



grievance settlement with AFSCME Council 75, after union officials alleged that Turner had engaged in sexual harassment. That agreement allegedly required the Department to transfer Turner out of the Snake River facility. Turner alleges that the original transfer from Snake River to Powder River, which took place on March 24, 2003, was disciplinary.

ORS 240.570 provides in part:

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

“(3) 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 the management service* if the employee is unable or unwilling to fully and faithfully perform the duties of the position satisfactorily.

“(4) Employees who are *assigned, reassigned, transferred or removed*, as provided in subsection (2) of this section, and employees who are *disciplined or removed* from the management service for the reasons specified in subsection (3) of this section may appeal to the Employment Relations Board in the manner provided by ORS 240.560.” (Emphasis added.)

In *Rosevear and Tetzlaff v. Department of Corrections*, Case Nos. MA-4/6-97 at 3-4 (February 1998), this Board stated:

“In this Board’s decision in *Knutzen v. Department of Insurance and Finance*, Case No. MA-13-92 (November 1994), on remand from 129 Or App 565 (1994), we stated that we have ‘no jurisdiction to review

management service personnel actions not enumerated in ORS 240.570.’ (Decision on remand at 7.) The legislature has not granted jurisdiction to this Board to consider management service employees’ claims regarding refusal to promote and hire.<sup>2</sup> These elements of the appeals are dismissed.

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“<sup>2</sup>The legislature has limited the authority of this Board to review alleged violations of the State Personnel Relations Law (SPRL), ORS 240, that involve management service personnel. In contrast, the legislature provided this Board with the authority to review allegations that a party violated any portion of the Public Employee Collective Bargaining Act, ORS 243.650, *et seq*. See ORS 243.672(1)(f)/(2)(c) and 243.676.”

More recently, this Board held that, for the same reasons, we lack jurisdiction over appeals from reclassifications and reallocations of management service employees. In *Herron v. State of Oregon, Department of Corrections*, Case No. MA-20-03 at 2 (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.”

Finally, this Board has stated:

“The court of appeals has ruled that this Board does not have the authority to set aside an action appealed under ORS 240.560(4) solely because the agency did not follow its own personnel rules. *See Knutzen v. Department of Insurance and Finance*, 129 Or App 565, 572 (1994) (management service layoff) and *Payne v. Department of Commerce*, 61 Or App 165, 175-76 (1982), *adhered to on reconsid* 62 Or App 433, 436-38 (1983), *rev den* 295 Or 841 (1983) (classified service disciplinary termination).” *Sabin, Vaughn, Moore, and Lingafelter v. State of Oregon, Public Utility Commission and Oregon Department of Transportation*, Case Nos. MA-1/4/6/7-96 at 16, n. 17 ( May 1998).

On March 14, 2006, the Administrative Law Judge (ALJ) notified Turner of this precedent and stated that it appeared from the face of Turner’s appeal letter that the action should be dismissed for failure to state a claim for relief. The ALJ invited Turner to provide him with any reasoning or factual allegations which would show 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 appeal be dismissed. Turner did not file a response.

We note that Turner’s allegedly disciplinary transfer out of the Snake River facility is not properly before us. That transfer occurred on March 24, 2003, and an appeal at this time would be untimely. ORS 240.560(1). The only matter timely before us is the Department’s denial of his request for a hardship transfer. Such a denial is not among the specific categories of personnel actions which the statute allows a management service employee to appeal to this Board. We conclude that this agency has no jurisdiction to hear Turner’s appeal of the denial of his request for a hardship transfer. Therefore, Turner has failed to state a claim for relief. We will dismiss the appeal.

ORDER

The appeal is dismissed.

DATED this 17 day of July 2006.

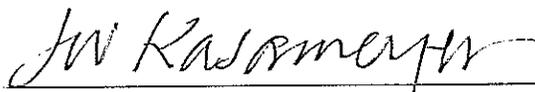
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\*Donna Sandoval Bennett, Chair



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Paul B. Gamson, Board Member



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James W. Kasameyer, Board Member

\*Chair Bennett is recused from this matter.

This Order may be appealed pursuant to ORS 183.482.