

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

KAREN FLOWERS,

Appellant,

vs.

CENTRAL WASHINGTON UNIVERSITY,

Respondent.

CASE NO. R-RULE-08-001

ORDER OF THE BOARD

FOLLOWING HEARING ON

EXCEPTIONS TO THE

DETERMINATION OF THE DIRECTOR

Hearing on Exceptions. This appeal came on for hearing before the Personnel Resources Board, MARSHA TADANO LONG, Chair, and JOSEPH PINZONE, Vice Chair, on Appellant's exceptions to the director's determination dated April 7, 2008. The hearing was held at the office of the Personnel Resources Board in Olympia, Washington, on October 23, 2008.

Appearances. Appellant Karen Flowers was represented by Elyse Maffeo, Assistant General Counsel with the Public School Employees of Washington. Respondent Central Washington University (CWU) was represented by Lawson Dumbeck, Assistant Attorney General.

Background. On January 18, 2008, Appellant's supervisor gave Appellant a letter of reprimand dated January 17, 2008. In conclusion, the letter stated that if Appellant had any questions, she should let her supervisor know immediately. The letter included a notation indicating that a copy was provided to Appellant's Appointing Authority and to her personnel file.

By letter dated February 25, 2008, Appellant's representative contacted Angela Beaudry, Director of Operations for CWU's Human Resource office. Appellant's representative acknowledged that Appellant had received a copy of the letter and asked whether the letter had been placed in her personnel file. By letter dated March 7, 2008, Ms. Beaudry responded to Appellant and to her representative indicating that the letter was in Appellant's file.

1 On March 31, 2008, the Department of Personnel received Appellant's request for a director's
2 review, alleging that CWU violated WACs 357-22-035 and 357-22-040(2).

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4 By letter dated April 7, 2008, Teresa Parsons, the director's designee, determined that
5 Appellant's request was untimely. Ms. Parsons stated, in part:

6 The January 17, 2008 letter includes a notation indicating the letter was copied to
7 Ms. Flowers' personnel file. Therefore, on or around January 17, 2008, Ms.
8 Flowers reasonably had knowledge of the action giving rise to her claim CWU
violated WAC 357-22-035 and WAC 357-22-040(2).

9 The Department of Personnel did not receive Ms. Flowers' request for a
10 Director's review until March 31, 2008, which was 74 days past the date on the
11 letter of reprimand that included the notation to Ms. Flowers' personnel file. As a
12 result, Ms. Flowers' request for a Director's review is untimely and the
Department of Personnel lacks jurisdiction to consider her request.

13 On May 1, 2008, Appellant filed exceptions to Ms. Parson's determination. Appellant's exceptions
14 are the subject of this proceeding.

15
16 **Summary of Appellant's Arguments.** Appellant argues that prior to March 7, 2008, she was not
17 provided confirmation from CWU's Human Resource office that the letter was placed in her file.
18 Appellant asserts that WAC 357-22-035 requires that confirmation be provided. Appellant also
19 argues that the instruction in the letter to contact her supervisor if she had any questions referred to
20 the content of the letter, not to whether a copy was place in her personnel file. Appellant asserts that
21 she did not know for certain that the letter was in her file until she received Ms. Beaudry's March 7,
22 2008 response. Appellant contends that her request for review was filed within thirty days of the
23 March 7, 2008 letter from Ms. Beaudry and therefore her request was timely.

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25 **Summary of Respondent's Arguments.** Respondent argues that the Board lacks jurisdiction in
26 this matter because the controlling statute and rules require that requests for review be filed within
27 thirty days of when the employee knew or should have known of the alleged violation. Respondent
28 asserts that the letter of reprimand instructed Appellant to contact her supervisor immediately if she
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1 had any questions about the letter, including whether the letter would be placed in her personnel file.
2 Respondent contends that on January 18, 2008, Appellant knew or should reasonably be expected to
3 have known that the letter of reprimand would be placed in her file. Therefore, Respondent argues
4 that Appellant's request for review should have been filed within thirty days of her receipt of the
5 letter of reprimand.

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7 **Primary Issue.** Whether the director's determination that Appellant's request for review was
8 untimely filed should be affirmed.

9
10 **Decision of the Board.** RCW 41.06.170 provides an employee the right to appeal. Specifically,
11 RCW 41.06.170(2) states, in part:

12 An employee who is . . . adversely affected by a violation of the state civil
13 service law, chapter 41.06 RCW, or rules adopted under it, shall have the right
14 to appeal . . . not later than thirty days after the effective date of such action . . .

15 WAC 357-49-010(4) states, in part:

16 . . . an employee who has been adversely affected by a violation of the civil
17 service laws or rules may request a director's review within thirty calendar days
18 of the date the employee could reasonably be expected to have knowledge of the
19 action giving rise to a law or rule violation claim or the stated effective date,
20 whichever is later.

21 The issue of reasonable knowledge was established in Barrington, et al, v. Eastern Washington
22 University, 41 Wn. App. 259 (1985). However, the facts in this case differ significantly from the
23 facts in Barrington. In Barrington, the employees received new information which gave rise to
24 their appeal of a previous action. Here, there is no evidence that Appellant received new
25 information after receiving the letter of reprimand.

26
27 The letter of reprimand clearly indicates that the letter was being placed in Appellant's personnel
28 file. We reject Appellant's argument that the reference to asking her supervisor questions about
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1 the matter was in regard to the content of the letter only. The letter states, in relevant part, "[l]et
2 me know immediately if you do not understand this expectation **or** if you have any questions."
3 (Emphasis added.)
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5 On January 18, 2008, Appellant reasonably had knowledge of the action giving rise to her claim
6 that CWU violated WAC 357-22-035 and WAC 357-22-040(2). The Department of Personnel
7 did not receive Appellant's request for a director's review until March 31, 2008. Her request was
8 not filed within thirty days after she had knowledge of the action. Appellant's request for a
9 director's review was untimely.
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11 Appellant has the burden to file a timely appeal. In addition, Appellant has the burden of proof to
12 show that the director's determination should be overturned. She failed to meet her burden in both
13 instances.
14

15 ORDER

16 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Karen Flowers
17 is denied and the director's determination dated April 7, 2008, is affirmed and adopted.
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19 DATED this ____ day of _____, 2008.

20 WASHINGTON PERSONNEL RESOURCES BOARD

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MARSHA TADANO LONG, Chair

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24 _____
JOSEPH PINZONE, Vice Chair
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