

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 WILLARD SCRUGGS,)

4 Appellant,)

5 v.)

PRB Case No. R-JUR-09-007

6 EMPLOYMENT SECURITY DEPARTMENT,)

7 Respondent.)

ORDER OF DISMISSAL

8
9 This matter came before the Personnel Resources Board, JOE PINZONE, Chair; LAURA
10 ANDERSON, Vice Chair; and DJ MARK, Member, for dismissal pursuant to WAC 357-52-215
11 and WAC 357-52-220.

12 WAC 357-52-215 provides, in relevant part:

13 The board may dismiss an appeal on its own motion when:

14 . . .

15 (3) An appeal is not filed on time;

16 (4) The board lacks jurisdiction over the subject matter or parties to the appeal

. . . .

17 On September 4, 2009, the Personnel Resources Board received Willard Scruggs' appeal request
18 regarding his "layoff" from his position with the Employment Security Department (ESD), effective
19 February 28, 2009. Based on the information provided in his request, it appeared that Mr. Scruggs'
20 employment and position at ESD were covered by the provisions of a collective bargaining
21 agreement. As a result, it appeared that the Personnel Resources Board lacked jurisdiction in the
22 matter. In addition, Mr. Scruggs' appeal request was filed more than thirty days after the effective
23 date of his separation.

24 Appeal rights for state civil service employees are provided by RCW 41.06.170, which states, in
25 part:

1 . . . (2) Any employee who is reduced, dismissed, suspended, or demoted, after
2 completing his or her probationary period of service as provided by the rules of the
3 director, or any employee who is adversely affected by a violation of the state civil
4 service law, chapter 41.06 RCW, or rules adopted under it, shall have the right to appeal,
either individually or through his or her authorized representative, not later than thirty
days after the effective date of such action . . . to the Washington personnel resources
board after June 30, 2005. . . .

5 (5) Subsections (1) and (2) of this section do not apply to any employee who is subject to
6 the provisions of a collective bargaining agreement negotiated under RCW 41.80.001
7 and 41.80.010 through 41.80.130.

(Emphasis added).

8 In addition, the Board's rules indicate that only employees subject to the statutory jurisdiction of the
9 Board may appeal separation actions. (See WAC 357-52-010).

10 Because it appeared that Mr. Scruggs' position was not subject to the jurisdiction of the Board and
11 that the appeal request was filed more than thirty days after the effective date of his separation from
12 employment, by letter dated October 13, 2009, Board staff directed the parties to provide written
13 argument addressing the Board's jurisdiction in this matter. The parties were informed that the
14 written argument was due within twenty-one calendar days of the date of the letter. The parties were
15 also informed that if the information provided failed to show that Mr. Scruggs' appeal fell within
16 the jurisdiction of the Board, the matter may be presented to the Board for dismissal under the
17 provisions of WAC 357-52-215.

18 On October 22, 2009, Artis Grant, Jr., Attorney at Law, filed a response on behalf of Mr. Scruggs.
19 Mr. Grant argued that Mr. Scruggs was not provided appeal rights in his layoff letter which is why
20 Mr. Scruggs did not appeal the layoff within the thirty-day appeal timeframe.

21 On November 3, 2009, David Slown, Assistant Attorney General for ESD, filed a response. Mr.
22 Slown argued that at the time of his termination, Mr. Scruggs was subject to the provisions of a
23 collective bargaining agreement and did not possess the right to appeal his termination. Mr. Slown
24 further argued that Mr. Scruggs' appeal request was filed one hundred and eighty-eight days after
25 the effective date of his separation and therefore the appeal request is untimely.

1 At the time of his separation from employment with ESD, Mr. Scruggs' position and the action
2 appealed were covered by the terms of the collective bargaining agreement. Consistent with the
3 provisions of RCW 41.06.170(5), it appeared that the Board lacked jurisdiction. Furthermore, Mr.
4 Scruggs filed his request for appeal more than thirty days after the effective date of his separation
5 from employment. Therefore, even if the Board had jurisdiction over the subject matter of Mr.
6 Scruggs' appeal request, it appeared that the request was untimely and should be dismissed.

7 On November 9, 2009, Board staff served the parties with a Notice of Potential Dismissal. The
8 notice stated that the appeal would be dismissed unless, within fifteen calendar days following the
9 date of service of the notice, the Board received a written request showing good cause why the
10 appeal should not be dismissed. Neither party filed a response to the Notice of Potential Dismissal.

11 The Board having reviewed the file and records herein, being fully advised in the premises, now
12 enters the following:

13 **ORDER**

14 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal request of Willard Scruggs v.
15 Employment Security Department, PRB Case No. R-JUR-09-007, is dismissed.

16 DATED AND MAILED this ____ day of _____, 2009.

17 WASHINGTON PERSONNEL RESOURCES BOARD

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19 _____
20 JOE PINZONE, Chair

21
22 _____
23 LAURA J. ANDERSON, Vice Chair

24
25 _____
26 DJ MARK, Member