

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

DEBORAH REED,

Appellant,

vs.

DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES,

Respondent.

CASE NO. R-LO-09-017

ORDER GRANTING RESPONDENT'S  
MOTION FOR SUMMARY JUDGMENT

**I. INTRODUCTION**

**1.1 Consideration of Motion.** This matter came before the Personnel Resources Board, LAURA ANDERSON, Vice Chair, and DJ MARK, Member, for consideration of written argument on Respondent's Motion for Summary Judgment.

**1.2 Representation.** Gina L. Comeau, Assistant Attorney General, represented Respondent Department of Social and Health Services. Appellant Deborah Reed represented herself.

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

- 1) Respondent's Motion for Summary Judgment, filed December 23, 2009, with the following:
  - a) Declaration of John Black with Attachments A and B
  - b) Declaration of Deborah Purce with Exhibit 1-3
  - c) Declaration of Randy Hart
- 2) Appellant's letter in response to the motion, filed January 6, 2010, with attached Position Description Form
- 3) Respondent's Reply to Appellant's Response to Motion for Summary Judgment, filed January 13, 2010.

## II. BACKGROUND AND FINDINGS

2.1 Appellant Deborah Reed is employed as a Washington Management Service (WMS) Program Manager with the Department of Social and Health Services (DSHS) Children's Administration, Field Operations Office in Olympia, Washington.

2.2 On August 3, 2009, Appellant received a layoff notice, effective on August 17, 2009. The notice allowed Appellant a formal layoff option to bump into a Program Manager position within DSHS Children's Administration in Olympia, Washington.

2.3 On August 14, 2009, Appellant was notified that the effective date of the layoff would be extended to September 16, 2009. However, on September 16, 2009, the layoff was rescinded and Appellant was reassigned to another position within the DSHS Children's Administration office, located in Olympia, Washington. Appellant's reassignment was effective September 17, 2009. Appellant received no loss in pay due to her reassignment.

2.4 On October 9, 2009, Appellant filed an appeal of her layoff. On December 23, 2009, Respondent filed a Motion for Summary Judgment.

## III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that that the appointing authority rescinded Appellant's layoff and reassigned her to another position. Therefore, Respondent contends that Appellant's appeal is moot based on the appointing authority's decision to rescind the layoff prior to the effective date of the layoff action. Respondent explains that Appellant was never separated from service or laid off; rather, she was reassigned to a different work unit that is not beyond a reasonable commute. Respondent further explains that Appellant suffered no loss of pay as a result of the reassignment. Respondent argues that because the layoff never took effect, there is no action from which

Appellant can appeal, no action over which the Board can exercise its jurisdiction, and no remedy that can be granted to Appellant. Therefore, Respondent asks that the appeal be dismissed.

3.2 Appellant argues that she was bumped out of her position by a person whose position had been cut and that she was provided an option to her old position. Appellant explains that she was notified that the option was rescinded and that she was reassigned to a new position. Appellant agrees that her salary was not changed and she was assigned to a WMS Band 3 position. However, Appellant argues that scope and responsibilities of her new position remain unclear, the new position has not gone through the salary banding process, and her work assignments have been inadequate to fill her time and require a low level of skill. Appellant contends that the process has had an adverse impact on her, the position is not at a level of responsibility or authority commensurate with her experience, knowledge, skills, abilities, and prior successful job assignments. Appellant further contends that the experience has been degrading and humiliating and has impaired her ability to make meaningful contribution as an employee.

#### IV. RELEVANT WACS

4.1 WAC 357-58-065(9) provides:

A reassignment is an employer initiated movement of:

- (a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or
- (b) A WMS position and its incumbent from one section, department, or geographical location to another section, department, or geographical location.

4.2 WAC 357-58-205 discusses the reassignment of WMS positions and states:

At any time, an agency may reassign an employee or a position and its incumbent to meet client or organizational needs. If the new location is within a reasonable commute, as defined by the agency, the employee must accept the reassignment.

1 If the reassignment is beyond a reasonable commute and the employee does not  
2 agree to the reassignment, the employee has layoff rights in accordance with this  
3 chapter.

4 4.3 WAC 357-58-438 addresses the impact of WMS layoffs and provides:

5 Layoff is an employer-initiated action taken in accordance with WAC 357-58-445  
6 that results in:

- 7 (1) Separation from service with an employer;
- 8 (2) Employment in a WMS position with a lower salary standard or evaluation  
9 points or a WGS position with a lower salary range maximum;
- 10 (3) Reduction in the work year; or
- 11 (4) Reduction in the number of work hours.

12 4.4 WAC 357-58-505 provides the appeal rights afforded to WSM employees and states:

13 Any permanent employee in a WMS position who is laid off, dismissed,  
14 suspended, demoted, separated, whose position has been reassigned beyond a  
15 reasonable commute without agreeing to the reassignment, or whose base salary is  
16 reduced may appeal in accordance with chapter 357-52 WAC. The conclusion of  
17 an acting appointment is not subject to appeal.

18 **V. DISCUSSION**

19 5.1 The Board may decide an appeal by motion if the documents on file, depositions and  
20 affidavits show there is no genuine issue as to any material fact and the appeal should be  
21 dismissed as a matter of law. WAC 357-52-140. All facts and reasonable inferences therefrom  
22 are to be determined in favor of the nonmoving party. For purposes of Respondent's motion to  
23 dismiss, we must assume any disputed facts in favor of Appellant. *See, Hall v. University of*  
24 *Washington*, PAB No. 3863-V2 (1995).

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26 5.2 In order to preclude summary judgment, the non-moving party must set forth specific facts  
27 by affidavit or otherwise show a genuine dispute of material fact. A material fact is one upon which  
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1 the outcome of the litigation depends. Hudemand v. Foley, 73 En.2d 880, 886, 441 P.2d 532  
2 (1968).

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4 5.3 There are no disputes of fact that preclude summary judgment in this case. The issue  
5 before the Board is whether an action occurred over which the Board can exercise jurisdiction. In  
6 this case, the layoff was rescinded and the action did not occur, Appellant was not dismissed,  
7 suspended, demoted, or separated, her position was not reassigned beyond a reasonable commute,  
8 and her base salary was not reduced. Therefore, no appealable action occurred and no remedy can  
9 be granted to Appellant.  
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12 5.4 The civil service rules allow an agency to reassign a WMS employee from one position to  
13 a different position within WMS with the same salary standard and from one section or department  
14 to another section or department. There is no dispute that Appellant's reassignment complied with  
15 the provisions of the rules.  
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17 5.5 Appellant raises concerns about the duties, responsibilities, and salary band assigned to her  
18 new position. However, these issues are outside of the scope of a layoff appeal and are not matters  
19 over which this Board can exercise jurisdiction at this juncture. Chapter 357 WAC provides the  
20 mechanism for WMS employees to seek reconsideration of an employer's action. The rules provide  
21 that if an employee is disagrees with the results at the agency level, the employee may request a  
22 review by the director of the department of personnel. See WACs 357-58-515 through 530.  
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25 5.6 Under the undisputed facts, no layoff action occurred and no action exists over which the  
26 Board can exercise jurisdiction. Therefore, Respondent's motion should be granted and the appeal  
27 should be dismissed.  
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1 5.7 The Board having reviewed the files and documentation, being fully advised in the  
2 premises now enters the following:  
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4 **VI. ORDER**

5 NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion for Summary  
6 Judgment is granted and the appeal is dismissed.  
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8 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.  
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10 WASHINGTON PERSONNEL RESOURCES BOARD

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12 LAURA ANDERSON, Vice Chair  
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15 DJ MARK, Member  
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