

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Renee D. Carr-Brown,	:	
Appellant-Appellee,	:	
v.	:	No. 11AP-930
Ohio Department of Administrative Services :		(C.P.C. No. 10CVF-10-15069)
and Ohio Bureau of Workers' Compensation,	:	(REGULAR CALENDAR)
Appellees-Appellants.	:	

D E C I S I O N

Rendered on April 10, 2012

Renny J. Tyson, for appellee.

Michael DeWine, Attorney General, and *Timothy M. Miller*,
for appellants.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} The Ohio Department of Administrative Services ("DAS") and the Ohio Bureau of Workers' Compensation ("BWC") are appealing from the decision of the court of common pleas which overturned the dismissal of an appeal to the State Personnel Board of Review ("SPBR") filed by Renee D. Carr-Brown. DAS and the BWC have assigned a single error for our consideration:

The common pleas court erred when it reversed the decision of the State Personnel Board of Review to dismiss the appeal of Renee Carr-Brown.

{¶ 2} Renee Carr-Brown had been an employee of the BWC for many years when she received notice that her position was subject to a job audit. The audit was conducted

and DAS issued a preliminary finding letter on April 15, 2010. The letter indicated that the proper classification for her position was not the Management Analyst Supervisor I position she held, but the BWC Underwriting Consultant, 63531, which is a higher paying position.

{¶ 3} The April 15, 2010 letter also stated:

If you disagree with this decision, you or your appointing authority have 30 days to collectively plan a resolution. The appointing authority must notify [DAS] in writing of the terms. If [DAS] accepts the terms, the position audit will be cancelled and a final determination will not be issued.

If an agreement cannot be reached within 30 days, the preliminary findings will be adopted and a written notification will be mailed to the appointing authority and the employee. The final decision may be appealed to [SPBR].

{¶ 4} The 30 days came and went, with no activity reflected in the record before the common pleas court and before us. Apparently, the findings in the letter were deemed to have become final, but no written notice was mailed to either the BWC or to Carr-Brown.

{¶ 5} On July 1, 2010, DAS sent Carr-Brown a letter which claimed that the BWC had withdrawn its request for a job audit. This letter did not inform Carr-Brown when or how the BWC had withdrawn its request for an audit.

{¶ 6} Within 30 days of this letter from DAS, Carr-Brown filed an appeal with SPBR, noting the problem that DAS had claimed that the job audit had been cancelled after it had been deemed final. An administrative law judge ("ALJ") with SPBR recommended that the appeal be dismissed as "prematurely filed." The full SPBR adopted the recommendation of the ALJ and dismissed the appeal.

{¶ 7} The common pleas court reversed the order of dismissal, which led to the appeal to us.

{¶ 8} The office of the Ohio Attorney General ("AG"), on behalf of the BWC and DAS, argues that the director of DAS never issued a final decision with respect to the audit performed on Carr-Brown's position with the BWC. This assumes that the July 1, 2010 letter indicating that the audit process was being cancelled was not a final decision with

respect to the job audit. We disagree with that assumption. The letter clearly indicated that the audit was now completed and no further action would be taken. The action, with respect to the audit, was final.

{¶ 9} If we were to accept the AG's argument, then apparently the job audit would be in some kind of bureaucratic limbo—deemed final but not acted upon. DAS could remove the audit from limbo at any time it chose by adopting it and mailing a written notification to the BWC and Carr-Brown. The need for finality in such matters trumps this argument. Both the appointing authority and the employee are entitled to know when the employee is working out of the correct employment position.

{¶ 10} Our interpretation is consistent with the pertinent provisions of the Ohio Administrative Code which call for an agreement to be reached between the appointing authority and the employee within 30 days or for the appointing authority to inform DAS in writing that it is withdrawing its request for a job audit. *See Ohio Adm.Code 123-1-3-01(G)(1)*. The Ohio Administrative Code, as then in effect, did not contemplate job audits lasting for a completely indefinite period of time without resolution.

{¶ 11} Apparently the BWC, upon receiving the preliminary findings, realized that Carr-Brown was performing the duties of a higher paying position. Rather than promote her to that position, the BWC chose to attempt to undo the factual findings of the job audit it requested. DAS assisted in this effort by failing to adopt the preliminary findings and failing to issue the written notice promised in its April 15, 2010 letter.

{¶ 12} We see no reason to approve the actions of the BWC and DAS in this situation. The rules set forth in the Ohio Administrative Code sometimes work to reward you and sometimes cause you pain. Here, the rules give Carr-Brown an opportunity to seek payment for a period of time for which she performed the duties of a higher paying position.

{¶ 13} The assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

CONNOR, J., concurs.

SADLER, J., concurs in judgment only.
