

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Michael G. Bischoff,

Case Nos. 11-REC-05-0190  
11-MIS-05-0191

*Appellant,*

v.

Department of Job and Family Services,

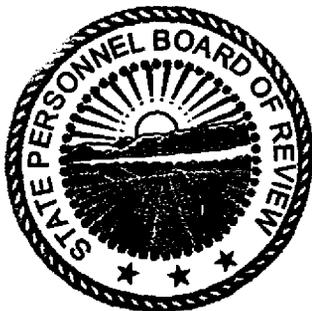
*Appellee.*

**ORDER**

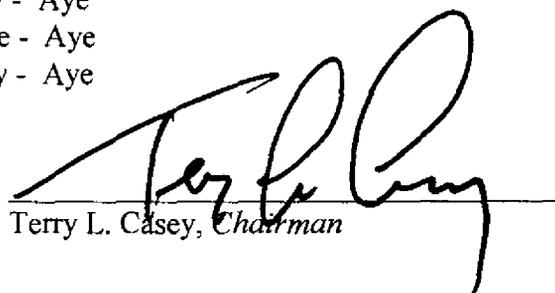
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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 the instant appeals be **DISMISSED** due to lack of subject matter jurisdiction, pursuant to O.R.C. § 124.03.



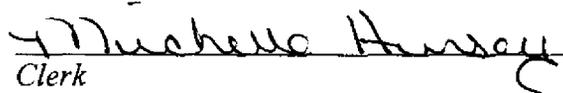
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
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 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, July 22, 2011.

  
*Michelle Hanson*  
Clerk

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

7-22-11mH

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

Michael G. Bischoff

*Appellant*

v.

Department of Job & Family Services

*Appellee*

Case Nos. 11-REC-05-0190  
11-MIS-05-0191

June 20, 2011

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on June 20, 2011 upon the filing of an appeal by Appellant Bischoff on May 20, 2011. In his notice of appeal, Appellant Bischoff states he is "appealing my recent reclassification from classified to unclassified service at the Department of Job and Family Services". On May 26, 2011, this Board sent out a questionnaire to Appellee and on June 9, 2011, Appellee filed its response. The response indicated that Appellant Bischoff's classification of Information Technology Consultant 3 did not change but that his status changed from classified to unclassified.

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Section 124.03 of the Ohio Revised Code establishes this Board's jurisdiction and it states, in pertinent part:

(A) The state personnel board of review shall exercise the following powers and perform the following duties:

(1) Hear appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities or the director of administrative services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal of the director, or anybody authorized to perform the director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under

division (D) of section 124.14 of the Revised Code. As used in this division, "discharge" includes disability separations.

As can be seen from reading the above statute, this Board does not possess jurisdiction over a change in an employee's status from classified to unclassified. In order for this Board's jurisdiction to be invoked, Appellant would have had to experience an adverse employment action. A change in Appellant's status from classified to unclassified without an accompanying adverse action does not invoke this Board's jurisdiction. This Board has no authority to issue a declaratory judgment stating that an employee is in the classified service rather than the unclassified service; whether or not an appointing authority's designation of a position is correct is an issue that can only be determined when this Board's jurisdiction has been invoked in regard to an adverse personnel action suffered by an employee. See *Crowley v. Board of Tax Appeals* (Oct. 23, 1991), PBR 91-MIS-08-0541; **aff'd** (Nov. 25, 1991), Full Board; **aff'd** (Feb. 3, 1992), Franklin Co., No. 91CVF12-9937, unreported.

Therefore, it is my **RECOMMENDATION** that these appeals be **DISMISSED** due to a lack of subject matter jurisdiction.

  
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Marcie M. Scholl  
Administrative Law Judge

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