

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Tom Mundy,

*Appellant,*

v.

Case No. 09-INV-11-0493

Ohio University,

*Appellee.*

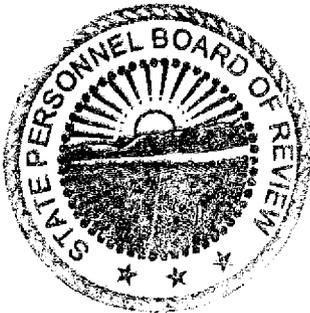
**ORDER**

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 the instant investigation be **TERMINATED** as the Board lacks jurisdiction over the allegations made by Appellant.

Lumpe - Aye  
Sfalcin - Aye  
Tillery - 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 this document and any attachment thereto constitute (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, February 4, 2010.

  
Michelle Hunsay  
Clerk

2/4/10

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

Tom Mundy

Case No. 09-INV-11-0493

*Appellant*

v.

December 29, 2009

Ohio University

Marcie M. Scholl

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on December 29, 2009. Appellant Mundy filed a request for investigation with this Board on November 20, 2009. In his request, Appellant Mundy states he applied for a position as a Broadcast IT Supervisor in August 2008 and the position was filled by someone else in September 2008. He then filed several grievances pursuant to the Appellee's internal policies, alleging among other things, that the promotional process was tainted.

Appellant Mundy also stated in his request for investigation that he did not agree with his performance evaluation which he received on April 7, 2009. He then states he interviewed for another position on June 16, 2009, which he was notified on July 17, 2009 that he was not the successful candidate. Appellant Mundy also filed an appeal with this Board regarding his layoff and that appeal has been assigned case number 2009-LAY-06-0311. It is scheduled for a record hearing on January 14, 2010.

With regard to Appellant Mundy's request for investigation, this Board does not possess jurisdiction to investigate performance evaluations or the denial of promotion, nor does it have the authority to review the internal grievance procedures of Appellee. The courts have stated in several opinions before them that this Board does not have any authority to investigate or to hear appeals of alleged abuses of promotion. The case of *Ketron v. Ohio Department of Transportation* (1991), 61 Ohio App.3d 657, concerned two employees of the Department of Transportation who filed an investigation request with this Board alleging that the Department was not adhering to the promotion process as described in Chapter 124. of the Ohio

Revised Code. This Board reviewed the request and terminated the investigation on the basis of a lack of subject matter jurisdiction. The Appellants appealed and the Court of Appeals held that:

. . . The legislature did not include the term 'promotion' in R.C. 124.03(A), and we decline to engage in judicial legislation by inserting the word 'promotion' into the statute. . . (*Ketron* at pg.661).

The Court continued on to state the terms "assignment" and "reassignment" as found in section 124.03(A) of the Ohio Revised Code are not synonymous with the term "promotion" and, therefore, section 124.03(A) of the Ohio Revised Code does not provide a right to appeal to this Board in the case of an alleged abuse of promotion. See also *Singh v. State* (1982), 7 Ohio App.3d 269.

Likewise, there is no provision in Chapter 124. of the Ohio Revised Code for this Board to review an employee's performance evaluation. Such review may be the subject of an internal review within an employee's agency, as is the case with Appellee. However, this Board does not possess any jurisdiction to review the Appellee's internal procedures.

Therefore, it is my **RECOMMENDATION** that this investigation be **TERMINATED** as the Board lacks subject matter jurisdiction over the allegations made by Appellant Mundy.

  
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Marcie M. Scholl  
Administrative Law Judge

:mms