

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

Gary R. Schneider,

*Appellant,*

v.

Case Nos. 06-REC-03-0060  
06-RED-03-0061

Department of Rehabilitation and Correction,  
Allen Correctional Institution,

and

Department of Administrative Services,

*Appellees.*


**ORDER**

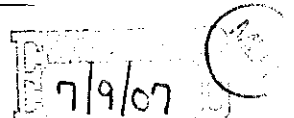
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the 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 Case Number 06-REC-03-0060 be **DISAFFIRMED**, and Appellant be put back to his position of a Storekeeper Supervisor, classification specification number 14745, effective January 22, 2006 and Case Number 06-RED-03-0061 be **DISAFFIRMED** since Appellant's reduction in position should not have occurred as it is Appellee Department of Rehabilitation and Correction, Allen Correctional Institution's responsibility to ensure that its employees are given job duties and/or responsibilities that match the classification specification assigned to those employees. Additionally, the Appellee Department of Rehabilitation and Correction, Allen Correctional Institution should restore the Appellant's duties to that of a Storekeeper Supervisor and reimburse any loss in pay that the Appellant suffered as a result of his being reduced since July 2006, and to fully restore the Appellant's job duties contained within the Storekeeper Supervisor position classification specification.

Lumpe – Aye  
Booth - Aye  
Tracy – Aye

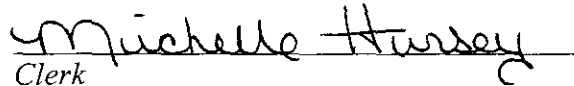
  
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J. Richard Lumpe, *Chairman*



## 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, JULY 9, 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**

Gary R. Schneider,

Case No. 06-REC-03-0060

Case No. 06-RED-03-0061

*Appellant*

v.

May 17, 2007

Ohio Department of Rehabilitation and Correction,  
Allen Correctional Institution,

and

Ohio Department of Administrative Services,

*Appellees*

Christopher R. Young

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on October 11, 2006, at 10:00 a.m. Present at the hearing were the Appellant, Gary Schneider, represented by Samuel Lillard, Attorney at Law and the Appellees, the Ohio Department of Rehabilitation and Correction, Allen Correctional Institution (hereinafter noted as ACI) was present through its designee Dean McCombs, the warden's assistant, represented by Joseph N. Rosenthal and Timothy M. Miller, Assistant Attorneys General. Also present at the hearing was the Ohio Department of Administrative Services through its designee Ms. Robin Lind, a Human Resource Analyst 3.

On or about January 17, 2006, the Appellant, Gary Schneider requested a job audit of his position as a Storekeeper Supervisor, classification specification number 14745. Subsequently, on or about February 24, 2006, the Appellant received the final results of his requested job audit which notified him that his proper position for his classification should be that of a Storekeeper 2, classification specification number 14742, a reduction from his past position while at the same time being placed in step X. After receiving the Appellee's decision, the Appellant timely filed his appeal to this Board on March 8, 2006. The Appellant herein in putting forth this job audit request sought to be reclassified to an Inventory Control Specialist Supervisor's position from that of his position as a Storekeeper Supervisor.

However, as was previously mentioned, the results of the job audit, as determined by the Ohio Department of Administrative Services found that his proper classification should be that of a Storekeeper 2. Thus, the Appellant filed the above noted appeals in relation to his reclassification to a lower classification and/or his reduction in position. Further, prior to going onto the record the subject matter of this Board was established, as well as being stipulated too.

### **STATEMENT OF THE CASE**

The Appellant, Gary Schneider, testified that he is presently employed by ACI and has been so since June 2004 and was holding the position of Storekeeper Supervisor up until the time of his reclassification to a lower position, that being a Storekeeper 2 position. For clarification, the witness testified that he had held the position of Storekeeper Supervisor for approximately the last twenty years as he had had previous employment at the Lima Correctional Institution and when that closed he was simply transferred over to Allen Correctional Institution. The witness testified that he filed the job audit at the end of January 2006 as was previously noted as January 17, 2006. Mr. Schneider affirmed, when questioned, that he filed the audit in question online, through an online questionnaire which he submitted to the Ohio Department of Administrative Services. The witness testified his direct supervisor was Mr. Joe Mayberry who was classified as a Business Administrator 2 and that he had been his supervisor for approximately the last eighteen years. However, the witness testified that Mr. Mayberry had recently retired at the end of August 2006, and that he is currently being supervised by another individual known as Emzer Shurelds, as of sometime in July 2006. The witness testified when he received his reclassification to the position of Storekeeper 2, he did not effectively go back into that position until sometime in July 2006, even though it had an effective date of January 22, 2006.

The witness testified he works in a warehouse located approximately a quarter of a mile away from ACI and that the warehouse is approximately the size of a football field. The witness explained prior to the job audit request, he supervised two Storekeeper 2s and three to four inmates in carrying out his duties at the warehouse. When questioned, he also testified Mr. Mayberry supervised approximately fifteen to twenty employees, that he was actually located at the institution and that he work autonomously for the most part. The witness also explained in addition to running and controlling the inventory at the warehouse, he ran the Allen County Distribution System and/or computer program for the inventory

control itself. Mr. Schneider explained the mission of the warehouse for ACI was to maintain the supplies for the institution, including but not limited to, the food, clothing, cleaning equipment, office supplies and the like. Again, when questioned, Mr. Schneider explained the warehouse had five civil service employees, including himself. The witness explained the warehouse; in addition to supplying all the supplies for ACI also supplied goods for Oakwood Correctional Facility, as well. The witness explained that while he was employed as a Storekeeper Supervisor there were two Storekeeper 2s under his direct supervision and control. Additionally, the witness explained there was one other Storekeeper Supervisor from Oakwood who had supervisory capacity over another Storekeeper 2 from Oakwood and that they did not cross share their responsibilities.

Along this line of questioning, the witness testified that he in fact supervised Mr. Maurice Wistner and Mr. Grapner, both Storekeeper 2s since June 2004 up until approximately one week before the filing of the instant audit request. The witness explained that he did in fact complete performance evaluations for these individuals, as well as he effectively recommended discipline if needed, approved any leave time or requests, assigned their work and did provide training when and if necessary. The witness testified Mr. Grapner as a Storekeeper 2 left and/or was transferred to the Oakwood facility sometime around the second week of January 2006. Further, when questioned, Mr. Schneider testified he was not notified whether Mr. Grapner was going to be replaced or not or if the position was going to be abolished at that time. Furthermore, Mr. Schneider testified Mr. Wistner, after receiving the results of the audit, went off on a medical disability leave in March 2006.

Mr. Schneider testified that he did work forty-hours per week, Monday through Friday, from 7:00 a.m. to 3:00 p.m. The witness testified he did in fact direct the work of others, those being the civilian delivery people, as well as the honor inmates and that there would be approximately two to three honor inmates there daily to perform the physical labor around the warehouse. When asked about the most important job function of his job, the witness explained that it was to maintain a safe level of inventory for the facilities to carry out their functions in a secure and safe manner. The witness then identified Appellee's Exhibit 3 as the online questionnaire that he filled out for his job audit request. When questioned about the job duties contained on page 3, he explained that the respective duties were an accurate depiction of his job and that it was true that at the time he filled out the questionnaire he was supervising only one Storekeeper 2 and that there was no

notification on the online audit request to note that there was a vacant position there on the table of organization. Moreover, the witness testified he filled out the instant job audit request in essence to be reclassified to an Inventory Control Specialist Supervisor, not to be reclassified downward to a Storekeeper 2. The witness explained that he filled out his questionnaire since the new computer system which had come on line in the last year or so for inventory control at the warehouse, he was one of the most well versed in it and that people throughout the state of Ohio had been calling him with help implementing the same thing. Additionally, Mr. Schneider identified Appellee's Exhibit 1 as his position description as he had signed off on or about November 16, 2005, approximately two months before the submission of his job audit request which in fact shows that he was providing supervision at that time. Upon further questioning, he explained as a result of the audit and his being placed in step X, he did not receive the three percent increase in July 2006.

Upon questioning by the Appellant's counsel, the witness testified prior to 2006 he was responsible for supervision of two Storekeeper 2s, as well as the inmates and oversaw all of the issues regarding the warehouse. The witness explained with respect to the inmates, they would pull the orders, clean the facilities and load the inventory onto trucks to be transported back to either Oakwood and/or ACI for the most part. With respect to the supervision of the civilian employees, he explained he would often have to direct the work of the individuals who were driving the delivery trucks into the facility. Moreover, Mr. Schneider testified while the other Storekeeper Supervisor and Storekeeper 2 from Oakwood would handle most of the inventory with regards to their food and food preparation he did, in fact, keep track of all the inventory for the non-food items for ACI and Oakwood and would log this into the inventory control system.

When questioned as to whether if he understood had either of the Storekeeper 2 positions been abolished, he testified they had not. The witness explained it was not until the first part of July 2006 that he was actually demoted, even though it had an effective date of the reclassification notification of January 22, 2006. As a matter of fact, the witness explained he in fact trained his replacement, that being Mr. Emzer Shurelds. The witness identified Appellant's Exhibit 7 as an e-mail he received from Mr. Ed Dunn explaining and evidencing that he was in fact to train Mr. Emzer Shurelds. Mr. Schneider then identified Appellant's Exhibit 4 as the actual notification from the Ohio Department of Administrative Services on or about February 21, 2006, which showed him being reclassified from a Storekeeper

Supervisor to a Storekeeper 2 effective January 22, 2006 and being placed in step X. Mr. Schneider also identified Appellant's Exhibit 6 as his most recent performance evaluation which again on page six, evidenced that he was doing an excellent job in supervising the warehouse operations, and noted the same. The witness also identified Appellant's Exhibit 9 as his employment history on computer which showed he had held the position of Storekeeper Supervisor since 1994. The witness also identified Appellant's Exhibit 10 which evidenced that there were two Storekeeper 2s, besides himself noted as a Storekeeper 2 as of July 24, 2006, and that Emzer Shurelds' position prior to coming on board in July 2006 was that as the Assistant Coordinator for the Commissary. The witness identified Appellant's Exhibit 11 as three pay stubs which evidenced his being placed down into his new demoted position as Storekeeper 2.

There were not questions by Appellee's counsel or questions by the Ohio Department of Administrative Services representative and/or designee, Ms. Lind.

The next witness to testify was Mr. Joe Mayberry, the Director Supervisor of the Appellant for approximately the last eighteen years prior to the instant job audit being requested. Mr. Mayberry testified he had worked for the Ohio Department of Rehabilitation and Correction at the Allen Correctional Institution for a number of years, lastly holding the position of Business Administrator 2, and that he recently had retired. The witness testified he was present in the hearing room during the testimony of Mr. Schneider and that he characterized Mr. Schneider's testimony of his job duties as being accurate. Further, for clarification, he explained Mr. Schneider did in fact supervise two Storekeeper 2s from June 2004 through the first couple weeks of January of 2006 when one of those employees was then transferred over to the Oakwood facility, but not in the warehouse.

The witness was then questioned by Appellant's counsel if in fact whether he knew or not the Appellant provided the inventory control for all of the items for the Oakwood facility, to which he testified that it was only for the non-food items. No other questions were solicited by either of the Appellee's representatives or the Department of Administrative Services.

The last person to testify was Ms. Robin Lind, a Human Resource Analyst 3 for the Department of Administrative Services who had been serving in her position for approximately the last eighteen years and was acting as the department's audit representative. When questioned, Ms. Lind testified she did in fact perform the

audit and that it was determined that the Appellant, Gary Schneider, was in fact a Storekeeper 2 at the time she conducted the audit. The witness testified Mr. Schneider, at the time of the audit, did not in fact supervise 2 full-time civil service employees as he was only supervising one full-time civil service employee, that being a Storekeeper 2 at the time of the audit, as noted by his online application. The witness explained there was no requirement for the department to look into whether or not there was a vacant position of a Storekeeper 2 and/or the individual has to in fact supervise an employee, but not a position. When questioned as to the reason why she did not find that he was properly classified as a Storekeeper Supervisor, the witness explained that he did not supervise two individuals, thus, the witness explained that she found he was properly classified as a Storekeeper 2. Furthermore, the witness testified that although it was known to her that the Appellant was seeking to be reclassified to an Inventory Control Specialist Supervisor, classification specification 64555, she did not feel this was an appropriate position for the Appellant to be in, as well. The witness explained not only was the Appellant no longer satisfying the definition of a supervisor or providing supervision, he lacked agency wide responsibility for an inventory control and salvage and surplus disposal system. The witness explained that Mr. Schneider was only responsible for the storeroom inventory of an institution. Furthermore, the position's inventory responsibilities cannot be considered institutional wide, because he was not accountable for inventory outside of the storeroom, as well.

Upon questioning by the Appellant's counsel, Ms. Lind testified it is true that the Storekeeper 2's position, which the Appellant had previously supervised was only vacant for about a week or so prior to Mr. Schneider's audit request. Additionally, the witness after identifying Appellant's Exhibit 14 testified the effective date of placing Mr. Schneider into the Storekeeper 2's position was that of January 22, 2006 and that Mr. Schneider had only requested the audit on January 17, 2006. This was only a period spanning five days. Further, Ms. Lind testified she did not review the audit until February 14, 2006, but that it is customary for the agency to make a determination following the first pay period in a retroactive sense placing the individual back into that position following the first pay period following the audit request as a reason there was a retroactive and/or back period present.

### **FINDINGS OF FACT**

There was no real discrepancy between the Appellant's characterization of his job duties and/or responsibilities and that of the testimony of his supervisor, Mr. Joe

Mayberry. Thus, I find that, as a matter of fact, the Appellant performed the duties about which he testified.

### CONCLUSIONS OF LAW

The Board in this case is presented with the question when a job audit is placed into the Ohio Department of Administrative Services, and rules that the individual requesting the audit should be downgraded as a result of that audit request, and the Appellant files an appeal of that reclassification and/or reduction appeal, while contemporaneously one of the subordinate employees which the Appellant supervised transfers to a different facility one week prior to the job audit request is sufficient to allow the downgrade in question to stand. The answer to this question is simply no.

This Board is required to perform several functions when determining the most appropriate classification for an Appellant coming before it. The Board must always review relevant classification specifications to determine which classification best describes the Appellant's actual job duties for the pertinent period of time in question. *Ford v. Ohio Department of Natural Resources* (1990), 67 Ohio App. 3d 755. In making this determination, the Board considers the classification specifications and the job duties outlined therein, as well as the percentages of time the Appellant devotes to each group of job duties. *Klug v. Department of Administrative Services* (May 19, 1988), Franklin App. 87AP-306, unreported, 1988 WL54277. The Board's consideration, however, is not solely limited to the duties contained within the classification specification itself, but may also embrace other relevant facts by the affected parties. *Gordon v. Ohio Department of Administrative Services* (May 31, 1988), Franklin App. 88AP-0122, unreported, 1988 WL37094.

As a general rule, the Appellant seeking reclassification to a higher position must demonstrate that his or her respective duties substantially satisfy those of the higher classification. *Mounts v. Ohio Department of Administrative Services* (1984), 17 Ohio App. 3d 125; *Deist v. Kent State University* (May 23, 1978), Franklin County App. 78AP-28, unreported. However, as in this case, as both of the above noted case numbers were not consolidated, but are now being considered at the same time, one also has to look at whether or not the Appellant was reduced in his position without having been served an Ohio Revised Code Section 124.34 order of demotion or reduction. In this case, it is clear that the Appellant was never served

an Ohio Revised Code Section 124.34 order of reduction or demotion at anytime. Further, there is no argument that the Appellant has suffered any monetary loss in pay as a result of the Appellee's actions of having reclassified the Appellant back to a Storekeeper 2's position, outside of the loss of three percent pay raise in July of 2006 as the Appellant was put into step X for that position with the effective date of January 22, 2006.

The facts of this case are quite clear. The Appellant filed for a job audit after one of his subordinate employees, a Storekeeper 2, whom he supervised for the proceeding two years, prior to his audit request, was transferred to a different facility, thus leaving his supervisory duties in question when the Ohio Department of Administrative Services received the audit in question. Outside of the analysis of the duties at this point, which will be discussed further, the Ohio Department of Administrative Services through its representative initially made a proper determination as they did not have all the facts at hand. Further, because the Appellant filed a reduction appeal along with a reclassification appeal at the same time, their needs to be other standards reviewed when making a final determination on this case.

The standard to be applied in this case where there is a reduction in position was set by the holding in *Firestone v. Summit County Welfare Department*, Court of Appeals Franklin Co. Ohio, case number 97AP-418, (1979). The standards set by the court in *Firestone* is that the Board must look at the employee's duties to see if they were so altered that if a job audit were to be performed, the employee would suffer a reclassification and a reduction would result. Also, see Ohio Administrative Code Section 12-1-02(Z) that defines a "reduction in position" to mean:

. . . . An action which diminishes and employee's duties or responsibilities to the extent an audit of the employee's position would result in a reclassification to a classification assigned a lower pay range.

In this case, as unusual as it may seem, there was a reduction *per se* as an audit was conducted finding the Appellant being reclassified to a lower position, along with being put into a different/lower pay range, placing him in step X. Thus, the reduction of the Appellant's position should not stand, as a matter of law, as the Appellant herein filed a reduction appeal to this Board to protect him from exactly what happened.

As was previously mentioned, the Appellant's position is presently classified as a Storekeeper 2, classification specification number 14742. However, at the time the Appellant filed his job audit request on January 17, 2006, the Appellant had held the position of a Storekeeper Supervisor, classification 14745, hoping to be reclassified to the position of an Inventory Control Specialist Supervisor, classification specification number 64555.

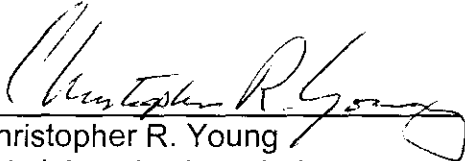
The testimony in this case revealed that Mr. Schneider, two years prior to his audit request and/or one week short of it, supervised two Storekeeper 2s in the performance of his job as a Storekeeper Supervisor, clearly what the Storekeeper Supervisor's classification specification calls for. As a result, the Appellant filed a job audit in hopes of being reclassified to an Inventory Control Specialist Supervisor. However, as was correctly determined by the Ohio Department of Administrative Services, the Appellant did not analyze the current operation and system for inventory control for a state agency or on an agency wide basis, but only for the Allen Correctional Institution. While the testimony did reveal that he did have some say so in the non-food items for Oakwood, the undersigned understands that the Ohio Department of Rehabilitation and Corrections consists over thirty penal institutions and that the Appellant clearly did not have inventory control over a statewide basis in this regard. Thus, the Inventory Control Specialist Supervisor's position was rejected as not being the most appropriate fit for the Appellant to be in. Likewise, while the Ohio Department of Administrative Services at the time of the audit was conducted, correctly analyzed that the Appellant was only providing supervision to one Storekeeper 2 as a Supervisor failed to adhere to Administrative Code Section 123:1-7-15 which sets forth "for the purpose of classifying positions and making job audit positions only, wherever the word "supervises" appears in a classification specification for any class title in this rule, it means that an employee assigns and reviews work, completes employee performance evaluation forms, recommends or authorizes leave and recommends or initiates disciplinary action for at least two full-time permanent employees or the equivalent".

It was based upon the above mentioned Ohio Revised Code Section that at the time of the audit request the Appellant was not supervising two full-time permanent employees as one employee had transferred a week prior to the audit request being sent in. However, on the other hand, in any reduction appeal an employee can come to this Board and complain that duties had been taken away or diminished which in effect would be a reduction in position, or an action which

diminished an employee's duties to the extent of an audit of the employee's position resulting in the reclassification to a classification assigned a lower pay range. This is exactly the case, the Appellant, not being at this tribunal for any disciplinary reason whatsoever, should not be penalized for being reclassified to a lower class and/or pay range simply because he was asserting his rights as an employee and a civil servant of the state of Ohio.

### RECOMMENDATION

Therefore, based upon the above noted conclusions of law, it is my **RECOMMENDATION** and respectfully submitted that the Appellant should not have been reclassified to the position of Storekeeper 2 effective January 22, 2006, and should be put back to his position of a Storekeeper Supervisor, classification specification number 14745, effective January 22, 2006. Additionally, the Appellant's reduction in position should not have occurred as it is ACI's responsibility to ensure that its employees are given job duties and/or responsibilities that match the classification specification assigned to those employees. Thus, it is also respectfully **RECOMMENDED** ACI should restore the Appellant's duties to that of a Storekeeper Supervisor and reimburse any loss in pay that the Appellant suffered as a result of his being reduced, believed to be a three percent reduction in his salary since July 2006, back to the Appellant, and to fully restore the Appellant's job duties contained within the Storekeeper Supervisor position classification specification.

  
Christopher R. Young  
Administrative Law Judge