

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. MA-11-05

(REMOVAL FROM MANAGEMENT SERVICE)

MARILYN JACKSON-GRAVES,)

Appellant,)

v.)

STATE OF OREGON,)

DEPARTMENT OF JUSTICE,)

DIVISION OF CHILD SUPPORT,)

Respondent.)

DISMISSAL ORDER

Marilyn Jackson-Graves, 3036 S.W. Volcano Circle, Redmond, Oregon 97756, pro se.

Herbert Harry, Assistant Attorney General, Labor and Employment Section, Department of Justice, 1162 Court Street N.E., Salem, Oregon 97301-4096, represented Respondent.

On October 28, 2005, Appellant Marilyn Jackson-Graves filed this appeal alleging that on September 30, 2005, the Department of Justice (DOJ) removed her from management service, in violation of ORS 240.570(3).

On November 10, 2005, DOJ filed a motion to dismiss the appeal arguing that because Appellant was a management service employee serving her trial service, this Board has no jurisdiction over her removal citing, *In the Matter of the Petition of the Executive Department, State of Oregon, for a Declaratory Ruling*, Case No. DR-8-85, 8 PECBR 8271 (1985).

On November 29, 2005, Appellant responded to Respondent's motion to dismiss. She argued that state policies 70.000.01 and 70.005.05 overrule this Board's declaratory ruling in *In the Matter of the Petition of the Executive Department, State of Oregon, for a Declaratory Ruling* and provide appeal rights for management service employees who have been removed or disciplined by reprimand, suspension, salary reduction, or demotion.

BACKGROUND

Appellant was employed in a classified position by DOJ in its Division of Child Support from May 1, 2001 until January 3, 2005, when she accepted a position in management service. Appellant was subject to a six-month trial service period, which was subsequently extended for three months, to October 3, 2005. On September 30, 2005, DOJ removed Appellant from her management service position, and effective October 3, 2005, she returned to her former classified position.

DISCUSSION

ORS 240.570(3) provides:

“A management service employee is subject to a trial service period established pursuant to rules of the Personnel Division under ORS 240.250. Thereafter, management service employee may be disciplined by reprimand, salary reduction, suspension or demotion or removed from management service if the employee is unable or unwilling to fully and faithfully perform the duties of the position satisfactorily.”

Effective October 18, 2004, the Department of Administrative Services Personnel Division promulgated policy number 40.065.01, which pertains to the trial service period for management service and unclassified unrepresented employees. The policy specifically provides for appeal rights for classified unrepresented employees, but does *not* include those same rights for management service employees.

Shortly after the legislature enacted ORS 240.570(3), this Board issued a declaratory ruling regarding our jurisdiction over management service removals during the trial service period. *In the Matter of the Petition of the Executive Department, State of Oregon, for a Declaratory Ruling*. We found that the statute provided for a trial service period for management service employees, but did not provide for an appeal of a removal from management service except for those employees who had completed trial service.

More recently, this Board upheld its earlier decision stating that “[t]his Board has no authority to review appeals from Management Service employees who are removed from a trial service period which has been established pursuant to rules of the Division under ORS 240.250.” *Taylor v. State of Oregon, Department of Corrections*, Case No. MA-4-00, p. 3 (May 2000).

Appellant was still in her trial service period when she was removed from management service. We have no jurisdiction over her appeal; therefore we will dismiss the appeal for failure to state a cause of action under the State Personnel Law.

ORDER

The appeal is dismissed.

DATED this 23rd day of January 2006.

*

Donna S. Bennett, Chair



Paul B. Gamson, Board Member



James W. Kasameyer, Board Member

*Chair Bennett has recused herself from this matter.

This Order may be appealed pursuant to ORS 183.482.

