

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

Max Sauray,

Appellant,

v.

Case No. 10-REC-09-0253

Ohio State University,

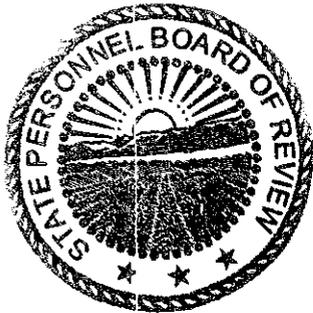
Appellee.

ORDER

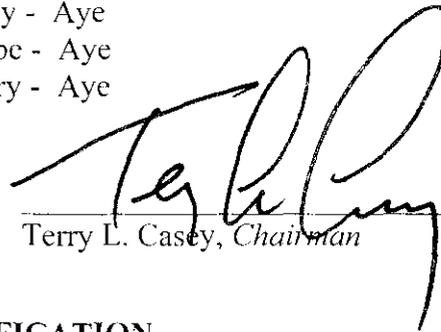
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 appeal be **DISMISSED** since Appellant was properly classified as a Sterile Supply Technician 1, during the relevant time period in question, pursuant to O.R.C. § 124.14(F) (1) and (2).



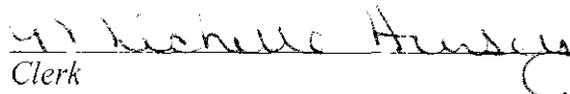
Casey - Aye
Lumpe - Aye
Tillery - Aye


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, April 13, 2011.


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**

Max Sauray,

Case No. 10-REC-09-0253

Appellant

v.

March 15, 2011

Ohio State University,

Christopher R. Young

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on March 11, 2011 at 10:30 a.m. Present at the hearing was the Appellant, Max Sauray, who was represented by Michael A. Moses, Attorney at Law, and the Appellee, The Ohio State University, was present through its designee, Josh Bowles, a Manager for the Central Sterile Supply Department, and was represented by Lisa G. Whittaker, an Assistant Attorney General. The Appellant, Max Sauray and the Manager for the Central Sterile Supply Department, Mr. Josh Bowles, Appellant's indirect supervisor, as the Appellant's direct supervisor, the Shift Supervisor, Ms. Kelly Mooney, is no longer employed by the University, along with Ms. Tammy Bethea, a Talent Management Analyst from the Office of Human Resources who completed the audit offered testimony at this record hearing.

On or about March 4, 2010, the Appellant, Max Sauray, requested a job audit of his position as a Sterile Supply Technician 1, classification specification number 7941. On or about June 4, 2010, the Labor Relations Manager's Office received the Job Audit Review Request. (See Appellee's Exhibit 6). On September 15, 2010, the Appellant, Max Sauray, received the results of the audit request which notified him that his proper classification for his position was that of a Sterile Supply Technician 1. After receiving the job audit results, the Appellant timely filed his appeal to this Board on or about on September 16, 2010. It should be noted that the aforementioned was stipulated to, as well as, the subject matter jurisdiction of this board was established.

Before proceeding onto the record hearing, the Appellant, Max Sauray, stated that although he is presently classified as a Sterile Supply Technician 2, he was

seeking to be reclassified to the position of a Sterile Supply Technician 2 from the time he requested on March 4, 2010, when he held the position of a Sterile Supply Technician 1. It should be noted that as further stipulated by the parties that the Appellant on October 24, 2011, was in fact promoted to the position of a Sterile Supply Technician 2. Thus, the only issues to be determined are whether the Appellant at the time he filed his audit request was properly classified as a Sterile Supply Technician 1, or a Sterile Supply Technician 2, and if so, what amount of differential back-pay should be awarded.

STATEMENT OF THE CASE

Mr. Max Sauray testified that he began his employment with the Ohio State University as a Sterile Supply Technician 1 in 2005, and was recently promoted to the position of a Sterile Supply Technician 2 on October 24, 2010. When questioned, the witness identified Appellee's Exhibit 6 as a job audit review request form for bargaining unit members of the Communications Workers of America, Local 4501 which he filled out on or about March 4, 2010. The witness testified that after he signed the above mentioned form he then handed it to his union representative. It should be noted that on the above mentioned form it shows that the Labor Relations Manager received the form on or about June 4, 2010. The witness testified that he works in the Central Sterile Supply Department, located within the Ross Heart Center building, on first shift from 8 a.m. to 4:30 p.m., Monday through Friday, while also working overtime, when needed. When questioned, Mr. Max Sauray testified that the Manager for the Central Sterile Supply Department, Mr. Josh Bowles, Appellant's indirect supervisor, is present at today's hearing, as the Appellant's direct supervisor when he was a Sterile Supply Technician 1, the Shift Supervisor, Ms. Kelly Mooney, is no longer employed by the University.

The witness identified Appellee's Exhibit 3 as a classification specification for a Sterile Supply Technician 1, the position he held when he filed for his job audit request. The witness, when questioned, about the duties listed thereon explained that he receives and sorts contaminated surgical instruments and utensils; performs cleaning, disinfecting and sterilizing procedures; inspects the conditions and completeness of surgical instruments sets; operates sterilizing equipment and machinery a large portion of his time. The witness also stated that he assists in identifying and pulling sterile supplies and surgical instruments; fills basic pull bags; maintains inventory of sterilized items; and delivers instruments, as well.

Additionally, the witness testified that he also expects sterilized instruments and utensils; places surgical sets and related equipment into the sterilizer or aerator; operates the sterilizers and aerator, as well as answers phones, completes records and forms while maintaining a clean environment. It should be noted that the Appellant had a hard time stating the percentages of time devoted for the group of duties listed above. However, the witness did state that the Sterile Supply Technician 1s typically work on what is called the "dirty side" as opposed to the "clean side" of things. Mr. Sauray explained that the dirty side works more on the cleanup of contaminated surgical instruments wherein those instruments are disinfected and inspected for completeness. The witness testified unequivocally that he worked more on the dirty side, than the clean side, when he put in for his audit request, and up until his promotion, while only averaging 15 to 25% of his time was spent working on the clean side.

The witness then identified Appellee's Exhibit 4 as a classification specification for a Sterile Supply Technician 2, the Appellant's current classification, and the classification which he sought when he filed his audit request. When questioned, the Appellant testified that he also inspected sterilized instruments and utensils; lubricated, padded, packaged and wrapped instruments; identified missing instruments; and also placed instruments into a sterilizer or aerator, as part of his duties when he filed for his audit request. The witness also testified that he receives and sorts contaminated surgical instruments and utensils; performs cleaning, disinfecting and sterilizing procedures; inspects the conditions and completeness of surgical instruments sets; operates sterilizing equipment and machinery a large portion of his time, as this duty is also contained within the Sterile Supply Technician 1's classification specification. Moreover, the witness testified that he also checks and tests sterilizing equipment for needed repairs; answers phones, but doesn't act as a shift leader in the absence of his supervisor. However, the witness did testify that he acted as a lead worker and/or technician in that he has trained others on how to clean various instruments, on the "dirty side", how to decontaminate and sterilize various instruments and utensils, along with checking the instruments for needed repairs.

When questioned if he completed performance evaluations, Mr. Sauray explained that he did not. Further, the witness testified that he did not approve any leave time, nor does he effectively recommend discipline in his position, as well. Moreover, the witness testified that he did not act on the behalf of his supervisor.

However, the witness did testify that he helped train other Sterile Supply Technician 1s, numbering anywhere from 10 to 15 during the last couple of years.

Upon questioning by Counselor Moses, the witness testified that he has been training Sterile Supply Technician 1s for at least the last couple of years, and that Mr. Bowles had asked him to apply to become a Sterile Supply Technician 2 around August 2010.

The witness then identified Appellee's Exhibit 5 as a document from Maureen Koblentz, a Compensation Manager for the Ohio State University, dated August 23, 2010, that was sent to OHR Talent Management Analyst, Ms. Tammy Bethea regarding Mr. Sauray's job audit request. When questioned, the Appellant explained that he appeared to be working outside of his current classification of a Sterile Supply Technician 1, along with that he was being regularly worked as a Sterile Supply Technician 2 approximately 20% of the time working on the "clean side" of the operation. Further, as was revealed by the document itself it did state that Mr. Sauray was working and performing Sterile Supply Technician 2 duties on his own, and was participating in the training of other Sterile Supply Technician 1s. Additionally, it was noted that this Koblentz's recommendation was to either reclassify Mr. Sauray to a Sterile Supply Technician 2 or stop working him as a Sterile Supply Technician 2.

Upon questioning by Counselor Whittaker, the Appellant testified that he was providing training only on the "dirty side", and not on the "clean side".

The next witness to testify was Mr. Josh Bowles, who was employed as the Manager of the Central Sterile Supply Department for the Ohio State University a position that he has held for the last 6 years, who is currently Mr. Sauray's indirect supervisor. As was explained earlier, the immediate supervisor of the Appellant, Max Sauray, during the relevant time of his job audit request had been Ms. Kelly Mooney, who currently is not employed by the University at this time. Specifically, when questioned, if the Appellant's testimony regarding his job duties and/or responsibilities were accurate, Ms. Bowles answered in the affirmative, as he was in the hearing room and heard the same.

Upon questioning by Counselor Moses, the witness testified that he has over a significant period of time personally observed Mr. Sauray in his positions during the last year or so. The witness testified that the Appellant voluntarily trained to be a

Sterile Supply Technician 2, while primarily focusing on his Sterile Supply Technician 1 duties. The witness explained that when someone is working as a Sterile Supply Technician 1 one's focus is primarily on the "dirty side", rather than the "clean side", and opined that that was Mr. Sauray's position prior to his promotion to a Sterile Supply Technician 2 in October 2010. The witness testified that before the Appellant's promotion to a Sterile Supply Technician 2 Mr. Sauray spent approximately 75% to 80% of his time working on the "dirty side". Moreover, the witness testified that after the Appellant's promotion to a Sterile Supply Technician 2 in October 2010 Mr. Sauray spends approximately 3 weeks performing "clean side" activities versus one week of "dirty side" duties, or 75% clean side activities to 25% dirty and/or duties.

Upon further questioning by Counselor Moses, Mr. Bowles identified Appellee's Exhibit 5 as a recommendation from Maureen Koblentz; a Compensation Manager dated August 23, 2010, wherein she specifically stated to reclassify Mr. Sauray to the Sterile Supply Technician 2's position or to stop working him as a Sterile Supply Technician 2. Further, the witness identified Appellee's Exhibit 2 as a position description draft for job audit review dated July 22, 2010, that was signed by Mr. Sauray, Ms. Koblentz and himself noting that Mr. Sauray spent approximately 75% of his duties cleaning specialty instruments and putting them into a washer, and only 20% of his time was utilized performing Sterile Supply Technician 2 type duties. Additionally, the witness noted that the Appellant's duties did change in October 2010 when he was promoted to a Sterile Supply Technician 2, and opined that Ms. Koblentz in August 2010 had only said that the Appellant was performing 20% Sterile Supply Technician 2 duties, at or prior to that time.

Upon questioning by Counselor Whittaker, the witness explained that there are only two (2) Sterile Supply Technician 1s currently employed by the Ohio State University, while there are thirty-five (35) Sterile Supply Technician 2s employed currently. Additionally, the witness testified that he never scheduled Mr. Sauray to work as a Sterile Supply Technician 2 prior to his promotion. Moreover, the witness explained that when Mr. Sauray did perform Sterile Supply Technician 2 type duties prior to his promotion, that it would only be for a couple hours a week, and maybe as high as 20% of his time. Moreover, the witness when questioned explained with regards to Appellee's Exhibit 2 the position description draft for a job audit review Mr. Sauray had a union representative at that meeting, and that both he and his representative participated in filling out the information on the form.

The last witness to testify was Ms. Tammy Bethea, a Talent Management Analyst in the Office of Human Resources at the Ohio State University, who conducted the audit of the Appellant's position. When questioned, the witness testified that she found that the Appellant, Mr. Max Sauray, was properly classified as a Sterile Supply Technician 1, when he filed for his audit. When asked to explain her rationale, the witness testified that although Ms. Koblentz was recommending the Appellant's classification be changed to a Sterile Supply Technician 2, or have him stop performing those duties, she overruled that recommendation as it was in conflict with Ohio Administrative Code Section 3335-55-04 (B) which states, among other things, that the function statement shall set forth the primary duties that must be satisfied at least 50% of the time. In the case at hand, the witness testified that Ms. Koblentz found Mr. Max Sauray to be performing Sterile Supply Technician 2's duties only 20% of the time, not enough under their rules to justify the upgrade.

Upon questioning by Counselor Moses, the witness agreed that she only performed a desk audit and that she did state that she was aware that he had been training others. The witness then identified Appellee's Exhibit 8 as a series of e-mails dating from August 23, 2010 to September 15, 2010, and explained that the function statement in the Sterile Supply Technician 2 classification specification states, "under general supervision from supervisor, acts as lead technician and inspecting, sterilizing and dispensing surgical instruments and utensils.", and explained that when she had reviewed the position description submitted, see Appellee's Exhibit 2, it was unclear as to whether or not he was acting as a lead technician. Hence, the witness testified she gathered further information wherein she discovered that Mr. Sauray was not considered to be acting as a lead technician, as he was only training new hires, maybe 20% of his time how clean instruments on the "dirty side" and therefore should remain a Sterile Supply Technician 1.

FINDINGS OF FACT

There were no real discrepancy between the Appellants' characterization and the duties that he performed and those of the testimony of his indirect supervisor, Mr. Josh Bowles, a Manager of the Central Sterile Supply Department for the Ohio

State University. Therefore, I find as a matter of fact, the Appellant performed the duties about which he testified.

CONCLUSIONS OF LAW

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. *Ford v. Ohio Department of Natural Resources* (1990), 67 Ohio App. 3d 755. In making this determination, the Board considers the classification specification and the job duties outlined therein, as well as the percentages of time the Appellant devotes to each group of job duties. *Klug v. Ohio Department of Administrative Services* (May 19, 1988), Franklin Co. 87AP-306, unreported, 1988 WL54277. This Board's consideration is not solely limited to the duties contained within the classification specification, but may also embrace other relevant facts submitted by the effected parties. *Gordon v. Ohio Department of Administrative Services* (March 31, 1988), Franklin Co. 88AP-0122, unreported, 1988 WL37094.

As a general rule, the Appellant seeking a reclassification to a higher position must demonstrate that his or her respective job 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, 1987), Franklin Co. 87AP-28, unreported.

As previously mentioned, the Appellant, Mr. Max Sauray, stated that although he is presently classified as a Sterile Supply Technician 2, he was seeking to be reclassified to the position of a Sterile Supply Technician 2 from the time he requested on March 4, 2010, when he held the position of a Sterile Supply Technician 1. However, as was noted by the undersigned the Ohio State University Office of Human Resources found that the Appellant was properly classified as a Sterile Supply Technician 1. After a thorough review of the above mentioned classifications and position description, it is my recommendation that the Appellant was properly classified as a Sterile Supply Technician 1, during the relevant period of time.

Ohio Revised Code section 124.14(F) (1) and (2) sets forth this Board's jurisdiction concerning job audits and job classifications regarding University employees.

(F)(1) Notwithstanding any contrary provision of sections 124.01 to 124.64 of the Revised Code, the board of trustees of each state university or college, as defined in section 3345.12 of the Revised Code, shall carry out all matters of governance involving the officers and employees of the university or college, including, but not limited to, the powers, duties, and functions of the department of administrative services and the director of administrative services specified in this chapter. Officers and employees of a state university or college shall have the right of appeal to the state personnel board of review as provided in this chapter.

(2) Each board of trustees shall adopt rules under section 111.15 of the Revised Code to carry out the matters of governance described in division (F) (1) of this section. Until the board of trustees adopts those rules, a state university or college shall continue to operate pursuant to the applicable rules adopted by the director of administrative services under this chapter.

The rules for the Classified Civil Service for the Ohio State University Office of Human Resources are located within Chapter 55 regarding the classification program. Specifically rule number 3335-55-04 (B) states:

Each classification title shall have a corresponding classification specification that sets forth the function statement and minimum qualifications. The function statement shall set forth the primary duties that must be satisfied at least 50% of the time.

In Mr. Sauray's case, when reviewing the classification specification of a Sterile Supply Technician 2 the function statement clearly states that one has to be under the general supervision from a supervisor, acts as a lead technician in inspecting, sterilizing and dispensing surgical instruments and utensils. The testimony revealed that during the relevant time period there were only three Sterile Supply Technician 1s, including the Appellant, while there were approximately 35 Sterile Supply Technician 2s, in addition to the testimony of the Appellant stating

that he was basically only training individuals on the sterilization and the decontamination of medical instruments, working on the "dirty side", not the clean side, and not working or training individuals regarding the inspection and the dispensing of surgical instruments. Furthermore, the testimony revealed by the Appellant's own admission that he only worked 15 to 25% of the time, prior to his promotion, on the "clean side", contrary to and in conflict with the above stated administrative rule wherein it is stated that the primary duties must be satisfied at least 50% of the time.

After reviewing Mr. Sauray's testimony with regard to his job tasks and/or responsibilities with respect to the Sterile Supply Technician 2 classification specification it became apparent when reviewing the rules for the Classified Civil Service of the Ohio State University's Office of Human Resources at this classification was not an appropriate fit for the Appellant, as he was not working on the "clean side" at least 50% of the time.

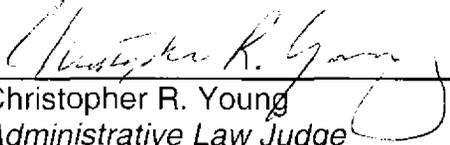
However, when reviewing the classification specification of a Sterile Supply Technician 1, the classification function statement states that one holding this position is to work under the direct supervision from a Sterile Supply Technician 2 or Supervisor and, receives, washes, sterilizes and dispenses surgical instruments and utensils. Based upon the documentation submitted, as well as the testimony of the Appellant, the evidence revealed that the Appellant was working within this classification specification roughly 75% of the time, and thus he was properly classified as such during the relevant time in question.

Thus, the undersigned after careful consideration of the evidence presented at the record hearing, and by preponderance thereof, concludes that the classification specification of a Sterile Supply Technician 1 best describes the duties which the Appellant, Max Sauray, performed in his job after he had put in for his audit and before his subsequent promotion to a Sterile Supply Technician 2.

Max Sauray
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RECOMMENDATION

Therefore, it is my **RECOMMENDATION** that the Appellant, Max Sauray, was **PROPERLY CLASSIFIED** as a Sterile Supply Technician 1, during the relevant time period in question, and that the Appellant's appeal be **DISMISSED**.



Christopher R. Young
Administrative Law Judge

CRY: