

**BEFORE THE PERSONNEL RESOURCES BOARD  
STATE OF WASHINGTON**

PATRICIA BROWN and KATHLEEN  
NAVARRE,

Appellants,

vs.

DEPARTMENT OF LABOR AND  
INDUSTRIES,

Respondent.

CASE NOS. R-ALLO-09-007 &  
R-ALLO-09-008

ORDER OF THE BOARD  
FOLLOWING HEARING ON  
EXCEPTIONS TO THE  
DETERMINATIONS OF THE DIRECTOR

**Hearing on Exceptions.** These appeals came before the Personnel Resources Board, JOSEPH PINZONE, Chair, and DJ MARK, Member, for a consolidated hearing on Appellants' exceptions to the director's determinations dated February 20, 2009. The hearing was held at the office of the Personnel Resources Board in Olympia, Washington, on September 23, 2009.

**Appearances.** Appellants Patricia Brown and Kathleen Navarre were present and represented themselves. Respondent Department of Labor and Industries (L&I) was represented by Sandi LaPalm, Personnel and Payroll Program Manager.

**Background.** Appellants' positions were allocated to the Safety and Health Specialist 2 (SHS2) classification. Appellants requested reallocation of their positions to the Safety and Health Specialist 3 (SHS3) classification. By letter dated February 11, 2008, L&I denied Appellants' reallocation request.

On March 6, 2008, Appellants filed requests for a director's review of L&I's allocation determination and asked that their position be reallocated to Investigator 3 classification. By letter dated February 20, 2009, the director's designee determined that Appellants' positions were properly allocated to the SHS2 classification.

1 On March 19, 2009, Appellants filed exceptions to the director's determination. In their exceptions  
2 appeal forms, Appellants requested that their positions be reallocated to the Investigator 3 classification.  
3 At the outset of the hearing on their exceptions, Appellant Navarre stated that she was no longer  
4 seeking reallocation to the Investigator 3 classification but was seeking reallocation to the SHS3 class.  
5 Appellants' exceptions are the subject of this proceeding.

6  
7 Appellants work in L&I's Division of Occupational Safety and Health (DOSH). They conduct  
8 investigations of employee complaints of discrimination by their employer. These complaints arise  
9 from an employee reporting unsafe or unhealthy working conditions based on the Washington  
10 State regulations regarding workplace safety and health. Appellants' investigate cases located  
11 primarily in Regions 1 and 2, though they are occasionally assigned cases from other regions.  
12 Appellants work independently to complete investigations, seek guidance from their supervisor when  
13 needed, and determine if discrimination has occurred and if so, try to develop a settlement agreement.  
14 When a settlement is reached, Appellants complete the form developed by the Office of the Attorney  
15 General which Appellants and the parties then sign. Their supervisor reviews all their cases and provides  
16 a letter of determination to finalize the cases. In addition, Appellants occasionally provide training and  
17 coaching for less experienced staff and review procedures for other employees.

18  
19 **Summary of Appellants' Argument.** Appellants explain that they did not request a reallocation of  
20 their positions; rather their supervisor completed the position description form, with the assistance of  
21 human resources staff, and initiated the reallocation process. Appellants believe that the process was  
22 initiated in an attempt to promote from within existing staff and to recognize discrimination  
23 investigations as a specialty area.

24  
25 Appellant Brown argues that she investigates high-profile cases, though her goal is to prevent cases  
26 from becoming high-profile. She further argues that the majority of the cases she investigates are  
27 complex as described in the position description form completed by her supervisor. She further argues  
28 that she negotiates and authors settlement agreements and authorizes settlements without prior approval

1 by her supervisor or manager as described in the position description form. Appellant Brown asserts that  
2 her supervisor had nothing to do with the settlements other than to sign off on the review of the case.  
3 Appellant Brown argues that she works independently to resolve the most complex cases including  
4 those with issues of systemic discrimination, that she has specialized expertise in the OSHA and WISHA  
5 regulations, and that the scope of position and the unique functions she performs are described by the  
6 Investigator 3 classification.

7  
8 Ms. Navarre contends that discrimination investigations are a specialty. She explains that she and Ms.  
9 Brown investigate high profile and extremely complex cases and negotiate settlement agreements  
10 between the employer, the employee and the union. She contends that they handle the entire  
11 investigation process from start to finish for the some of the largest and most sophisticated employers in  
12 the state. In addition, Ms. Navarre explains that she was given additional duties such as mentoring  
13 another staff person and making discrimination presentations to outside entities in order to support her  
14 reallocation to the SHS3 level.

15  
16 **Summary of Respondent's Arguments.** In summary, Respondent argues that Appellants' positions  
17 are very focused and that they work with only one type of allegation. Respondent contends that  
18 discrimination complaints do not require complex investigations such as those required for cases  
19 involving fraud or fatalities. While Respondent recognizes that Appellants may encounter situations that  
20 require special handling, involve angry individuals, and have unexpected issues, Respondent asserts that  
21 on an agency-wide basis, discrimination complaints are not the most complex investigations.  
22 Respondent further asserts that the settlement agreements Appellants complete are standardized and use  
23 a boiler plate form developed by the Office of the Attorney General. In addition, Respondent asserts that  
24 Appellants' positions are specifically mentioned in the typical work of the SHS2 class. Respondent  
25 contends that the director's determination was thorough, provided a clear explanation of the rationale  
26 for the decision, and is supported by documents provided by the parties. Respondent agrees with the  
27 director's determination that Appellants' positions fit within the SHS2 classification.

1 **Primary Issue.** Whether the director's determination that Appellants' positions are properly allocated  
2 to the Safety and Health Specialist 2 should be affirmed.

3  
4 **Relevant Classifications.** Safety and Health Specialist 2, class code 392F; Safety and Health Specialist  
5 3, class code 392G; Investigator 3, class code 427R.

6  
7 **Decision of the Board.** The purpose of a position review is to determine which classification best  
8 describes the overall duties and responsibilities of a position. A position review is neither a measurement  
9 of the volume of work performed, nor an evaluation of the expertise with which that work is performed.  
10 A position review is a comparison of the duties and responsibilities of a particular position to the  
11 available classification specifications. This review results in a determination of the class that best  
12 describes the overall duties and responsibilities of the position. See Liddle-Stamper v. Washington State  
13 University, PAB Case No. 3722-A2 (1994).

14  
15 Consistent with the direction provided by this Board in Boekhoff v. Bellevue Community College,  
16 PRB Case No. R-ALLO-07-002 (2007), the director's designee should consider all relevant  
17 classifications. In this case, we find that the designee was correct in considering the Investigator  
18 classes and the SHS classes.

19  
20 The following standards are primary considerations in allocating positions:

- 21 • Class series concept (if one exists).
- 22 • Definition or basic function of the class.
- 23 • Distinguishing characteristics of a class.
- 24 • Class series concept, definition/basic function, and distinguishing characteristics of other  
25 classes in the series in question.

26 The class series concept for the Investigator series states:

27 Positions in this series conduct civil and/or criminal investigations in a variety of  
28 areas including allegations of fraud or collusion among recipients of public

1 assistance or industrial insurance, allegations of fraudulent and/or unfair business  
2 and insurance practices, misconduct, and allegations of civil rights violations.

3 Positions gather facts and develop evidence with responsibility for developing the  
4 complete case from the original claim or allegation through preparation for  
5 presentation in court or administrative hearing. This includes researching records  
6 and case files; gathering and preserving documentary evidence; obtaining statements  
7 of fact, depositions, or confessions; obtaining and serving subpoenas to compel the  
8 attendance of witnesses or the production of records; conducting field surveillance;  
9 obtaining and coordinating the service of search warrants; writing investigative  
10 reports, establishing proof of facts and evidence; reviewing the case with private  
11 attorneys, assistant attorneys general, or prosecuting attorneys; and testifying in  
12 court or other proceedings as necessary.

13 Appellants do not conduct civil and/or criminal investigations in areas such as fraud, collusion among  
14 recipients of public assistance or industrial insurance, allegations of civil rights violations, or of  
15 fraudulent and/or unfair business and insurance practices. They do not develop cases for presentation in  
16 court or administrative hearings. Their cases are not reviewed with private attorneys, assistant attorneys  
17 general, or prosecuting attorneys and they do not testify in court or other proceedings. Appellants'  
18 positions do not fit with the class series concept of the Investigator class series. Therefore, allocation of  
19 their positions to a class within this series is not appropriate.

20 The class series concept for the Safety and Health Specialist (SHS) series states:

21 This series works in the Department of Labor & Industries. The Safety and Health  
22 Specialist is required to successfully maintain the Federally approved state occupational  
23 safety and health program and meet the authorizing statute, Chapter 49.17 RCW, the  
24 Washington Industrial Safety and Health Act (WISHA). The approved State program at  
25 the Department of Labor and Industries must be maintained as-effective-as the national  
26 Federal OSHA program including enforcement, consultation, rules, regulations, policies  
27 and procedures. The series represent the predominant professional classifications  
28 necessary to maintain Federal approval. The work is aimed at assisting and ensuring  
29 employers comply with safety and health standards, general duty clauses and employee  
30 safety laws, rules and regulations.

31 Appellants' positions fit within the SHS class series concept.

1 The definition for the SHS3 classification states, in relevant part:

2 In the Department of Labor and Industries, this is the senior-level class of the series.

3 . . .

4 Position designated in writing by the Assistant Director of the Division of Occupational  
5 Safety and Health (DOSH) as a technical specialist for an assigned industry. Designated  
6 positions will conduct all levels of safety inspections/consultations for the assigned  
7 industry. Technical specialty areas are defined by the Assistant Director of DOSH.

8 The issue of written designation has been addressed in many decisions by the Personnel Appeals  
9 Board (predecessor to this Board.) The Personnel Appeals Board consistently held that when a  
10 classification specification requires written designation, there must be a document that confers such  
11 a designation upon the position in question. This written documentation can be a formal agency  
12 designation form, an approved position description form or other written documentation. See  
13 Rapozo v. Parks and Recreation Commission, PRB Case No. R-ALLO-08-021 (2009).

14 We have carefully reviewed the documentation provided in Appellants' appeals. The documents  
15 establish that Appellants must maintain an expert awareness of WISHA statutes and regulations;  
16 that they must have a strong working knowledge of safety and health regulations; and that they  
17 perform complex discrimination investigations. However, nothing in the record indicates that  
18 Appellants' positions have been designated in writing as a technical specialist responsible for  
19 conducting all levels of safety inspections/consultations for an assigned industry. Appellants' positions  
20 do not fit within the SHS3 classification.

21  
22 After reviewing the documents and considering the arguments of the parties, we find that the director's  
23 determination should be affirmed. Appellants' positions are properly allocated to the SHS2 classification  
24 and their appeals should be denied.

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26 In a hearing on exceptions, the appellant has the burden of proof. WAC 357-52-110. Appellants have  
27 failed to meet their burden of proof.  
28

1  
2 **ORDER**

3 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeals on exceptions by Patricia Brown  
4 and Kathleen Navarre are denied and the director's determinations dated February 20, 2009, are  
5 affirmed.

6  
7 DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

8 WASHINGTON PERSONNEL RESOURCES BOARD

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JOSEPH PINZONE, Chair

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DJ MARK, Member