

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

MAURICE MORRIS,

Appellant

v.

Case No. 05-MIS-02-0046

LUCAS COUNTY SHERIFF,

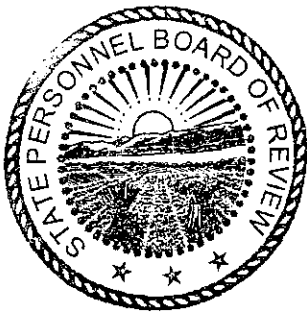
Appellee

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 record and 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 Appellant's appeal be **DISMISSED** for failure to state a claim over which this Board may exercise its jurisdiction, pursuant to O.R.C. 124.03 and O.A.C. 124-1-02(Y).



Tracy – Aye
Lumpe – Aye
Booth – Aye



Roger W. Tracy, *Chairman*

CERTIFICATION

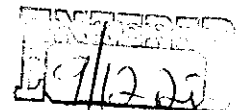
The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that the foregoing is (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 12, 2005.



Dianna Mills
Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.



STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Case No. 05-MIS-02-0046

Maurice Morris,

Appellant

v.

Lucas County Sheriff,

Appellee

July 12, 2005

Elaine K. Stevenson
Hearing Officer

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration due to Appellant's filing of an appeal of an alleged reduction in pay. No R.C. 124.34 Order of Reduction was filed with this Board. On May 23, 2005, a Procedural Order was issued to Appellant directing him to supplement the record with information regarding the subject of his appeal. On June 2, 2005, Appellant filed his response. On June 21, 2005, a second Procedural Order was issued directing Appellee to respond to Appellant's assertion that he was reduced in pay. On July 1, 2005, Appellee filed its response. On July 11, 2005, Appellant filed a reply to Appellee's July 1, 2005, response.

FINDINGS OF FACT

Based on the information contained in the record, I make the following findings of fact:

1. Appellant holds the position of Deputy Sheriff with the Lucas County Sheriff.
2. Appellant is assigned to the Corrections Center as a jail guard.
3. The Lucas County Sheriff utilizes a voluntary overtime court recall list for assignments to the Lucas County Court of Common Pleas and the Municipal Court.
4. Assignments to the Lucas County Court of Common Pleas or the Municipal Court are either "bid" into or assigned by a letter of interest.
5. Assignments to the Lucas County Court of Common Pleas or the Municipal Court are strictly voluntary and are not a regular part of a deputy sheriff's position.

6. As part of disciplinary action imposed on Appellant in December 2004, Appellant was permanently removed from the voluntary overtime court recall list.
7. On February 4, 2005, Appellant filed an appeal with this Board alleging that he was reduced in pay when he was permanently removed from the voluntary overtime court recall list.

CONCLUSIONS OF LAW

O.A.C. 124-1-02(Y) states:

“Reduction in pay” means an action which diminishes an employees pay. When the conditions entitling an employee to supplemental pay ends, the ending of supplemental pay shall not be considered a reduction.

O.A.C. 124-5-02 states:

If a reduction, removal or suspension is alleged and no “section 124.34 order” has been filed with the state personnel board of review, the employee shall prove, by a preponderance of the evidence, that the reduction, removal or suspension occurred.

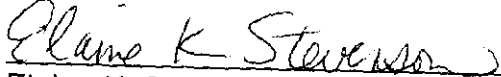
In the instant case, Appellant argues that by placing his name on the voluntary overtime court recall list and working multiple shifts per week pursuant to the list, the additional work he performed was a regular part of his position. Appellant contends that Appellee’s decision to permanently ban him from the voluntary overtime court recall list reduced his pay because he has permanently lost the opportunity to earn extra pay by working overtime shifts in the courts.

A review of the definition of “reduction in pay” cited, *supra*, indicates that a “reduction in pay” occurs when an employee suffers a loss of an entitlement to which that employee has a right. Thus, the mandatory nature of the entitlement from which the loss has been suffered is a necessary element in an appeal of a reduction in pay pursuant to O.A.C. 124-1-02(Y). Although Appellee’s decision to permanently remove Appellant from the voluntary overtime court recall list has had a financial impact on Appellant, Appellant alleges no legislative or regulatory right to be included on the voluntary overtime court

Maurice Morris
Case No. 05-MIS-02-0046
Page 3

recall list and to receive work assignments in the courts pursuant to the recall list. Absent a legislative or regulatory right to receive overtime work assignments in the courts, the opportunity to work these overtime shifts constitutes a privilege granted by Appellee rather than an entitlement to which Appellant has a right. Accordingly, because Appellant is not entitled to work overtime shifts in the courts, he has not established that his permanent exclusion from the voluntary overtime court recall list resulted in a reduction in pay as defined in O.A.C. 124-1-02(Y).

Therefore, I respectfully **RECOMMEND** that Appellant's appeal be **DISMISSED** for failure to state a claim over which this Board may exercise its jurisdiction, pursuant to O.R.C. 124.03 and O.A.C. 124-1-02(Y).


Elaine K. Stevenson
Hearing Officer

:eks