BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

PHILIP HUBER, Appellant, v. EMPLOYMENT SECURITY DEPARTMENT, Respondent.	Case No. RIF-04-0009 ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member, on oral argument of Respondent's Motion to Dismiss on May 23, 2005.

1.2 **Representation.** Appellant Philip Huber was present and represented himself *pro se*. Emily Calkins, Assistant Attorney General, represented Respondent Employment Security Department (ESD).

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including:

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

a) Respondent's Motion for Dismissal, with attached Declaration of Carol Rembaugh in Support of Respondent's Motion to Dismiss and exhibits, filed April 25, 2005;

b) Appellant's Response to Motion for Summary Judgment, filed May 9, 2005;

c) Respondent's Reply in Support of Its Motion for Dismissal, filed May 17, 2005.

II. BACKGROUND AND FACTS

2.1 Prior to the reduction in force that is the subject of this appeal, Appellant was an Unemployment Insurance (UI) Specialist 4 with Respondent Employment Security Department.

2.2 By letter dated June 14, 2004, Dr. Sylvia P. Mundy, ESD Commissioner, notified Appellant that his UI Specialist 4 position was "identified as a position to which another employee has reduction-in-force rights." Appellant's reduction in force was effective June 30, 2004, and he was provided with an attached form listing his bump options.

2.3 For reduction in force purposes, WAC 356-30-330 states, "[e]mployees may be separated in accordance with the statutes and the agencies' approved reduction in force procedures . . . when there are fewer positions than there are employees entitled to such positions either by statute or within other provisions of merit system rules." WAC 356-30-330(3)(e) specifically states, "[b]umping by employees with greater seniority will be limited to: (i) The same layoff unit; and (ii) Classification in which the 'bumping' employee previously held permanent status . . ." WAC 356-05-075 defines class as "the identification of a position, or a group of positions, sufficiently similar in duties so that the same requirements of training, experience, or skill and the same title, examination, and salary range may be applied."

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.4 ESD's reduction in force policy states, "[w]hen a reduction is necessary because of a lack of funds, the least senior employee(s) within a class . . . will be designated first for reduction-in-force, whenever possible."

2.5 The class specification defines a UI Specialist 4 as a "[d]esignated leadworker for UI Specialists taking and processing unemployment insurance claims; or adjudicates unemployment insurance claims. All positions apply complex laws, rules, regulations, policies and procedures applicable to the unemployment insurance program."

2.6 The distinguishing characteristics for a UI Specialist 4 are as follows:

> Intake Lead Worker: Designated leadworker for UI Specialists who take and process basic and complex unemployment insurance claims. . . .
>
> Adjudication: This is the fully qualified adjudicator. Works independently. Makes and issues determinations or redeterminations to allow or deny UI benefits that involve nonmonetary issues. . . .

2.7 A UI Specialist 4 may perform adjudicator work or lead intake work, and there are no specific selectives imposed. At the time the department implemented the reduction in force, Appellant worked as a UI Specialist 4, performing adjudicator work. Appellant was bumped by a more senior employee who previously held permanent status in the UI Specialist 4 position, performing lead intake work.

2.8 Based on Appellant's selection of bump options, ESD offered him the position of Work Source Specialist 4, which was in the same salary range as his previous UI Specialist 4 position. Appellant was appointed to the new Work Source Specialist 4 position, effective July 1, 2004.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.9 Effective August 31, 2004, Appellant began working in a temporary appointment as a UI Specialist 5.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues there are no genuine issues of material fact. Respondent asserts Appellant was appropriately bumped by an employee who previously held status in the UI Specialist 4 class and that a Journey Level Adjudicator and Intake Lead Worker are in the same class. Respondent argues WAC 356-05-075 specifies that a class includes positions "sufficiently similar in duties" and asserts the Personnel Resources Board has not approved any "selectives" or specialized qualifications to distinguish a Journey Level Adjudicator from an Intake Lead Worker. In addition, Respondent argues Appellant was offered a position within the same salary as the position he was bumped from, based upon his selection of options, and that he was subsequently appointed to a temporary position at a higher salary range than the position he was originally bumped from. Therefore, Respondent argues Appellant has not been harmed as a result of the reduction in force action.

3.2 Appellant argues that a non-qualified individual without the proper training or expertise as an adjudicator was permitted to bump him out of his adjudicator position. Appellant asserts that in a May 2004 email to Department of Personnel, Human Resource Manger Carol Rembaugh described the journey level adjudicator and intake leadworker positions as having different sets of minimum qualifications. Appellant argues he has been harmed by the RIF due to his loss of permanent status as a UI Specialist 4 and his assignment to a Work Source Specialist position, where there is significantly more risk in subsequent reduction in force actions.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

IV. DISSCUSION

4.1 The Personnel Appeals Board may decide an appeal when the documents on file, depositions and affidavits show there is no genuine issue as to any material fact and the appeal should be decided or dismissed as a matter of law. WAC 358-30-060(1). All facts and reasonable inferences there from are to be determined in favor of the nonmoving party. Hall v. University of Washington, PAB No. 3863-V2 (1995).

4.2 There are no disputed facts to be resolved or inferences that need to be drawn to decide this motion. The issue is whether the agency followed the appropriate reduction in force rules with regard to Appellant being bumped as a result of another employee's reduction in force action. We are able to make this determination based on the uncontroverted facts presented here.

4.3 Although Appellant and the individual who "bumped" his position may have had different work experience, WAC 356-30-330 (e) requires the agency to offer the more senior employee options within "the same layoff unit" and in the "classification in which the 'bumping' employee previously held permanent status." There is no dispute that the person who exercised a bump option to Appellant's position was more senior and previously held permanent status as a UI Specialist 4. Therefore, Respondent has proven that ESD complied with reduction in force rules.

Having reviewed the file and record in this matter and being fully advised in the premises, the Board enters the following:

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion for Dismissal is granted, and the appeal of Philp Huber is dismissed.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

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