

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

John Paulson,

*Appellant,*

v.

Case No. 2016-RED-04-0160

Department of Taxation,  
and  
Department of Administrative Services,

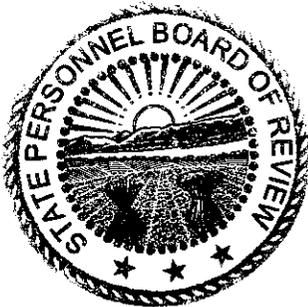
*Appellees,*

**ORDER**

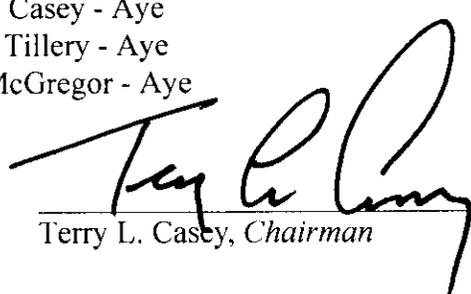
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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.

Wherefore, it is hereby **ORDERED** that the instant appeal is **DISMISSED**.



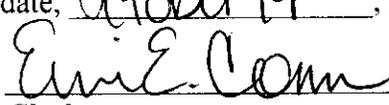
Casey - Aye  
Tillery - Aye  
McGregor - Aye

  
\_\_\_\_\_  
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, October 19, 2016.

  
\_\_\_\_\_  
Emily E. Conn  
*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 October 26, 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-RED-04-0160

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: November 3, 2016

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

John Paulson,

Case No. 2016-RED-04-0160

*Appellant,*

v.

September 12, 2016

Dept of Taxation,

and

Dept. of Administrative Services,

Raymond M. Geis

*Appellees.*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This matter arises from Appellant's reduction appeal, and Appellee's response to my August 18, 2016 Procedural Order and Questionnaire. The instant appeal shares the same facts with Appellant's companion reclassification appeal, 2016-REC-04-0055 (which was consolidated with other similar reclassification appeals and is also before this Board). In that case, I recommended that the reclassification be affirmed.

However, the instant appeal presents an ancillary but distinct question about how to calculate the proper Step X rate when the step anniversary and reclassification date are the same.

In other words, should an employee receive a step increase due under his old classification before going into Step X when his step anniversary date is the same date as the effective date of the reclassification?

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

Appellant was reclassified from Tax Commissioner Agent Supervisor 2 (66817), Pay Range 14, Step 6 to Tax Examiner Manager (66816), Pay Range 13, Step X on April 17, 2017. Appellant's last step anniversary date was also April 17, 2016.

Appellant more or less argues that because his step anniversary and his reclassification both fell on the same date, he should have advanced an additional

step in his old series before being placed into Step X. This would have increased his Step X rate by more than three dollars per hour.

Step X functions as a wage floor. When a reclassification results in a reduction in position to a lower pay range<sup>1</sup>, the employee's pay is kept at the hourly wage made before the reclassification. OAC 123:1-7-22 (B). This is designed to protect the employee from experiencing an actual reduction in wages post reclassification. However, it also operates to preclude the employee from future increases until his or her new lower pay range catches up to the Step X rate. *Id.*

Appellant's base rate was \$37.50 per hour prior to reclassification. But for reclassification, Appellant's base rate would have advanced to \$40.88 beginning April 17, 2016, a \$3.38 per hour increase. This is according to the E-1D schedule published by DAS which became effective July 1, 2015 through June 30, 2016 (Fiscal Year 2016).

However, DAS and TAX note that Appellant's last day in his old classification was April 16, 2016. In other words, if Appellant had stayed in his old classification just one more day, only then would he have experienced advancement to Step 7 within Pay Range 14 before going into Step X.

In the record hearing for his companion reclassification appeal, Appellant argued that his *near miss* of this raise is fundamentally unfair to him because DAS controlled the effective date of reclassification. The argument goes that Appellant's expectancy was so virtually vested, at this point, that failing to award the step advancement frustrates the purpose of Step X which is to avoid an actual reduction in wages when reclassification results in demotion.

Also, in the record hearing for the companion case, DAS representative Bobbi Lind testified that Appellant's reclassification was part of a large classification plan amendment for TAX which resulted in a substantially reduced number of classifications. Many TAX employees were affected and were transitioned into newly created classifications.

I take administrative notice that the effective date of reclassification for the project was April 17, 2016. Circumstantially, there is nothing in the record to

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<sup>1</sup> OAC 124:1-7-02 (A) states in pertinent part, "An employee shall not be reduced by reassignment. An employee is reduced if reassigned to a classification assigned a lower pay range." Additionally, OAC 123:1-47-01(69) states in pertinent part, "'Reduction' - Means a change of the classification held by an employee to one having a lower base pay range, a change to lower step within a salary range,..." Contrast with OAC 123:1-7-22 (A) which states in pertinent part, "An employee whose position is determined to be overclassified shall be properly classified and may be placed in step x...as a result of...a class plan change..."

suggest that Appellant was singled out for bad treatment. Rather, it looks as though he is the victim of unfortunate happenstance.

I take administrative notice that step rates were again modified effective July 1, 2016 (Fiscal Year 2017). These changes reduced the rate of increase in Step 7 for pay ranges 12-16 and split the increases across step 7 and newly created step 8. Under this pay table, pay range 14, step 7 was reduced to \$40.01 (from \$40.88 for FY 2016) and the new step 8 was set at \$41.90. Pay range 13, step 7 was set at \$36.26 and step 8 at \$37.97 respectively.

I take administrative notice of Appellant's EHOc which shows he received Step 8 of Pay Range 13 on June 26, 2016. His new base rate was \$37.97. This is still \$.91 short of the increase he would have received had he never been reclassified. However, it is more than the \$37.50 base rate he made prior to his April 17, 2016 reclassification.

Appellant has then apparently received step increases in his new pay range consistent with R.C 124.15 (G) (1) which states in pertinent part:

Step advancement shall not be affected by demotion...  
Step advancement shall become effective at the beginning of the pay period within which the employee attains the necessary length of service.

Because Appellant's total rate of pay under his new pay grade exceeds his step X rate, he is unfrozen and will continue to receive annual pay increases in fiscal year 2018 and 2019. However, because he is "stepped out" in his new pay range, Appellant will not receive any new steps on his anniversary date.

### **CONCLUSIONS OF LAW**

At issue is whether an employee whose step anniversary and reclassification occurred on the same date but was still reduced to a lower pay range as a result of that reclassification, should receive a final step increase under his old classification before going into Step X.

DAS says no because one is not entitled to steps in a classification to which one no longer belongs. Appellant says yes, because DAS controlled the reclassification date and it is unfair to defeat a raise through arbitrary selection of the effective date of reclassification.

If this Board were to grant Appellant's requested relief, then it begs the question of whether employees reduced in pay range with a step anniversary date

just 2 days, one week, two weeks or two months after the effective date of reclassification should also get the raise.

Or conversely, if Appellant is denied the raise on the basis articulated by DAS, why should someone whose anniversary date is just one or two days before the effective date of reclassification get the raise?

From the standpoint of equity, these are difficult questions to answer. The date may seem arbitrary. But there has to be an effective date for reclassification, and it is logical that the cutoff for step advancement under one's old class precede it. Correspondingly, there will always be the potential that an effective date of reclassification will fall on someone's step anniversary date. If Paulson was the only person to suffer reclassification within TAX, then his argument of unfairness would ring more powerfully. DAS' determination would then seem more dastardly, calculating or at least capricious.

But this is not the case. Appellant was caught up in a classification amendment affecting dozens upon dozens of TAX employees. His duties never changed. Approximately 5% of TAX employees experienced a reduction in pay range as a result of the project. There had to be an effective date for transition to the new classifications. This is unfortunate and understandably discouraging for Appellant. However, changing the effective date of reclassification for all of the employees affected in order to accommodate Appellant could have more far reaching negative consequences to the other reclassified employees.

Adding to the complexity of this situation, the step 7 to which Appellant would have been entitled was a unique anomaly. It was a onetime large raise of approximately 10% for exempt pay ranges 12-16. These ranges contain the supervisory and managerial classes. The raise was designed to immediately catch up to wage gains won exclusively by the bargaining unit classes.

In an ordinary year, the step increase realized would be much less. For example, if Appellant had been reclassified April 17, 2015 his lost expectancy would only have been only \$ 1.87 instead of \$3.88.<sup>2</sup>

Moreover, I liken Appellant's bad fortune to that suffered by other employees during step freezes. These freezes forever decreased expectancies in compensation too. In that case, the detriment of frozen steps was applied neutrally and uniformly, without regard to the incumbent. Similarly here, the same set of criteria was applied equally to Appellant and his colleagues. The results were not

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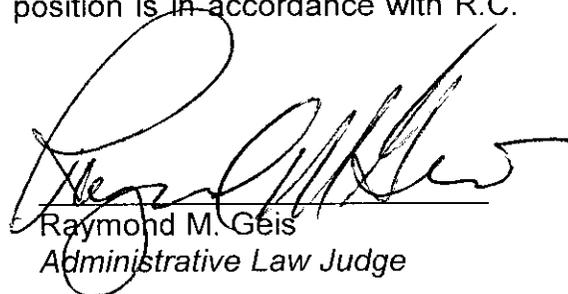
<sup>2</sup> General wages were frozen from 2008 – 2015. Step advancements under the 2007 E-I D schedule still occurred during these years.

equal in either case. Some lost more money, others less, depending on their range. But the end result is not the test of procedural fairness.

In short, this Board should affirm TAX's decision because Appellant's treatment was facially neutral and without malice, and Appellant did not suffer an actual reduction in already-accrued wages.

### RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED**. Appellant has not suffered a reduction in pay within the meaning of OAC 124-1-02 (Y). Appellant's reduction in position is in accordance with R.C. 124.14.



Raymond M. Geis  
Administrative Law Judge