

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. MA-039-12

(MANAGEMENT SERVICE ALLOCATION)

HEATHER N. WILABY,)	
)	
Appellant,)	
)	
v.)	DISMISSAL ORDER
)	
OREGON MILITARY DEPARTMENT,)	
)	
Respondent.)	
_____)	

Heather N. Wilaby, Lake Oswego, Oregon, appeared *pro se*.

Sylvia Van Dyke, Assistant Attorney General, Labor and Employment Section, Department of Justice, Salem, Oregon, represented Respondent Oregon Military Department.

On November 5, 2012, Appellant Heather Wilaby filed this appeal alleging that the Oregon Military Department (OMD) unlawfully designated her position as classified represented rather than management service.

On November 6, 2012, Administrative Law Judge (ALJ) B. Carlton Grew sent a letter to the parties asking them to show cause why the appeal should or should not be dismissed because the Employment Relations Board's lacked jurisdiction of the matter. OMD filed a timely response; Wilaby did not file a response. Thereafter, ALJ Grew transferred the case to the Board with a recommendation that the appeal be dismissed.

For purposes of this Order, we assume the allegations in the appeal are true. We also rely on undisputed facts discovered during our investigation. *Miller v. State of Oregon, Department of Human Services, Seniors and People with Disabilities*, Case No. MA-010-10 (2011).

Wilaby asks this Board to review the change in status of her position.¹ She asserts that the position warrants being in management service, not classified represented status.

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.”

ORS 240.570(4) provides:

“[Management Service] 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.”

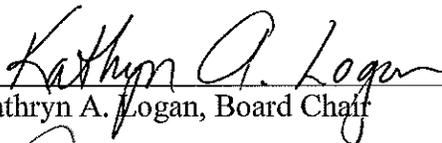
Under these statutes, management service employees have limited appeal rights of personnel actions. *Herron v. State of Oregon, Department of Corrections*, Case No. MA-20-03 (November 2003) (Board dismissed management service correctional lieutenant’s appeal of his position reclassification to classified correctional sergeant represented by a union). The statute does not provide for an appeal regarding either the change in position status or the designation of one’s position as management or classified service.

As Wilaby’s appeal does not meet the limited appeal categories set forth in the statute, this Board does not have jurisdiction of this matter. The appeal will be dismissed.

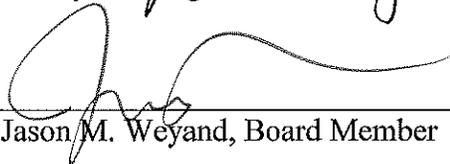
ORDER

The appeal is dismissed.

DATED this 14 day of January 2013.



Kathryn A. Logan, Board Chair



Jason M. Weyand, Board Member

This Order may be appealed pursuant to ORS 183.482.

¹Wilaby’s position status was changed pursuant to House Bill 2020, which required the Department of Administrative Services to develop a plan for certain state agencies to “attain a ratio of 11 to 1 of public employees to supervisory employees and managerial employees acting in a supervisory capacity.”