

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

Steven Adams,

Appellant.

v.

Case No. 10-INV-03-0057

Ohio State University,

Appellee.

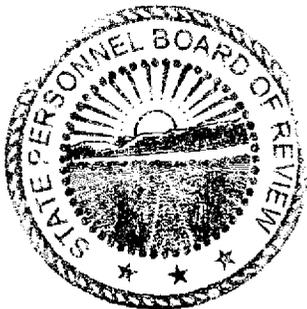
ORDER

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 **DISMISSED** for lack of subject matter jurisdiction, pursuant to O.R.C. § 124.56.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



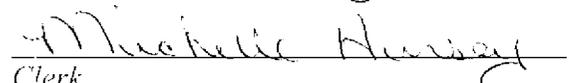


J. Richard Lumpe, *Chairman*

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, August 4, 2010.



Clerk

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

Steven Adams,

Case No. 10-INV-03-0057

Appellant

v.

April 19, 2010

Ohio State University,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellant's request for investigation, filed with this Board on February 22, 2010. Appellant requested that this Board examine the position of Environmental Service Area Supervisor and make a determination as to whether the duties of the position placed it in the classified or unclassified civil service.

Unlike a court of general jurisdiction, however, the State Personnel Board of Review has authority only where it has been explicitly conferred upon it by the Ohio General Assembly. In determining its jurisdiction to consider an appeal, it is often necessary for this Board to make an initial determination as to whether the position encumbered by the Appellant falls within the classified or, alternatively, the unclassified service. However, such a determination must be precipitated by an adverse personnel action, such as a removal or reduction, which either accompanied or followed an Appellant's change or "correction" of status. This Board does not otherwise have the authority to issue declaratory judgments determining the classified or unclassified status of a position. In this instance, Appellant does not encumber the position of Environmental Service Area Supervisor, nor was the status of the position he actually encumbers changed.

While Appellant's request was styled as an investigation, this Board's investigatory jurisdiction does not extend to address such an issue. Ohio Revised Code Section 124.56 provides that this Board shall conduct an investigation when it has reason to believe that:

. . . any officer, board, commission, head of a department, or person having the power of appointment, layoff, suspension, or removal, has abused such power by making an appointment, layoff, reduction, suspension, or removal of an employee under his or their jurisdiction in violation of [Chapter 124.] of the Revised Code

In order to invoke this Board's authority, Appellant must allege that Appellee has made an appointment, layoff, reduction, suspension, or removal in violation of R.C. Chapter 124. Where a request for investigation alleges none of the above-referenced triggering devices, the State Personnel Board of Review is without jurisdiction to proceed with an investigation. *State, ex rel. Carver v. Hull* (1994), 70 Ohio St.3d 570; *Okopal v. University of Toledo* (1982), PBR 82-INV-10-3019; *Reed v. Montgomery County Board of Mental Retardation* (1982), PBR 82-INV-09-2801; *Logsdon v. University of Cincinnati* (1982), PBR 82-INV-08-2690.

Appellant's request that this Board determine whether the duties Environmental Service Area Supervisor position placed it in the classified or unclassified civil service is not one of the triggering devices found in R.C. 124.56. Accordingly, I find that this Board has no jurisdiction to proceed with an investigation of this matter.

Therefore, I respectfully **RECOMMEND** that the instant investigation be **DISMISSED** for lack of subject matter jurisdiction.

Jeannette E. Gunn
Administrative Law Judge