

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

MATTHEW J. YUNGER,

Appellant,

v.

Case No. 11-REC-04-0087

HAMILTON COUNTY ENGINEER,

Appellee,

ORDER

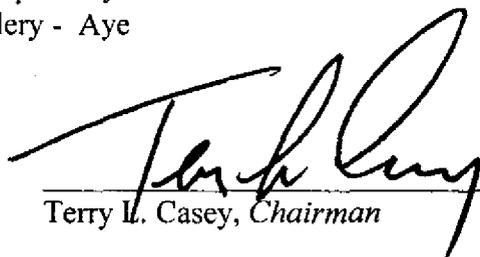
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including 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 is **DISMISSED** for lack of jurisdiction, pursuant to R.C. 124.03(A).

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 constitutes ~~(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, November 09, 2011.




Eric E. Conn
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**

Matthew J. Yunger,

Case No. 11-REC-04-0087

Appellant

v.

September 30, 2011

Hamilton County Engineer,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on pursuant to Appellee's Motion to Dismiss, filed with this Board on August 11, 2011. Appellant filed an appeal with this Board on March 23, 2011, from the results of an audit performed on his position by the Hamilton County Human Resources Department.

Based upon the uncontroverted evidence contained in the record, I make the following findings of fact:

Appellant occupied a position classified as Design Technician III. Following an audit, it was determined that the duties he performed in that position were more accurately classified as those of a Project Inspector 3, which is a position in a lower classification than Design Technician III. The recommendation of the Human Resources Department was that Appellant's position be reclassified effective December 9, 2010.

As a result of the audit, Appellant was given the option of accepting a voluntary reduction to the Project Inspector 3 classification or remaining in the Design Technician III classification with additional duties and responsibilities being assigned to him. Appellant elected to remain in the classification of Design Technician III.

CONCLUSIONS OF LAW

Ohio Revised Code Section 124.03(A) provides that the final decision of an appointing authority to classify or reclassify an employee's position may be appealed to this Board. Appellee asserts in its Motion to Dismiss that no reclassification action took place with regard to Appellant's position. As noted previously, Appellant was provided with two options following the Hamilton County Human Resources Departments' determination that his position was misclassified: Appellant could have kept the same job duties and accepted a voluntary demotion or Appellant could have kept the same classification and accepted additional job duties commensurate with the position. Appellant chose the latter. Accordingly, I find that Appellant has suffered no reclassification action over which this Board may exercise jurisdiction.

I note that the inquiry into Appellant's proper classification appears to have been prompted by an examination of the FLSA status assigned to his position. This Board has no jurisdiction to review Appellee's assignment of exempt or non-exempt status with respect to the Fair Labor Standards Act (FLSA) to a position within its organizational structure.

Therefore, based upon the above analysis, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** for lack of jurisdiction pursuant to R.C. 124.03(A).


Jeannette E. Gunn
Administrative Law Judge

JEG: