

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 DEPARTMENT OF CORRECTIONS, )

4 Appellant, )

5 v. )

6 PHILIP AIKMAN, )

7 Respondent. )

PRB Case No. R-ALLO-08-018

**ORDER OF DISMISSAL**

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9 This matter came before the Personnel Resources Board, MARSHA TADANO LONG, Chair;  
10 JOSEPH PINZONE, Vice Chair; and LAURA ANDERSON, Member, for dismissal pursuant to  
11 WAC 357-52-215 and WAC 357-52-220.

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

14 The Board may dismiss an appeal on its own motion when:

15 . . .

16 (3) An appeal is not filed on time . . . .

17  
18 On April 25, 2008, the director's determination was served notifying the Department of Corrections  
19 (DOC) and Mr. Aikman of the results of Mr. Aikman's allocation review request. The  
20 determination informed the parties that the right to appeal the determination was governed by RCW  
21 41.06.170.

22  
23 RCW 41.06.170 provides, in relevant part: "[a]ny employee incumbent in a position at the time of  
24 its allocation or reallocation, or the agency utilizing the position may appeal the allocation or

1 reallocation to the . . . personnel resources board . . . . Notice of such appeal must be filed in writing  
2 within thirty days of the action from which appeal is taken.”

3 Consistent with the RCW, the Board’s rules provide, in relevant part: “[i]n order to be considered  
4 timely, an appeal must be received in writing at the office of the board within thirty calendar days  
5 after: . . . Service of the director’s determination . . . .” (WAC 357-52-045).

6  
7 On July 2, 2008, DOC filed exceptions to the director’s determination with the Personnel Resources  
8 Board. In the exceptions, DOC indicated that it had no record of receiving a copy of the  
9 determination. However, a review of the director’s determination indicates that a copy of the  
10 director’s determination was mailed to David Cahill, DOC’s representative during the review.

11  
12 The appeal was received sixty-eight (68) days after service of the director’s determination. The  
13 appeal appeared to be untimely.

14  
15 Therefore, on July 8, 2008, Board staff sent a letter to the parties directing them to submit affidavits  
16 and/or written argument addressing the timeliness of the appeal. Affidavits and/or written argument  
17 were to be submitted within twenty-one (21) calendar days of the date of the letter. Neither party  
18 submitted affidavits or written argument.

19  
20 On July 30, 2008, Board staff served the parties with a Notice of Potential Dismissal. The notice  
21 stated that the appeal appeared to be untimely. The notice also stated that the appeal would be  
22 dismissed unless within fifteen calendar days following the date of service of the notice, the Board  
23 received a written request showing good cause why the appeal should not be dismissed.

24  
25 Neither party submitted a response to the notice. Therefore, the appeal should be dismissed.

1  
2 The Board having reviewed the file and records herein, being fully advised in the premises, now  
3 enters the following:

4  
5 **ORDER**

6 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of the Department of Correction,  
7 PAB Case No. R-ALLO-08-018, is dismissed.

8  
9 DATED AND MAILED this \_\_\_\_ day of \_\_\_\_\_, 2008.

10 **WASHINGTON PERSONNEL RESOURCES BOARD**

11  
12 \_\_\_\_\_  
MARSHA TADANO LONG, Chair

13  
14 \_\_\_\_\_  
JOSEPH PINZONE, Vice Chair

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16 \_\_\_\_\_  
LAURA J. ANDERSON, Member