

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. MA-8-05

(MANAGEMENT SERVICES APPEAL: RECLASSIFICATION)

TONY NELSON,)
)
 Appellant,)
)
 v.)
)
 STATE OF OREGON,)
 EMPLOYMENT DEPARTMENT,)
 OFFICE OF HUMAN RESOURCES,)
)
 Respondent.)
 _____)

DISMISSAL ORDER

Tony Nelson, a non-attorney, [REDACTED] pro se.

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

Nelson filed this complaint against the State of Oregon, Employment Department, Office of Human Resources (Department) on July 13, 2005. The Department employed Nelson as a training and development specialist I in management

service from April 1, 2003 until April 11, 2005.¹ Nelson alleges that the Department wrongfully failed to reclassify his position as a training and development specialist 2, and that he is owed back pay for work-out-of-class he did while classified at the "1" level.

In *Herron v. State of Oregon, Department of Corrections*, Case No. MA-20-03 (November 2003), this Board stated:

"In *Jester v. Department of Corrections*, Case No. MA-9-00 (October 2000), this Board concluded that management service employees have limited appeal rights under ORS 240.570(2) and 240.570(3). Reclassification and reallocation are not among the specific categories of personnel actions which ORS 240.570(4) provides that a management service employee may appeal to this Board.

"Our conclusion in *Jester* was consistent with our prior decisions on this question. See *Wishart v. AFS*, Case No. MA-2-93 (May 1993); *Butler v. AFS*, Case No. MA-20-92 (February 1993); and *Yandell v. Executive Department*, Case No. MA-2-85 (July 1985). Beginning with *Yandell*, this Board has held that ORS 240.570 affords management service employees more limited appeal rights than those granted to classified employees under ORS 240.086. We see no persuasive reason to vary from our precedent." *Herron* at 2 (footnote omitted).

On July 22, 2005, the Administrative Law Judge (ALJ) notified Nelson of this precedent and stated that it appeared from the face of Nelson's complaint that the action should be dismissed for failure to state a claim for relief. The ALJ invited Nelson to provide him with any reasoning, or disputed facts, which demonstrated that the arguments identified by the ALJ were incorrect, or that the complaint rested on other legal theories, so that the ALJ could determine whether it was appropriate to recommend that the complaint be dismissed. Nelson did not respond.

¹On April 11, 2005, Nelson left this position to take another management service position.

This agency has no jurisdiction to hear appeals of management service reclassification decisions. We conclude that Nelson has failed to state a claim for relief. We will dismiss the complaint.

ORDER

The complaint is dismissed.

DATED this 7th day of September 2005.



Paul B. Gamson, Chair



Rita E. Thomas, Board Member



James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.