

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 MICHAEL FADDEN,)
4 Appellant,)
5 vs.)
6 DEPARTMENT OF CORRECTIONS,)
7 Respondent.)
8 _____

9 CASE NO. R-ALLO-08-005
 ORDER OF THE BOARD
 FOLLOWING HEARING ON
 EXCEPTIONS TO THE
 DETERMINATION OF THE DIRECTOR

9 **Hearing on Exceptions.** This appeal came on for hearing before the Personnel Resources Board,
10 LAURA ANDERSON, Chair; MARSHA TADANO LONG, Vice Chair; and JOSEPH PINZONE,
11 Member, on Appellant's exceptions to the director's determination dated January 18, 2008. The
12 hearing was held at the office of the Personnel Resources Board in Olympia, Washington, on May
13 14, 2008.

14
15 **Appearances.** Appellant Michael Fadden was present and represented himself. Department of
16 Corrections (DOC) was represented by Joanne Harmon, Human Resource Consultant.

17 **Background.** Appellant's position was allocated to the Carpenter Supervisor classification. He
18 requested that DOC reallocate his position to the Construction and Maintenance Supervisor
19 classification. On September 19, 2007, DOC provided a response to Appellant's request and denied
20 the reallocation of his position.

21
22 On October 23, 2007, Appellant filed a written review request with the director of the Department of
23 Personnel (DOP). The director's designee reviewed the timeliness of the request and by letter dated
24 January 18, 2008, dismissed the review request as untimely.

25
26 On February 6, 2008, Appellant filed timely exceptions to the director's determination. Appellant's
27 exceptions are the subject of this proceeding.

1 **Summary of Appellant's Arguments.** Appellant argues that he received DOC's denial of his
2 request on September 23 or 24, 2007, and that his thirty-day filing period should start from the date
3 that he received the letter, not from the date that DOC placed the letter in the mail. In the alternative,
4 Appellant argues that the Board should apply the provisions of WAC 357-04-105 to his situation and
5 find that service of his request for review was completed when he placed his request for review in
6 the mail. Appellant contends that the rules on service should be the same for employers and
7 employees and that if documents are not deemed filed with the director until actual receipt of the
8 document, then documents should not be deemed served on an employee until the employee actually
9 receives the document.

10 **Summary of Respondent's Arguments.** Respondent argues that the director's designee correctly
11 determined that the request for review was untimely. Respondent contends that WAC 357-49-023
12 controls filing of review requests and provides that review requests are considered filed only when
13 the paper request is received by the director. Respondent asserts that Appellant's paper request for a
14 director's review was received on October 23, 2007, thirty-four days after the date of service of
15 DOC's denial of the Appellant's reallocation. Respondent argues that Appellant's director's review
16 request was untimely.

17
18 **Primary Issue.** Whether the director's determination that Appellant's request for review was
19 untimely should be affirmed.

20
21 **Relevant Laws and Civil Service Rules.**

22 RCW 41.80.020(6) provides, in relevant part, "[a] provision of the collective bargaining
23 agreement that conflicts with the terms of a statute is invalid and unenforceable."

24
25 RCW 41.06.170(4) provides, in relevant part, "[a]n employee incumbent in a position at the time
26 of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or
27 reallocation . . . to the personnel resources board . . . Notice of such appeal must be filed in
28 writing within thirty days of the action from which appeal is taken."

1 Consistent with WAC 357-49-017, a director's review is the initial step in the appeal process for
2 employee allocation or reallocation requests.

3
4 WAC 357-13-080(1) provides, "[a]n employee may request a director's review of the results of a
5 position review or reallocation of the employee's position The employee must request the
6 director's review within thirty calendar days of being provided the results of a position review or
7 the notice of reallocation."

8
9 WAC 357-04-105 establishes to how notices are to be provided or served on job applicants, job
10 candidates, employees or employers. The rule provides, in relevant part, that service upon parties
11 "will be regarded as completed . . . upon deposit in the United States mail" This rule does
12 not apply to notices or papers that are to be filed with the director or the board.

13
14 WAC 357-49-023 provides, in relevant part, "[p]apers that must be filed with the director for
15 director's review requests are considered to be filed only when the papers are actually received
16 in the director's review office in Olympia, Washington." The rule further provides, "filing of
17 papers for director's review requests by electronic mail ("e-mail") is not authorized without the
18 express prior approval of the director, and only under such circumstances as the director allows."

19
20 **Decision of the Board.** Respondent provided its denial of Appellant's reallocation request to
21 Appellant by mail. By letter dated December 21, 2007, Respondent certified that the denial was
22 placed in the mail on September 19, 2007. As provided in WAC 357-04-105, Appellant was served
23 with DOC's denial of his reallocation request on September 19, 2007.

24
25 On October 18, 2007, Appellant sent an email to the director of DOP indicating his desire to
26 request a review of DOC's decision. On October 19, 2007, director's review staff replied by
27 email indicating that review requests are not accepted by email. Staff asked Appellant to submit
28 his request by fax.

Neither the file nor the exhibits in this matter show that the director provided prior approval or authorization for filing of director's review requests by e-mail.

On October 23, 2007, the DOP received a paper copy of Appellant's email. In accordance with WAC 357-49-023, Appellant's request was considered filed on October 23, 2007.

Appellant's review request was filed more than thirty days after service of Respondent's response to his reallocation request.

In a hearing on exceptions, the Appellant has the burden of proof. WAC 357-52-110. Appellant has failed to meet his burden of proof. Appellant's request for a director's review was untimely filed and the appeal should be denied.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Michael Fadden is denied and the director's determination dated January 18, 2008, is affirmed and adopted.

DATED this ____ day of _____, 2008.

WASHINGTON PERSONNEL RESOURCES BOARD

LAURA ANDERSON, Chair

MARSHA TADANO LONG, Vice Chair

JOSEPH PINZONE, Member