

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. MA-014-10

(MANAGEMENT SERVICE APPEAL)

SHELLI HONEYWELL,	)	
	)	
Appellant,	)	
	)	
v.	)	DISMISSAL ORDER
	)	
STATE OF OREGON,	)	
DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent.	)	
_____	)	

Shelli Honeywell, Salem, Oregon, *pro se*.

Francis J. Connell, III, Senior Assistant Attorney General, Labor and Employment Section, Department of Justice, Salem, Oregon, represented Respondent.

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On November 5, 2010, Appellant Shelli Honeywell (Honeywell) timely filed this appeal of a non-disciplinary action under the State Personnel Relations Law (SPRL), ORS 240.570(2) and OAR 115-045-0023(2). Honeywell challenges the Department of Corrections' (Department) refusal to hire her into the Chief Investigator's position after her existing position was eliminated.

On November 29, 2010, the Department moved to dismiss the appeal on the grounds that this Board: (1) lacks jurisdiction to review the Department's refusal to hire Honeywell into the Chief Investigator position; (2) lacks jurisdiction to review the Department's alleged violation of its own rules or practices regarding personnel decisions; and (3) lacks authority to grant the relief Honeywell seeks. The Administrative Law Judge (ALJ) assigned to this case directed Honeywell to file a reply that included facts and legal authority to contest the Department's motion. She filed her reply on December 16, 2010.

We summarize the undisputed facts set out in the Complaint and attached documents, the Department's motion and attached affidavit, and Honeywell's reply.

Honeywell has been continuously employed by the Department in executive and management service positions since July 2004. From June 1, 2007 until October 2010, she was employed in the Office of Legal Affairs in the "unfunded" position of Information Security and Grant Administration. Honeywell refers to the position as a Legal Coordinator. The position is classified as a Principal Executive Manager F (PE/M F).

On September 30, 2010, the Department informed Honeywell that her job was being eliminated as part of the Governor's across-the-board allotment reduction. Her layoff was to take effect on October 31, but the Department told her that she could apply for any open management service position for which she was qualified.

Honeywell applied for the open position of Chief Investigator in the Department's Special Investigation Unit (SIU), a position with a PE/M E classification. The Department determined that Honeywell lacked some of the special qualifications for the position and notified her on October 8, 2010, that she would not be hired.

Honeywell, who resides in Salem, then applied for the open position of Assistant Superintendent of General Services at the Snake River Correctional Institution (SRCI) in Ontario, Oregon. This position was classified as a PE/M F, the same management service level as the Legal Coordinator position she previously held. She accepted the lateral transfer to SRCI, effective November 1, 2010<sup>1</sup>, and consequently, was never laid off. She has not yet assumed her duties at SRCI because she has been on a combination of family leave and paid administrative leave.

### DISCUSSION

The Department moves to dismiss the appeal on the grounds that: (1) this Board lacks jurisdiction under ORS 240.570(2) and (4) to consider management service employees' claims regarding an agency's refusal to hire; (2) that it lacks jurisdiction to decide whether an agency violated its own rules and practices in implementing personnel decisions; and (3) that the Board lacks jurisdiction to grant the remedy Honeywell seeks, namely, an order requiring the Department to hire her into the Chief Investigator position after her "unfunded" position was eliminated.

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<sup>1</sup>Honeywell contends the effective date of the transfer was October 14, 2010, but the two-week discrepancy is immaterial to our consideration of the issues in this case.

Honeywell argues that this Board is authorized to hear her appeal under ORS 240.570(2), because she was essentially forced to accept the transfer to SRCI or face layoff. She also alleges that the decision to eliminate her position was “a veil the agency was using to attempt termination.” She further contends that the Department has inconsistent hiring practices that were unfairly applied to her.

For the reasons stated below, we conclude that this Board lacks jurisdiction to grant the remedy Honeywell seeks, and we therefore dismiss her appeal.

### Analysis

ORS 240.570(2) provides:

“An appointing authority may assign, reassign and transfer management service employees for the good of the service and may remove employees from the management service due to reorganization or lack of work.”

If a management service employee believes that an assignment, reassignment, transfer, or removal due to reorganization or lack of work is unjustified, the employee may appeal the actions to this Board. ORS 240.570(4) grants this Board the authority to hear such appeals.

Honeywell does not allege that the elimination of her former position was unlawful, nor does she appeal her assignment, reassignment, transfer, or removal due to reorganization or lack of work. Instead, she seeks review of the Department’s decision *not to hire her* into the Chief Investigator position. The decision to hire, however, is not listed among the grounds for appeal under ORS 240.570(4).

In *Knutzen v. Dept. of Ins. and Finance*, Case No. MA-13-92, *order on remand* at 7 (November 1994), we stated that this Board has “no jurisdiction to review management service personnel actions not enumerated in ORS 240.570.” More specifically, in *Rosevear & Tetzlaff v. Department of Corrections*, MA-4/6-97 at 3-4 (February 1998), we stated that “[t]he legislature has not granted jurisdiction to this Board to consider management service employees’ claims regarding refusal to promote and hire.” Accordingly, the Department’s decision not to hire Honeywell into the Chief Investigator’s position because she lacked some of the job’s requirements is not subject to review by this Board.

Likewise, Honeywell’s contention that the Department has inconsistent hiring and promotion practices is not within our jurisdiction. In *Payne v. Department of Commerce*, 61 Or App 165, 174, 656 P2d 361 (1982), *recons* 62 Or App 433,

661 P2d 119 (1982), *rev den* 295 Or 841 (1983), *cert den* 470 US 1083 (1985), the Court held that in appeals under ORS 240.560, an agency's failure to abide by its own personnel rule, absent a showing that substantial rights were violated, is not grounds to set aside a dismissal under ORS 240.560(4). In *Knutzen* (*Order on remand* at 7), we also stated:

“ORS 240.086(1) does not apply to ORS 240.570 appeals. Therefore, a bare allegation that an employer has violated one or more of the standards of ORS 240.086(1) (*e.g.*, violation of rule), does not state a cause of action under ORS 240.570(4).”

Finally, the remedy Honeywell seeks is an order from this Board compelling the Department to hire her into the SIU's Chief Investigator position. The remedies provision in ORS 240.560(4) states that “if the board finds that the action was not taken in good faith for cause, it shall order the immediate reinstatement or re-employment of the employee in the position without loss of pay.” By definition, an employee can be reinstated or re-employed only to a position previously held. Honeywell seeks reinstatement or re-employment as a Chief Investigator, a position she never held. The statute does not authorize the remedy Honeywell seeks.

The documents Honeywell submitted, construed in the light most favorable to her appeal, do not state a claim for relief which is within this Board's jurisdiction. Accordingly, we will grant the Department's motion and dismiss the appeal.

#### ORDER

The appeal is dismissed for lack of jurisdiction.

DATED this 15 day of February, 2011.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.