety days of the actual imposition of the reduction. *The appeal time may be extended within the discretion of the board.* (emphasis added)

Unquestionably, Appellant did not file an appeal with this Board in calendar year 2012 when she gained actual knowledge that her duties had been significantly reduced. Indeed, she did not file the instant appeal until her position had been reclassified, some three and one-half years following the initial reduction in duties that she experienced.

It is understandable that Appellant believes that she should be able to make a claim for relief now. However, Appellant's waiting several years before seeking this Board's review makes it extremely difficult to reconstruct and assess the situation that transpired in calendar year 2012. Moreover, Appellant may still have another avenue of potential remedy available to her.

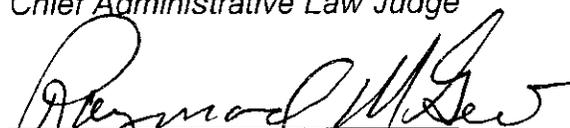
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RECOMMENDATION

Therefore, we respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant appeal, pursuant to R.C. 124.03 and O.A.C. 124-1-03 (E).



James R. Sprague
Chief Administrative Law Judge


Raymond M. Geis
Administrative Law Judge