

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

Maureen Murphy Weiss,

*Appellant,*

v.

Case No. 2016-REC-03-0046

Department of Health,  
and  
Department of Administrative Services,

*Appellees,*

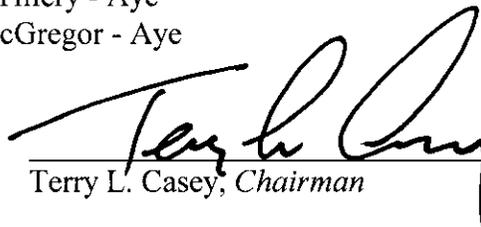
**ORDER**

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. *The Board wishes to acknowledge that the record reflects Appellant's role as a valued state employee. It is clear that she is a recognized subject matter expert in her profession and field.*

Wherefore, it is hereby **ORDERED** that the job audit determination of the Department of Administrative Services that Appellant's position be reclassified to Epidemiology Investigation Supervisor, 65765, is **AFFIRMED**, pursuant to R.C. 124.03 and R.C. 124.14.

Casey - Aye  
Tillery - Aye  
McGregor - Aye

  
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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 01, 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 December 8, 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-03-0046

Transcript Costs: \$238.50 Administrative Costs: \$25.00

Total Deposit Required: \* \$263.50

Notice of Appeal and Deposit Must  
Be Received by SPBR on or Before: December 16, 2016

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

Maureen Murphy-Weiss

Case No. 2016-REC-03-0046

*Appellant*

v.

October 24, 2016

Department of Health

and

Department of Administrative Services,

*Appellees*

James R. Sprague  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came to be heard on October 3, 2016. Present at the hearing was Appellant, who was represented by Jessica L. Olsheski, Attorney at Law. Appellee Ohio Department of Health (ODH) was present through its designee, Mahjabeen F. Qadir, Senior Legal Counsel. Appellee Ohio Department of Administrative Services (DAS) was present through its designee, Renee Norris, Human Capital Management (HCM) Senior Analyst.

This cause comes on due to Appellant's March 28, 2016 timely filing of an appeal from a DAS job audit determination that reclassified Appellant's position from Health Planning Administrator (HPA) 2, 65246 to Epidemiology Investigation Supervisor (EIS), 65765, effective December 13, 2015. Appellant received her notice of this action on or about March 17, 2016. Appellant believes her position would be more properly classified as HPA 3, 65247 or Project Manager (PM) 1, 63381.

Jurisdiction over the subject matter of this appeal was established pursuant to R.C. 124.03 and R.C. 124.14.

*It is noted that the representatives for all sides in this matter performed well and were quite persuasive. Their respective efforts are particularly commendable, given the complexity and breadth of facts in this matter.*

**CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT**

At hearing, three witnesses testified.

First to testify was **Appellant, Maureen Murphy-Weiss**, who currently serves as the EIS over the Ohio Department of Health's Tuberculosis (TB) Program and Unit and over ODH's Healthcare Associated Infections (HIA) Program and Unit. These two units are collectively known as the TB TI Unit.

In her capacity as head of the TB and HAI units, Appellant supervises seven bargaining unit employees. The TB Unit includes 2 full time epidemiologists and two infectious disease control consultants. Appellant does not supervise any exempt employees and does not supervise any supervisory employees.

Appellant has been performing duties as supervisor of the TB unit for a number of years, with considerable autonomy. With the advent of a 2015 reorganization, Appellant also was assigned to supervise the HAI unit. It is in the HAI area where Appellant's supervisor, Epidemiology Investigation Project Manager (EIPM) Kim Quinn, possesses particular expertise.

Appellant's duties over the TB unit also include serving as the State of Ohio's "TB Controller" and "Principal Investigator" regarding the State's Tuberculosis Elimination and Laboratory Cooperative Agreement (TB COAG Agreement). This agreement, entered into with the federal government, provides Ohio's overarching framework and policies concerning TB treatment standards of care, protocols, and controls.

Next to testify was **Kim Quinn**, who serves as an Epidemiology Investigation Project Manager and as head of ODH's THOR Group. She has served as Appellant's immediate supervisor during the entirety of the pertinent job audit review period. Ms. Quinn reports to HPA 4 Sietske J. DeFijter, who, in turn, reports to ODH Chief of Staff Julie Walburn.

Last to testify was **Renee Norris**, DAS HCM Senior Analyst, who conducted the audit of Appellant's position.

Appellant spends about 50 percent of her time serving as the "State Tuberculosis Controller" and the "Principal Investigator" concerning the TB COAG Agreement, to which the State of Ohio and the U.S. Centers for Disease Control and Prevention (CDC) are parties. This agreement involves, among other things, a grant and a five-year (but continuing) funding stream. Appellant serves as the State's subject matter expert on TB.

The first year of the agreement's five-year cycle is based on competition. Years two through five constitute the continuation phase of the cycle and require an application but are neither competitive nor scored. Testimony reflects that this

contract is currently viewed as a continuing effort with no current perceived *de facto* end date.

Appellant developed the State's grant application for the agreement. She also develops plans for the upcoming project year. Appellant addresses measures that are set nationally for TB elimination in the U.S. and assigns work to her staff to further effectuate the grant.

Appellant provides guidance and technical support for nurses, physicians, and epidemiologists in the 88 County TB control units around the State and to those who directly care for TB patients. Further, her staff routinely collects reportable data.

Appellant develops the initial budget for the grant and establishes priorities. She must submit this work "up chain" for review. That review principally focuses on text and formatting. Appellant stated these components are developed without direction from and are independent of Kim Quinn, Appellant's supervisor

Appellant has also substantially participated in the Ohio Administrative Code rule making process. However, while Appellant interprets those rules, they were not scheduled for review during the time period at issue in this appeal.

Appellant spends about 50 percent of her time as the supervisor of the Health Care Associated Infection unit. Here, HPA 4 Sietske J. DeFijter serves as Principal Investigator.

In this regard, Appellant is responsible for the activities described in Sections J. and K.1. of the grant under the direction of Ms. Quinn. While Appellant directs the work of her staff for this function, overall EIPM Quinn and Principal Investigator DeFijter are responsible for the final proposals for these two sections of the grant.

Appellant was principally responsible for authoring the State's TB Manual, which is a comprehensive document regarding TB reporting and control. The manual was created several years ago. The manual is still functional and important. Yet, no work on the manual has been dispositively completed and approved during the review period at issue in this appeal.

In that same vein, Appellant creates initial drafts of policies and procedures that impact beyond her section. These are submitted "up chain" for review and possible approval. Testimony reflects that these drafts can be re-routed to Appellant for additional consideration by anyone above Appellant in her chain of command, including Ms. Quinn, Appellant's immediate supervisor.

Accordingly, I find that, for the pertinent review period, Appellant has **not** developed statewide policies and procedures on behalf of her appointing authority for her assigned discipline. **Neither** has Appellant acted as an assistant bureau chief. Moreover, Appellant has **not** supervised two supervisors of her own, each of whom is to head a unit and one of whom is classified as a Health Planning Administrator 2 or similar professional/technical exempt classification. Finally, the TB COAG Grant, while on a five-year cycle, is contemplated to continue into the future. Thus, in practice, the grant has no current anticipated end date.

Based upon the testimony presented and evidence admitted at hearing, I make the following Findings:

First, I incorporate, herein, any finding set forth, above, whether express or implied. Next, I find the percentages that Appellant set forth at hearing concerning her broad duties to be accurate.

### **CONCLUSIONS OF LAW**

This case presents the question of whether did the Department of Administrative Services properly reclassify Appellant's position from Health Planning Administrator 2 (Pay Range 14) to Epidemiology Investigation Supervisor (also Pay Range 14)? Based on the findings set forth, above, and for the reasons, below, this Board should find that DAS was correct in its determination and affirm the instant reclassification of Appellant's position.

The former classification of Appellant's position was HPA 2 and Appellant believes the HPA 3 Class or the Project Manager 1 Class better describe Appellant's duties. Let us, then, examine the HPA Series.

The Class Concept language for **Health Planning Administrator 2** reads, in pertinent part:

The first managerial level class works under general direction & requires thorough knowledge of health-related field & management in order to manage one or more public health program(s) as designated by journal entry of appointing authority in Ohio Department of Health ... or in Ohio Department of Health, serve as block grant administrator for assigned division, develop statewide policies & procedures on behalf of department for federal block grant (e.g., maternal & child health or preventive health & health services), develop division block grant application process & monitor division's annual report to federal government, & if assigned, supervise staff.

Appellant essentially manages the State TB program. She had previously developed the grant application and monitors and reports annually to the federal government. She supervises assigned staff to help her carry out this function. She also supervises the HAI unit. Appellant's position, then, clearly qualifies for the HPA 2 Classification.

The Class Concept language for **Health Planning Administrator 3** reads, in pertinent part:

The second managerial level class works under administrative direction & requires extensive knowledge of health-related field & management in order to manage daily operations of bureau & act as assistant bureau chief or administers all activities of assigned section comprised of two units headed by subordinate supervisory personnel, one which must be classified as Health Planning Administrator 2 or similar professional/technical exempt classification in Ohio Department of Health ... or to develop statewide policies & procedures on behalf of appointing authority for assigned discipline/area, topic or programmatic issue (e.g., nutrition, social work, programs to serve older Ohioans, administration, public health, health care financing, health care delivery, ombudsman program mandated by statute for older Ohioans, preventive medicine) & if assigned supervise staff.

The HPA 3 Class Concept envisions three ways that an incumbent serving at the Ohio Department of Health may qualify for this Class. I have found, above, that Appellant does not act as assistant bureau chief. Further, I have found, above, that Appellant does not administer all activities of a section containing two unit supervisors with additional restrictions. Additionally, I have found, above, that Appellant does not develop statewide policies and procedures on behalf of Appellee. Thus, Appellant's duties do not qualify her position for the HPA 3 Class.

Two additional points here bear further exposition. First, Appellee ODH argues that Appellant must act as assistant bureau chief or administer the requisite two-supervisor section AND develop statewide policies and procedures. DAS and Appellant argue, I believe correctly, that Appellant must act as assistant bureau chief or administer the aforementioned two-supervisor section OR develop statewide policies and procedures.

Appellee ODH and Appellee DAS agree, as do I, that Appellant does not develop statewide policies and procedures. Conversely, Appellant believes that she does develop statewide policies and procedures. Ultimately, unless this Board finds

that Appellant does develop statewide policies and procedures, this is a moot issue.

Secondly, in 2013 and prior thereto, when Appellant developed the State TB Manual, Appellant may have at that point possibly developed statewide policies and procedures. It is not clear in the record that Appellant had the requisite authority and autonomy, even then, to independently do so.

However, Appellant may have been closer to actually developing statewide policies and procedures in 2013 than she is currently. Finally, Appellant's counsel argues cogently (albeit unsuccessfully) that Appellant's residual and continuing duties regarding the TB Manual and regarding ODH's upcoming Ohio Administrative Code five-year review under R.C. 119.032 qualify Appellant for the HPA 3 Class.

Following its job audit, DAS reclassified Appellant's position to Epidemiology Investigation Supervisor, 65765 (Pay Range 14).

The Class Concept for **Epidemiology Investigation Supervisor** reads:

The supervisory level class works under general direction & requires thorough knowledge of public health & epidemiology principles, data analysis & data collection techniques in order to plan, implement & manage all aspects of statewide epidemiology &/or surveillance program, participate in development of section & bureau policies & procedures & supervise lower-level epidemiology investigators assigned to one unit.

Appellant plans, implements, and manages the statewide TB program and supervises the HAI unit. Her duties include supervising epidemiology investigators in one of her units. She is supervised by an Epidemiology Investigation Project Manager, the next higher Class in the Epidemiology Investigator Class Series.

Appellant's duties fit squarely within the parameters of the EIS Specification. Thus, this Class is superbly suited for Appellant's duties and position.

Finally, Appellant has asserted that **Project Manager 1**, 63381 (Pay Range 15) is also suited to Appellant's position. The Series Purpose language for the PM 1 Specification contains a Glossary, wherein the term "Project" is defined as follows:

Project: A temporary stand-alone assignment that has a definite beginning and end and is undertaken to create a unique product or service. "Temporary" is not to be construed as being a short period of time.

Testimony reflects, and I have found, that the TB COAG agreement/grant functions are not contemplated to terminate in the near future. Moreover, given the predicted longevity of these functions and mission, it is problematic to argue that these functions and mission are a unique product or service. Thus, it is challenging to argue that Appellant's position could qualify under the Project Manager 1 Specification.

To summarize, Appellant's position is suited for the Health Planning Administrator 2 Class, is well suited for the Epidemiology Investigation Supervisor Class, is not suited for the Health Planning Administrator 3 Class, and is not suited for the Project Manager 1 Class. DAS, then, was correct to reclassify Appellant's position to Epidemiology Investigation Supervisor.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the job audit determination of the Department of Administrative Services that Appellant's position be reclassified to Epidemiology Investigation Supervisor, 65765, pursuant to R.C. 124.03 and R.C. 124.14.

  
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James R. Sprague  
Administrative Law Judge