

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

LELAND YIALELIS,

Appellant,

vs.

DEPARTMENT OF TRANSPORTATION,

Respondent.

CASE NO. R-ALLO-08-016

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, JOSEPH PINZONE, Vice Chair, and LAURA ANDERSON, Member, on Appellant's exceptions to the director's determination dated May 23, 2008. The hearing was held at the office of the Personnel Resources Board in Olympia, Washington, on September 24, 2008.

Appearances. Appellant Leland Yialelis appeared telephonically and represented himself. Department of Transportation (DOT) was represented by Niki Pavlicek, Classification and Compensation Manager.

Background. Appellant requested a reallocation of his position. By letter dated October 8, 2007, DOT provided a response to Appellant's request and denied the reallocation of his position.

On November 9, 2007, Appellant filed a written review request with the director of the Department of Personnel. The director's designee reviewed the timeliness of the request and by letter dated May 23, 2008, dismissed the review request as untimely.

On June 24, 2008, Appellant filed timely exceptions to the director's determination. Appellant's exceptions are the subject of this proceeding.

Summary of Appellant's Arguments. Appellant argues that on October 10, 2007, he received DOT's October 8, 2007 letter denying his reallocation request. Appellant cited several examples of letters that were postmarked the day after the date on the letter and asserted that DOT provided no proof to show that the reallocation denial letter was placed in the mail on October 8, 2007. Appellant

1 asserts that his thirty-day filing period to request a director's review should start from the date that he
2 received the letter, not from the date that DOT allegedly placed the letter in the mail. Appellant further
3 argues that the Board should apply the same standard of service for both employers and employees and
4 that the Board should hold that service of his request for review was completed when he placed his
5 request for review in the mail rather than when it was received by the director.

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7 **Summary of Respondent's Arguments.** Respondent acknowledges that the agency does not have a
8 copy of the postmark from the envelope used to mail the October 8, 2007 denial letter but asserts that
9 staff confirmed that the letter was placed in the mail on October 8, 2007. Respondent acknowledges that
10 initially, they believed that the thirty-day filing period began with an employee's receipt of the agency's
11 decision. Respondent further acknowledges that Appellant's request for review was filed based on the
12 information Appellant received from them. Respondent explained that they later learned that they had
13 misinterpreted the rule and that the rule required requests for review to be filed within thirty days of
14 service of the agency's decision. Based on the correct interpretation of the rule, Respondent argues
15 that the director's designee correctly determined that the request for review was untimely.

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

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19 **Relevant Laws and Civil Service Rules.**

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

22
23 RCW 41.06.170(4) provides, in relevant part, "[a]n employee incumbent in a position at the time
24 of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or
25 reallocation . . . to the personnel resources board . . . Notice of such appeal must be filed in
26 writing within thirty days of the action from which appeal is taken."

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

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

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

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

17 **Decision of the Board.** Respondent provided its denial of Appellant’s reallocation request to
18 Appellant by mail. As provided in WAC 357-04-105, Appellant was served with DOT’s denial of his
19 reallocation request on October 8, 2007.

21 On November 9, 2007, the director received Appellant’s request for review of DOT’s decision. In
22 accordance with WAC 357-49-023, Appellant’s request was considered filed on November 9,
23 2007.

24 Appellant’s review request was filed thirty-two days after service of Respondent’s response to his
25 reallocation request.

27 It is unfortunate that Appellant was given incorrect information by DOT regarding the timeline for
28 filing his review request. However, there is a history of cases in which the Personnel Appeals
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Board (predecessor to this Board) has held that an appeal is untimely even when the affected employee had been unintentionally misled by an agency or given erroneous information about a process. See for example, Lapp v. Washington State Patrol, PAB No. V94-079 (1995).

While the Board understands that Appellant relied on advice given to him by the agency, the Board may not waive the jurisdictional timelines found in statute. However, because more than six months have passed since his request for review, Appellant may exercise his right to request a new review of his current duties and responsibilities.

Finally, Appellant asks the Board to apply the same standard of service for both employers and employees. The standards for service are codified in the civil service rules adopted by the director of the Department of Personnel. Modification of the rules is outside the scope of the appeal process and the jurisdiction of the Board.

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 Leland Yialelis is denied and the director's determination dated May 23, 2008, is affirmed and adopted.

DATED this ____ day of _____, 2008.

WASHINGTON PERSONNEL RESOURCES BOARD

JOSEPH PINZONE, Vice Chair

LAURA ANDERSON, Member