

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

L. Kevin O'Connor,

*Appellant,*

Case Nos. 10-REC-11-0322

10-INV-11-0323

10-MIS-11-0324

v.

Department of Natural Resources and  
Department of Administrative Services,

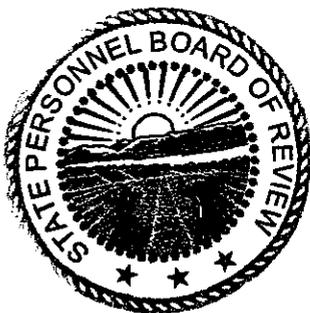
*Appellees.*

**ORDER**

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

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.

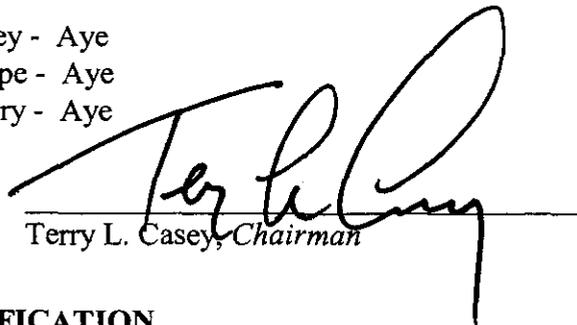
Wherefore, it is hereby **ORDERED** that in Case No. 10-REC-11-0322, Appellee, Department of Administrative Services' determination that Appellant's position is properly classified as External Audit Manager 2, classification number 66467, be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.14. It is further **ORDERED** that the investigation in Case No. 10-INV-11-0323 be **TERMINATED** as moot, pursuant to O.R.C. § 124.56, and that Case No. 10-MIS-11-0324 be **DISMISSED** as moot, pursuant to O.R.C. § 124.03.



Casey - Aye

Lumpe - Aye

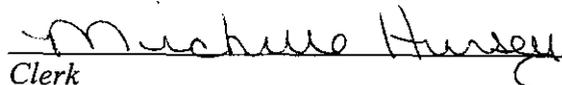
Tillery - Aye

  
Terry L. Casey, *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, June 28, 2011.

  
*Clerk*

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

6.28.11MH

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

L. KEVIN O'CONNOR,

*Appellant*

v.

Case Nos. 10-REC-11-0322  
10-INV-11-0323  
10-MIS-11-0324

May 12, 2011

DEPARTMENT OF NATURAL RESOURCES

and

DEPARTMENT OF ADMINISTRATIVE SERVICES,

*Appellees*

JAMES R. SPRAGUE  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

These causes come on due to Appellant's November 22, 2010 filing of two appeals and a request for investigation concerning Appellant's continuing efforts to have his position at the Department of Natural Resources (DNR) reclassified from External Audit (EA) Manager 2, 66467, to External Audit Administrator, 66468. Further, on or about October 28, 2010, Appellant received notice that the job audit that the Department of Administrative Services (DAS) had conducted on his position resulted in no change to his EA Manager 2 classification. Thereafter, on November 22, 2010, Appellant timely filed the above-captioned appeals and request for an investigation with this Board.

The records in these matters were thereafter developed and on March 7, 2011, a pre-hearing was conducted regarding these matters. As a result of that pre-hearing, a subject matter briefing schedule was established and the parties timely filed their respective briefs on or before May 9, 2011.

By way of background, the 127<sup>th</sup> General Assembly passed Sub. H.B. 166, which became effective on February 14, 2008. That legislation created the Office of Internal Auditing within the Office of Budget and Management (OBM). Among other things, it also transferred various state employees, who performed internal audit functions for the various state agencies, to OBM.

L. KEVIN O'CONNOR

Case Nos. 10-REC-11-0322, 10-INV-11-0323, and 10-MIS-11-0324

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As a consequence of the enactment of Sub. H.B. 166, the State reviewed the functions of numerous auditing positions. Considerable negotiation and analysis also occurred and, at some point, the External Auditor class series appears to have been opened up to various agencies, whereas its usage had previously been limited. Further, DNR appears to have been initially receptive to the idea that Appellant's position would potentially benefit by reclassification to the EA Administrator classification.

However, DAS was not so disposed and, so, DAS did not place Appellant's position in the EA Administrator class. Further, a DAS job audit of Appellant's position resulted in the above-referenced determination that Appellant's position was properly classified as EA Manager 2. As noted, Appellant has timely appealed that job audit determination to this Board.

Moreover, the parties are in agreement that Appellant performs the requisite duties of the EA Manager 2 classification as well as the next progressive classification in the class series, EA Administrator, with one significant exception. Appellant believes this one point of contention, namely that the incumbent EA Administrator must supervise " ... *lower-level external audit managers & administrative/clerical support.*" (emphasis added) is not dispositive.

This is the case, he argues, because he does all other pertinent duties in the EA Administrator specification and, since DNR is extremely efficient, it does not even need to and does not carry extra external audit managers for him to supervise. Thus, Appellant argues, for him to be treated equitably, he should be reclassified upward to EA Administrator.

Conversely, DNR and DAS argue that the requirement that Appellant supervise "*lower-level external audit managers*" is, in fact, a dispositive requirement for Appellant to be reclassified upward to EA Administrator. Since it is undisputed that Appellant does not perform this duty and since this duty is listed both in the EA Administrator Class Concept and in Rank 1 of the Job Duties section of the EA Administrator specification, DNR and DAS argue that it is required that Appellant perform same to qualify for the upgrade he seeks.

R.C. 124.03 establishes the general subject matter jurisdiction of this Board. R.C. 124.03 (A) (2) provides this Board with the authority to review job audit

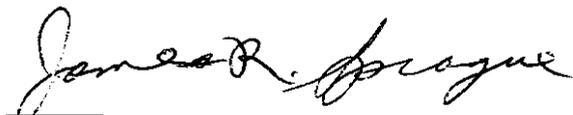
determinations of the Director of DAS. R.C. 124.03 (A) (1) and (2) mandate that the decisions of this Board shall be consistent with the applicable classification specifications. In the instant cases, Appellant does not perform a supervisory duty listed both in the Class Concept and in Rank 1 of the EA Administrator specification. It is noted this requirement does not appear in the Series Purpose language.

O.A.C. 123: 1-3-01 (D) mandates that, for an employee to hold a particular classification, the employee must perform the duties of the class concept at least 20 percent of the employee's time unless the specification contains an alternative requirement, which the EA Administrator class does not.

To be consistent, then, with the applicable classification specification and to be consistent with the duties of a Class Concept that Appellant performs at least 20 percent of his time, this Board must conclude that Appellant is barred from holding the EA Administrator class, and, as such, is not eligible for an upgrade to same.

To summarize, the only point of meaningful contention in the instant cases is whether Appellant must perform this supervisory duty over external audit managers. Thus, since the parties agree, and I find, that Appellant performs all requisite duties of the EA Manager 2 class, this Board should affirm DAS' job audit determination that Appellant's position is properly classified as EA Manager 2.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the job audit determination of the Department of Administrative Services that Appellant's position is properly classified as External Audit Manager 2, 66467, in Case No. 10-REC-11-0322, pursuant to R.C. 124.03 and R.C. 124.14. I further **RECOMMEND** that this Board **TERMINATE** Case No. 10-INV-11-0323 as **MOOT**, pursuant to R.C. 124.56. Additionally, I **RECOMMEND** that this Board **DISMISS** Case No. 10-MIS-11-0324 as **MOOT**, pursuant to R.C. 124.03.



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JAMES R. SPRAGUE  
*Administrative Law Judge*

JRS: