

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

BENJAPON SAKKARAPOPE,

Appellant,

v.

WASHINGTON STATE UNIVERSITY,

Respondent.

)
)
) Case No. R-RULE-07-001
) ORDER OF THE BOARD FOLLOWING
) CONSIDERATION OF APPELLANT'S
) EXCEPTIONS TO THE DIRECTOR'S
) DETERMINATION
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)

I. INTRODUCTION

1.1 This matter came before the Personnel Resources Board, LAURA ANDERSON, Chair; MARSHA TADANO LONG, Vice Chair; and JOSEPH PINZONE, Member, for consideration of Appellant's exceptions to the director's determination dated August 31, 2007. This matter was considered based on the record and the written submissions of the parties.

1.2 **Representation.** Appellant Benjapon Sakkarapope appeared *pro se*. Respondent Washington State University (WSU) was represented by Donna J. Stambaugh, Assistant Attorney General.

II. BACKGROUND

2.1 On March 3, 2003, Appellant requested remedial action from the Director of the Department of Personnel. On July 8, 2003, the Director's designee issued a decision denying Appellant's request. Appellant filed exceptions to the Personnel Appeals Board.

2.2 The Personnel Appeals Board conducted a hearing in July 2004. During the hearing, the Personnel Appeals Board admitted evidence, accepted testimony from witnesses and heard the arguments of the parties. The Personnel Appeals Board denied Appellant's appeal. After the

1 Personnel Appeals Board issued its decision, Appellant appealed the decision to the Thurston
2 County Superior Court.

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4 2.3 The Thurston County Superior Court (Court) heard the arguments of the parties and
5 issued a decision remanding to the Department of Personnel the issue of whether Washington
6 State University's temporary appointment policy was part of WSU's compliance with the
7 Washington Administrative Code relating to temporary appointments and if so, whether
8 Appellant is a person qualified for consideration for remedial action, and if so, whether
9 Appellant should be granted remedial action. Specifically, in its written order, the Court:

10 ORDERED that for the reasons set forth in the Court's Oral opinion, dated
11 October 6, 2006, a copy of which has been filed, and which the Court
12 incorporates herein by reference, the decision of the PAB entered in this matter on
13 October 4, 2004, is reversed. This matter is remanded back to the Department of
14 Personnel to determine whether WSU's *Business Policies and Procedures*
15 *Manual*, Personnel Rule 60.26, is part of compliance by WSU with WAC 251-19-
16 120(7), and if so, whether under the terms of Rule 60.26, Mr. Sakkarapope is a
17 person qualified for consideration of remedial action under WAC 251-12-600,
18 and if so, to consider whether a remedial action should be offered to Mr.
19 Sakkarapope.

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21 2.4 Following submission of the parties' written briefs, on July 26, 2007, the Director's
22 designee issued a decision. The Director's designee denied the request for remedial action.

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24 2.5 On August 2, 2007, Appellant filed exceptions to the Director's determination. On August
25 21, 2007, Board staff issued a proposed hearing date of October 11, 2007, beginning at 1:00 p.m.

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27 2.6 On August 31, 2007, Appellant filed his Objection, Motion and Request RE: Hearing and
28 Subpoenas. On November 29, 2007, the Board denied Appellant's motion and ordered, in part, that
29 Appellant's exceptions would be considered based on the record and the written arguments of the
parties within the scope of the specific matters remanded by the Court. The parties were ordered to
provide written argument on the exceptions specific to the matters remanded by the Court by no later
than January 11, 2008.

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2 2.7 On December 21, 2007, Appellant filed exceptions to the Board's decision on his Objection,
3 Motion and Request RE: Hearing and Subpoenas and requested that the Board reconsider its
4 decision on his motion. The Board took no action on Appellant's request for reconsideration.

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6 2.8 On December 26, 2007, Appellant filed an amendment to his exceptions.

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8 2.9 On January 10, 2008, Respondent filed its written statement of position regarding the review
9 of the Directors' determination. On January 11, 2008, Appellant filed his written argument on the
10 exceptions.

11 12 **III. SUMMARY OF THE PARTIES' PERSPECTIVES**

13 3.1 In summary, Appellant argues that the Personnel Resources Board (Board) has no authority
14 to impose new rules in this case and that the Board must following the provisions of Titles 251 and
15 358 WAC. Appellant contends that because the Court reversed the Personnel Appeals Board's
16 (PAB) decision and remanded the matter to the Director, the Director was required to consider the
17 original records using the same administrative rules and to modify the original determination
18 accordingly.

19
20 Appellant argues that the Director must apply the WSU's approved policy, that no evidence exists to
21 show that the 1990 approved policy was invalidated, and that the 1990 policy is identical to
22 Personnel Rule 60.26 which is at issue here. Appellant contends that the Director erred by relying on
23 the RCWs and WACs rather than the approved policy in defining what constitutes non-student work
24 hours when determining whether he worked more than 1050 hours in a year. Appellant argues that if
25 the policy was correctly applied, his work hours would qualify him for remedial action. Appellant
26 argues that remedial action is not discretionary and that because he meets the four conditions for
27 granting remedial action under 251-12-600, the Director must grant him remedial action. Appellant
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1 asserts that he should be granted permanent status, salary, seniority and benefits as required by the
2 rule.

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4 Appellant asserts that the PAB did not include his immigration status in its decision. Therefore,
5 Appellant argues that his immigration status should not be a basis for denying remedial action and
6 that the Director erred in including discussion of his immigration status in the determination.

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8 3.2 Respondent argues that Personnel Rule 60.26 was not submitted to or approved by the
9 Director and that Personnel Rule 60.26 is not the same as the policy that was approved by the
10 Director in 1990. Therefore, Respondent contends that Personnel Rule 60.26 was not part of WSU's
11 compliance with WAC 251-19-120(7). Respondent argues that the Director correctly complied with
12 the applicable rules and correctly excluded student and overtime hours from the calculation in
13 determining if Appellant met the threshold hours required for remedial action. Respondent contends
14 that the WAC, rather than WSU policy, takes precedence. Respondent argues that WAC 251-12-600
15 and the Judge's oral ruling make it clear that the granting of remedial action and conferring
16 permanent status is a discretionary decision by the Director. Respondent contends that the Director's
17 discretion was appropriately invoked in denying Appellant permanent employment.

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19 Respondent agrees that the PAB did not include Appellant's immigration status in its decision,
20 but asserts that testimony on the issue is included in the record. Respondent contends that
21 Appellant's immigration status is relevant because it was directly connected to his enrollment as
22 a student. Respondent asserts that maintaining student status required maintaining full
23 enrollment in school and that it was Appellant's enrollment in school that then enabled him to be
24 temporarily employed by WSU.

25 26 **IV. ISSUE**

1 4.1 The issue before the Board is whether the Director's determination should be affirmed.
2 The Court narrowed the matters to be considered and decided by the Director and ultimately by
3 this Board. The scope of our decision complies with the Order of the Court.

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5 4.2 Specifically, the Court ordered the Department of Personnel to determine:

- 6 • Whether WSU's *Business Policies and Procedures Manual*, Personnel Rule
7 60.26, is part of compliance by WSU with WAC 251-19-120(7), and if so,
- 8 • Whether under the terms of Rule 60.26, Mr. Sakkarapope is a person qualified for
9 consideration of remedial action under WAC 251-12-600, and if so,
- 10 • To consider whether a remedial action should be offered to Mr. Sakkarapope.

11 IV. DECISION

12 4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.

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14 4.2 In an appeal on exceptions, the party filing the appeal has the burden of proof. WAC 357-52-
15 110.

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17 4.3 **Whether WSU's *Business Policies and Procedures Manual*, Personnel Rule 60.26, is**
18 **part of compliance by WSU with WAC 251-19-120(7).** WAC 251-19-120(7) requires each
19 institution to develop for Director approval, a procedure for controlling and monitoring
20 temporary positions. WSU's Personnel Rule 60.26 was not submitted to or approved by the
21 Director. Therefore the rule is not part of compliance by WSU with WAC 251-19-120(7).

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23 4.4 **Whether under the terms of Rule 60.26, Mr. Sakkarapope is a person qualified for**
24 **consideration of remedial action under WAC 251-12-600.** Because Personnel Rule 60.26 was
25 not part of compliance by WSU with WAC 251-19-120(7), Appellant is not a person qualified
26 for remedial action under the terms of Personnel Rule 60.26.
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1 4.5 **Whether a remedial action should be offered to Mr. Sakkarapope.** Remedial action
2 should not be offered to Appellant.

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4 4.6 Appellant has failed to meet his burden of proof. The appeal on exceptions should be denied
5 and the Director's determination should be affirmed and adopted.

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8 **ORDER**

9 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Benjapon
10 Sakkarapope is denied and the Director's determination dated July 27, 2007, is affirmed and
11 adopted.

12 DATED this ____ day of _____, 2008.

13 WASHINGTON PERSONNEL RESOURCES BOARD

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LAURA ANDERSON, Chair

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18 _____
MARSHA TADANO LONG, Vice Chair

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JOSEPH PINZONE, Member