

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

ALBERT LOOMIS,

Appellant,

vs.

DEPARTMENT OF FISH AND WILDLIFE,

Respondent.

CASE NO. R-RULE-09-001

ORDER DISMISSING APPEAL

I. INTRODUCTION

1.1 Hearing on the Motion. This matter came before the Personnel Resources Board, LAURA ANDERSON, Vice Chair, and DJ MARK, Member, on October 29, 2009, for hearing oral argument on Respondent's Motion for Summary Judgment and Appellant's Cross-Motion for Summary Judgment. After hearing argument on the motions, on November 9, 2009, the Board requested briefs from both parties addressing the issue of Appellant's standing to file this appeal.

1.2 Appearances. Gil Hodgson, Assistant Attorney General, represented Respondent Department of Fish and Wildlife (F&W). Edward Younglove, III, Attorney at Law, represented Appellant.

1.3 Documents Considered. The Board considered the files and documents in this matter, including:

- 1) Respondent's Motion for Summary Judgment, filed August 14, 2009, including Appendixes 1 through 4;
- 2) Appellant's Response to Motion for Summary Judgment and Cross-Motion for Summary Judgment, filed August 28, 2009, including
 - a) Declaration of Albert Loomis with attached exhibits 1 through 3; and
 - b) Declaration of Charles A. Leidy;
- 3) Respondent's Reply Response to Motion for Summary Judgment, filed September 4, 2009;

- 4) Respondent's Response to Appellant's Motion for Summary Judgment, filed September 14, 2009, including
 - a) Declaration of J. David Brittell in Support of Respondent's Response to Appellant's Motion for Summary Judgment;
 - b) Declaration of Dan Budd in Support of Respondent's Response to Appellant's Motion for Summary Judgment;
 - c) Declaration of Elyse Kane in Support of Respondent's Response to Appellant's Motion for Summary Judgment;
 - d) Declaration of Michele Culver in Support of Respondent's Response to Appellant's Motion for Summary Judgment;
 - e) Declaration of Jennifer Quan in Support of Respondent's Response to Appellant's Motion for Summary Judgment; and
 - f) Declaration of Art Irving in Support of Respondent's Response to Appellant's Motion for Summary Judgment, with Appendixes A through E;
- 5) Appellant's Reply to Response to Cross Motion for Summary Judgment, filed September 21, 2009, including
 - a) Supplemental Declaration of Albert Loomis;
- 6) Appellant's Brief on Standing, filed December 10, 2009, including
 - a) Declaration of Bert Loomis; and
- 7) Respondent's Supplemental Brief, filed December 11, 2009, including
 - a) Second Declaration of Art Irving in Support of Respondent's Motion for Summary Judgment with two attachments.

II. BACKGROUND

2.1 On February 9, 2009, Appellant filed a request for a director's review alleging violations of various RCWs and WACs by Respondent in regard to his supervisor's appointment to a Property and Acquisition Specialist 6 position.

2.2 On March 27, 2009, the director's designee issued a determination. The designee determined that the request for review was untimely in regard to the alleged violations of Chapter 357-19 WAC. In regard to Appellant's supervisor's voluntary demotion from a Washington Management Service position and appointment to a Property and Acquisition Specialist 6 position, the designee determined that the appointment was made in accordance with the civil service laws and rules.

2.3 Pursuant to WAC 357-52-010, on April 24, 2009, Appellant filed exceptions to the director's determination. In his exceptions, Appellant alleged that Respondent violated WAC 357-19-015.

2.4 On August 14, 2009, Respondent filed a Motion for Summary Judgment. On August 28, 2009, Appellant filed a Cross-Motion for Summary Judgment.

2.5 After hearing argument on the motions, by order dated November 9, 2009, the Board requested briefs from both parties addressing the issue of Appellant's standing to file this appeal. Appellant filed his brief on December 10, 2009 and Respondent files its brief on December 11, 2009.

III. FINDINGS

3.1 At the time of the actions giving rise to this appeal, Appellant was employed as a Property and Acquisitions Specialist 3. On January 7, 2009 Penny Warren was appointed, through the voluntary demotion process, to a Property and Acquisitions Specialist 6 (PAS6) and she became Appellant's supervisor.

3.2 The same PAS6 position was vacant in 2008 and at that time, Respondent recruited to fill the position. Appellant did not apply for the position. Further, Appellant has never held status in the PAS6 class.

3.3 The appointment of Ms. Warren did not affect Appellant's permanent status as an employee. His classification, salary, benefits, position description, hours of work, layoff rights, seniority, and work location remained unchanged as a result of Ms. Warren's appointment.

IV. ARGUMENTS OF THE PARTIES

4.1 Appellant admits that he never applied for the PAS6 position but argues that if the position was vacant, it would have been a promotional opportunity for him. Appellant contends that he was

1 aggrieved by Ms. Warren's appointment because he was eligible for promotion to the PAS6
2 position. Appellant argues that his eligibility alone gives him standing to challenge Respondent's
3 violation of the civil service rules. Appellant asserts that the fact that he chose not to apply to the
4 PAS6 position when it was initially opened does not mean that he does not have standing to
5 challenge a subsequent appointment for which he was eligible.

6
7 In regard to whether Respondent was collaterally estopped from challenging Appellant's standing
8 to file this appeal, Appellant explains that he successfully challenged a previous rule violation
9 concerning Ms. Warren's appointment to the PAS6 position. Appellant argues that there is no
10 reason to distinguish his standing to file the present case. Appellant contends that the only
11 difference between the two cases is the rule alleged to have been violated.

12
13 4.2 Respondent argues that Appellant failed to prove that he was adversely affected by
14 Respondent's decision to fill a PAS6 position that he never applied for. Therefore, Respondent
15 asserts that he lacks standing to challenge the agency's decision and the appeal should be dismissed.
16 Respondent further argues that Appellant failed to prove that Respondent violated any rule in
17 appointing Ms. Warren, through the voluntary demotion process, to the PAS6 position and asserts
18 that Appellant's allegations in regard to the qualifications of Ms. Warren are not properly before the
19 Board.

20
21 In response to the issue of collateral estoppel raised by Appellant, Respondent argues that the Board
22 is not precluded from considering the issue of standing because the facts in this case are not
23 identical to those of a prior case filed by Appellant. Respondent further argues that the director's
24 review process does not rise to the level of an adjudicatory proceeding required for it to have a
25 preclusive effect.

26 27 **V. DISCUSSION**

28 5.1 The Board may decide an appeal by motion if the documents on file, depositions and
29 affidavits show there is no genuine issue as to any material fact and the appeal should be

1 dismissed as a matter of law. WAC 357-52-140. All facts and reasonable inferences therefrom
2 are to be determined in favor of the nonmoving party. *See, Hall v. University of Washington*,
3 PAB No. 3863-V2 (1995).

4
5 5.2 There is no question of material fact regarding the narrow issue that must first be decided
6 by the Board. Before we can decide the merits of the appeal, we must determine whether Appellant
7 has standing to appeal an alleged rule violation regarding the appointment of Ms. Warren to the
8 PAS6 position.

9
10 5.3 RCW 41.06.170 provides, in relevant part: “[a]ny employee who is . . . adversely affected
11 by a violation of the state civil service law, chapter 41.06 RCW, or rules adopted under it, shall
12 have the right to appeal, either individually or through his or her authorized representative, not
13 later than thirty days after the effective date of such action . . . to the Washington personnel
14 resources board after June 30, 2005. . . .”

15
16 5.4 For guidance, we look to past decisions by the Personnel Appeals Board (PAB),
17 predecessor to this Board, for guidance. We concur with the PAB that for jurisdictional purposes,
18 an “adverse affect” is one having a meaningful impact on the appellant as opposed to another
19 employee. In this case, Appellant has not shown that he has been adversely impacted by Ms.
20 Warren’s appointment through the voluntary demotion process. Appellant’s permanent status,
21 classification, salary, benefits, position description, hours of work, layoff rights, seniority, and work
22 location were not impacted by Ms. Warren’s appointment.

23
24 5.5 We also look to the courts for guidance on the issue of standing. The general rule of
25 standing “requires that the plaintiff demonstrate an injury to a legally protected right.” *Sprague v.*
26 *Sysco Corp.*, 97 Wn. App 169, 176 N.2, 982 P.2d 1202 (1999). In this case, Appellant has not
27 shown that he was injured by Ms. Warren’s appointment to the PAS6 position through the
28 voluntary demotion process.

5.6 “To have standing, a party must show a real interest in the subject matter of the lawsuit, that is, a present, substantial interest, as distinguished from a mere expectancy, or future, contingent interest, and the party must show that a benefit will accrue it by the relief granted.” Primark, Inc. v. Burien Gardens Assocs., 63 Wn. App. 900, 907, 823 P2d 116 (1992) citing to State ex rel. Gebhardt v. Superior Court, 15 Wn.2d 673, 680, 131, P.2d 943 (1942). In this case, Appellant has not shown a present, substantial interest in Ms. Warren’s appointment to the PAS6 position. Rather, his interest is a future or contingent interest. Further, any benefit he may accrue by our ruling is speculative at best.

5.7 Following the guidance of the courts, in order to have standing, an appellant must satisfy the following:

1. The agency action has prejudiced or is likely to prejudice that person;
2. That person’s asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and
3. A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action.

5.8 First, Appellant has failed to show that he was prejudiced by Respondent’s appointment of Ms. Warren to the PAS6 position through the voluntary demotion process. Second, Appellant has failed to show that the agency was required to consider his interests in the position when it allowed Ms. Warren to voluntarily demote to the PAS6 position. Finally, because Appellant has failed to show prejudice, he has failed to show that a decision in his favor would eliminate or redress the prejudice caused by the agency action. Appellant lacks standing in this matter. When a party lacks standing, the Board lacks jurisdiction to decide the matter.

5.9 The Board having reviewed the files and documentation, being fully advised in the premises now enters the following:

VI. ORDER

1 NOW, THEREFORE, IT IS HEREBY ORDERED that because Appellant Albert Loomis lacks of
2 standing to bring this matter to the Board, the Board lacks jurisdiction to decide the appeal and the
3 appeal is dismissed.

4
5 DATED this ____ day of _____, 2010.

6 WASHINGTON PERSONNEL RESOURCES BOARD

7
8 _____
9 LAURA ANDERSON, Vice Chair

10
11 _____
12 DJ MARK, Member