

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

Ray F. Silbitzer,

Appellant,

v.

Case No. 06-REC-01-0022

Cuyahoga County Board of Commissioners,
and
Cuyahoga County Office of Human Resources,

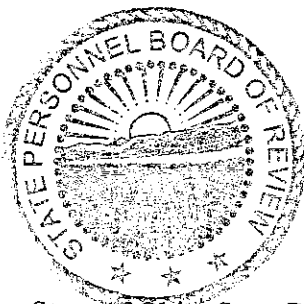
Appellees.

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 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 Appellee's determination that Appellant's position is properly classified as Software Specialist, classification number 1053111, be **AFFIRMED**. It is further **ORDERED** that Appellant be compensated for any differential back pay and/or benefits owed to him as a result of Appellant having performed the duties of a Programmer Analyst 1, classification number 1053121, from the first date of the first pay period following his job audit request until the end of the first pay period in September 2006, pursuant to O.R.C. §§ 124.03 and 124.14.



Lumpe – Aye
Booth – Aye
Tracy – Aye

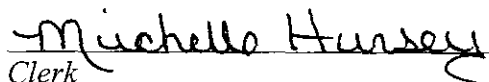


J. Richard Lumpe, *Chairman*

CERTIFICATION

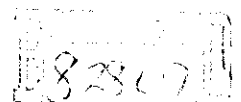
The State of Ohio, State Personnel Board of Review, ss:

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, August 28, 2007.



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**

Ray F. Silbitzer,

Case No. 06-REC-01-0022

Appellant

v.

July 16, 2007

Cuyahoga County Board of Commissioners,

and

Cuyahoga County Office of Human Resources,

Jeannette E. Gunn

Appellees

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's timely appeal of the results of an audit conducted on his position. The audit resulted in a finding that the proper classification for Appellant's position was Software Specialist, classification number 1053111.

A record hearing was held in the instant appeal on March 1, 2007. Appellant was present at the hearing and appeared *pro se*. Appellee Cuyahoga County Board of Commissioners was present at the record hearing through its designee, Martin Murphy, Assistant Director, Department of Justice Affairs; Appellee Cuyahoga County Office of Human Resources was present at the record hearing through its designee, Personnel Manager Albert Bouchahine.

Jurisdiction of the Board was established pursuant to R.C. 124.03 and 124.14.

STATEMENT OF THE CASE

Appellant testified that he is presently employed by the Cuyahoga County Department of Justice Affairs (Justice Affairs), and holds a position classified as Software Specialist. He indicated that he has held that position for approximately

six years, and that his immediate supervisor is Martin Murphy, the Assistant Director of Justice Affairs.

Appellant confirmed that he filed a request for a job audit on July 15, 2005, and received the results of his audit in January 2006. He identified a copy of the comprehensive position questionnaire that he completed in conjunction with the job audit. Appellant reviewed the document and testified that the position purpose stated therein was substantially correct, both at the time of the audit and the date of record hearing. He noted that the number of relational databases he had created was probably closer to six or seven, rather than four.

Appellant indicated that he is part of a three-person information technology staff within Justice Affairs and noted that they share responsibility for all computer maintenance. He explained that each of them have their own areas of expertise, but all work together to cover the Justice Affairs Help Desk and address any problems or needs.

Appellant testified that tasks related to designing and creating databases and reports occupied approximately forty percent of his working time at the time of the audit. He provided several examples of databases, both relational and flat-file, that he had constructed for Justice Affairs. Appellant noted that he developed the Division of Treatment Services (DTS) database from the ground up, working with Division staff to build reports and queries and maintain the database; he observed that since the time he developed the original database it has been migrated to a SQL database. Appellant explained that he also developed the Grants Management database, which was a flat file database, and the Check Log database from the ground up. He stated that these databases were not used department-wide, but were used by specific divisions or offices within Justice Affairs.

Appellant indicated that he was responsible for monitoring and correcting data input for information being migrated into databases from old files. He noted that time spent on this task varied, depending on the format in which the original information was stored. Appellant confirmed that the twenty percent of working time he estimated for this job duty was fairly accurate at the time.

Appellant stated that approximately ten percent of his work time was spent providing instruction to staff on database operation, as well as generally instructing them on how to work with the software used in the office. He noted that there are approximately 180 users in the Department. Appellant indicated that he devoted

approximately thirty percent of his time to servicing and installing computer hardware and software, along with fax machines and handheld devices.

Appellant noted that the percentages he originally assigned to his duties had changed in the six to eight months prior to record hearing, and that he no longer performed database work. He estimated that ninety percent of his work time was now spent on instruction, service and installation duties. Appellant indicated that Justice Affairs had switched to a new database system that was maintained by the company that developed it.

Martin Murphy testified that he is presently employed by the Cuyahoga County Department of Justice Affairs, and holds a position classified as Assistant Director. He indicated that he has held that position for approximately three years and is Appellant's immediate supervisor. Mr. Murphy confirmed that he is familiar with Appellant's day-to-day job duties.

Mr. Murphy explained that Justice Affairs is presently utilizing Rite Track, a SQL relational database system, in the Treatment Alternatives to Street Crimes (TASC) program, DTS and one additional grant area. He indicated that Justice Affairs migrated to Rite Track primarily because TASC had a large amount of information that required a solution with more flexibility and power than Microsoft Access. The witness noted that Rite Track also allows them to have remote access input of data from offsite locations and from other entities outside Justice Affairs. Mr. Murphy testified that Justice Affairs has a maintenance contract with the vendor who developed the system.

The witness observed that the database developed by Appellant for DTS is no longer used and the information was migrated to Rite Track. He confirmed that while Appellant was creating the original databases, those duties consumed a large portion of his work time, but testified that Appellant's responsibilities dropped off once the decision was made to use Rite Track. Mr. Murphy confirmed that the other databases developed by Appellant are still in use and he occasionally performs maintenance duties related to them, but does not devote a significant amount of his working time to database work.

Albert Bouchahine testified that he is currently employed as Personnel Manager by the Cuyahoga County Board of County Commissioners, Office of Human Resources. He stated that although he did not personally perform the audit of Appellant's position, he is familiar with the rationale employed by the auditor and

the audit determination. The witness confirmed that the auditor reviewed the comprehensive position questionnaire submitted by Appellant and relevant classification specifications and determined that the classification specification that most accurately described Appellant's job duties was that of Software Specialist.

FINDINGS OF FACT

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

Appellant is presently employed by the Cuyahoga County Department of Justice Affairs, and holds a position classified as Software Specialist. He is one of three Justice Affairs information technology staff persons; the three employees share responsibility for all computer maintenance and support for the approximately 180 users in the Department. Appellant's immediate supervisor is Martin Murphy, the Assistant Director of Justice Affairs.

Appellant requested a job audit on July 15, 2005, and was notified in January 2006 that the auditor had concluded his classification was properly classified as Software Specialist.

In the course of his employment, Appellant created approximately six or seven databases for use by individual divisions and/or offices within Justice Affairs. The database created by Appellant for DTS is no longer in use, having been migrated to Rite Track, a vendor-provided system.

At the time of his audit, Appellant devoted approximately forty percent of his working time to tasks related to designing and creating databases and reports. Appellant designed these databases from the ground up, and was responsible for monitoring and correcting migrated data, maintaining the database and modifying associated reports and queries as needed. Appellant stopped performing database tasks on a regular basis approximately six or eight months prior to the record hearing, although if needed he may still assist in modifying associated reports and queries.

At the time of the audit, Appellant spent approximately ten percent of his work time providing database and software instruction to end users, and approximately thirty percent of his time to servicing and installing computer

hardware and software, along with fax machines and handheld devices. At the time of record hearing, he estimated that these duties consumed approximately ninety percent of his time.

CONCLUSIONS OF LAW

The primary criteria for this Board to consider when determining the most proper classification for a position are classification specifications, including the class concept or function statement, the job duties outlined, and the percentages of time devoted to each job duty. *Klug v. Dept. of Admin. Services*, No. 87AP-306, slip op. (Ohio Ct. App. 10th Dist., May 19, 1988). Unless there is a dispute as to what constitutes the classification specification, no factual issues arise with respect to the classification. Rather, as in all cases of construction, the question becomes one of law as to how the relevant facts relate to the classification specification. *Klug, supra*.

This Board must consider the relation between the classification specifications at hand and testimony presented and evidence admitted. This Board's consideration, however, is not limited solely to the duties contained in the classification specifications, but may also embrace other relevant facts submitted by any of the affected parties. *Gordon v. Dept. of Admin. Services*, No. 86AP-1022, slip op. (Ohio Ct. App. 10th Dist., March 31, 1988).

As a general rule, Appellants seeking reclassification to a higher position must demonstrate that they meet substantially all of the qualifications of the higher position. *Harris v. Dept. of Admin. Services*, No. 80AP-248, slip op. (Ohio Ct. App. 10th Dist., September 25, 1980); *Deist v. Kent State Univ.*, No. 78AP-28, slip op. (Ohio Ct. App. 10th Dist., May 23, 1978.) The incumbent need not perform every duty enumerated within the body of the specification for his or her position to fall within a particular classification specification; it is sufficient if all of the job duties actually performed fall within those specified for the classification. See *Klug, supra*. Appellee's Rule 4, however notes that the employee must perform the mandatory duties stated in the classification function for at least twenty percent of his or her work time.

* * * * *

The classification specifications considered by this Board were: Software Specialist, classification number 1053111; Programmer Analyst 1, classification number 1053121; and Database Developer, classification number 1053102.

The classification function for the Software Specialist classification, Appellant's present classification, states that the purpose of the classification is to:

. . . provide computer software technical support and assistance to end-users in a County department.

The essential job functions section of the classification indicates that the normal duties assigned to this classification generally require an incumbent to provide computer software technical support and assistance to end-users in a County department; evaluate existing department software systems and make recommendations; and perform miscellaneous administrative duties. Testimony and evidence presented at record hearing indicate that Appellant is responsible for installing computer hardware and software, along with fax machines and handheld devices, as well as providing employee training. These duties fall squarely within the range of responsibilities contemplated by the classification of Software Specialist. At the time of the audit Appellant performed these job duties for approximately forty percent of his work time; as of the date of record hearing, they consumed approximately ninety percent of his work time. Accordingly, Appellant's position could properly be assigned to the Software Specialist classification specification.

The classification function for the Programmer Analyst 1 classification states that the purpose of the classification is to:

. . . develop new computer programs and maintain existing computer information systems.

The essential job functions section of the classification indicates that the normal duties assigned to this classification generally require an incumbent to develop new computer programs and maintain existing computer information systems; test computer programs; and perform administrative duties. Testimony and evidence presented at record hearing indicate that Appellant was responsible for the design and implementation of six to seven databases, along with associated reports and queries and any required maintenance. At the time of the audit, he was devoting approximately forty percent of his work time to this task. I find that a database of

the types and scope designed by Appellant may properly fall within a broad definition of the term "computer program." Therefore, Appellant's position could properly be assigned to the Programmer Analyst 1 classification specification.

The classification function for the Database Developer classification states that the purpose of the classification is to:

... organize the design, implementation and coordination of database operations and assigned application systems to ensure data integrity and efficient operation.

The essential job functions section of the classification indicates that the normal duties assigned to this classification generally require an incumbent to organize the design, implementation and coordination of database operations and assigned application systems; provide support for assigned applications and systems; utilize a variety of software; provide necessary on-call support during non-office hours; and develop and maintain working relationships with a variety of individuals.

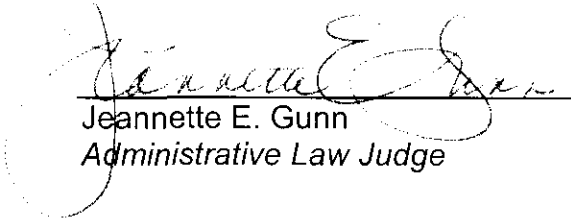
Upon a review of the Database Developer classification specification, I find that the function statement and job functions sections appear to contemplate a greater scope of responsibility than that exercised by Appellant. While Appellant did design databases for use by individual divisions or offices within the Department, testimony did not indicate that he had responsibility for the coordination of database operations department-wide. Accordingly, I find that Appellant's position would not be properly assigned to the classification of Database Developer.

Based upon my review of the job duties performed by Appellant, the amount of working time Appellant performs each of these job duties, and the relevant classification specifications, I find that the classification specification that most accurately described Appellant's job responsibilities at the time of the job audit was that of Programmer Analyst 1. However, as noted by Appellant, he no longer devotes a significant portion of his time to the development of databases and ceased the regular performance of such duties some time around September 2006. Without the assignment of such responsibilities for the requisite twenty percent of his working time, the most appropriate classification for Appellant's position is Software Specialist.

Therefore, I respectfully **RECOMMEND** that Appellee's determination that Appellant's position is properly classified as Software Specialist, classification

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number 1053111, be **AFFIRMED**. However, because the information contained in the record indicates that Appellant was performing the duties of a Programmer Analyst 1, classification number 1053121, from the time of his audit request until approximately September 2006, I find that Appellant should have been compensated at a Temporary Work Level from the first date of the first pay period following his request for a job audit until the end of the first pay period in September 2006, and hereby **ORDER** Appellee to compensate Appellant for any differential back pay and/or benefits owed to him as a result of such designation.



Jeannette E. Gunn
Administrative Law Judge

JEG: