

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 ALEXANDER DANIELS,)

4 Appellant,)

5 v.)

PRB Case No. R-DEMO-09-007

6 DEPARTMENT OF CORRECTIONS,)

7 Respondent.)

ORDER OF DISMISSAL

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

11
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 By letter dated August 6, 2009, Alexander Daniels was informed of his demotion from a
17 Correctional Lieutenant to a Correctional Sergeant with the Department of Corrections. His
18 demotion was effective August 21, 2009. On September 22, 2009, Mr. Daniels filed an appeal of his
19 demotion with the Personnel Resources Board. The appeal was received thirty-two days after the
20 effective date of the demotion. Therefore, it appeared that the appeal was untimely.

21
22 Because it appeared that Mr. Daniels' appeal was untimely, by letter dated September 23, 2009,
23 Board staff directed the parties to provide written argument addressing the Board's jurisdiction in
24 this matter. The parties were informed that the written argument was due within twenty-one
25 calendar days of the date of the letter. The parties were also informed that if the information

1 provided failed to show that Mr. Daniels' appeal was timely, the matter may be presented to the
2 Board for dismissal under the provisions of WAC 357-52-215.

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4 On September 30, 2009, Kari Hanson, Assistant Attorney General for the Department of
5 Corrections, submitted a Memorandum in Support of Dismissal for Untimeliness. In summary, Ms.
6 Hanson argued that the appeal should be dismissed because it was not filed within thirty days of the
7 effective date of the demotion as required by RCW 41.06.170.

8 Mr. Daniels did not file a response.

9
10 RCW 41.06.170 provides, in relevant part: "[a]ny employee who is . . . demoted . . . shall have the
11 right to appeal . . . not later than thirty days after the effective of such action to the . . . personnel
12 resources board"

13 WAC 357-52-015 provides, in relevant part: "[i]n order to be considered timely, an appeal must be
14 received in writing at the office of the board within thirty calendar days after: . . . [t]he effective
15 date of the disciplinary action"

16
17 Neither the RCW nor the civil service rules allow the Board to waive the jurisdictional requirements
18 for filing appeals. The RCW and the rules require that the appeal must be received by the Board
19 within thirty days of the effective date of the disciplinary action.

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21 In this case, the demotion was effective August 21, 2009 and the appeal was received September 23,
22 2009. The appeal was received thirty-two days after the effective date of the disciplinary action.

23 On October 15, 2009, Board staff served the parties with a Notice of Potential Dismissal. The notice
24 stated that the appeal appeared to be untimely. The notice also stated that the appeal would be
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1 dismissed unless, within fifteen calendar days following the date of service of the notice, the Board
2 received a written request showing good cause why the appeal should not be dismissed.

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4 On October 28, 2009, Mr. Daniels submitted a response to the notice. In summary, Mr. Daniels
5 argues that when he mailed the letter on Friday, September 18, 2009, he was told by the US Postal
6 staff that the letter should reach the Board by Monday, September 21, 2009. Mr. Daniels stated that
7 he could not say what would have caused a delay, but asked the Board to accept his letter of appeal.

8 It is unfortunate that Mr. Daniels was given misleading information by United States postal staff
9 regarding the delivery time for mail from Lacey, Washington, to the Board's office in Olympia.
10 However, there is a history of cases in which this Board and the Personnel Appeals Board
11 (predecessor to this Board) has held that an appeal is untimely even when the affected employee had
12 been unintentionally misled by an agency or given erroneous information about a process. See for
13 example, Lapp v. Washington State Patrol, PAB No. V94-079 (1995) and Yialelis v. Dept. of
14 Transportation, PRB No. R-ALLO-08-016 (2008).

15 While the Board understands that Mr. Daniels relied on information given to him by postal staff, the
16 Board may not waive the jurisdictional timelines found in statute. In this case, Mr. Daniels' appeal
17 was filed more than thirty days after the effective date of his demotion. As a result, the appeal is
18 untimely and should be dismissed.

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

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23 / / / / /

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Alexander Daniels v. Department of Corrections, PRB Case No. R-DEMO-09-007, is dismissed.

DATED AND MAILED this _____ day of _____, 2009.

WASHINGTON PERSONNEL RESOURCES BOARD

LAURA J. ANDERSON, Vice Chair

DJ MARK, Member