

BEFORE THE PERSONNEL RESOURCES BOARD  
STATE OF WASHINGTON

KENNETH JURGENSEN,

Appellant,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent.

CASE NO. R-LO-06-005

ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS

**I. INTRODUCTION**

**1.1 Consideration of Motion.** This matter came before the Personnel Resources Board, MARSHA TADANO LONG, Chair; LARRY GOODMAN, Vice Chair; and LAURA ANDERSON, Member, on November 13, 2006, for consideration of written argument on Respondent's Motion to Dismiss.

**1.2 Representation.** Rachelle Wills, Assistant Attorney General, represented Respondent Department of Corrections. Appellant represented himself *pro se*.

**1.3 Documents Considered.** The Board considered the files and documents in this matter, including Respondent's Motion to Dismiss and attachments, filed October 11, 2006. Appellant did not file a response to the motion.

**II. BACKGROUND**

**2.1** Appellant Kenneth Jurgensen, is employed by Respondent Department of Corrections (DOC) at the Washington State Penitentiary (WSP).

**2.2** On May 15, 2006, Appellant was notified that, pursuant to Governor Gregoire's directive to reduce middle management within state government, his position as a Hearings Lieutenant at WSP

1 was being abolished. Appellant was offered a formal option position as a Correctional Lieutenant  
2 and an informal option position as a Corrections Specialist 3. Appellant accepted the informal  
3 option. Appellant's appointment as a Corrections Specialist 3 became effective on July 16, 2006.  
4

5 2.3 In a letter dated May 31, 2006, to the Director of the Department of Personnel (DOP)  
6 regarding an earlier reallocation request, Appellant indicated that he would like to "submit a separate  
7 appeal to the fact that the Hearings Lt. position was 'abolished.'" On June 8, 2006, Teresa Parsons,  
8 Director's Review Program Supervisor for the Department of Personnel Legal Affairs Division,  
9 forwarded Appellant's appeal to the Personnel Resources Board.  
10

11 2.4 On August 3, 2006, the Board sent a letter to Appellant acknowledging receipt of his layoff  
12 appeal. Appellant responded by stating that he was not appealing a "layoff," but instead was  
13 appealing DOC's failure to Y-rate his salary.<sup>1</sup>  
14

15 2.5 On August 22, 2006, Holly Platz, WPRB Appeals Supervisor, sent a letter to Appellant  
16 seeking clarification regarding his appeal. By letter dated September 19, 2006, Appellant responded  
17 that his "intent [wa]s to appeal the failure to place [him]self and [his] fellow Hearing Officers in the  
18 correct Occupational Category and Y-rate [their] pay . . . ."  
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### 20 **III. ARGUMENTS OF THE PARTIES**

21 3.1 Respondent argues that the Board does not have jurisdiction to adjudicate Appellant's Y-rate  
22 claim because he is not appealing a director's review. Respondent further argues that even if this  
23 matter was properly before the Board, Appellant's claim lacks merit and should be dismissed. In  
24 addition, Respondent argues that Appellant is not appealing a director's review regarding the  
25 allocation of his position, and therefore the Board lacks jurisdiction to hear Appellant's claim that  
26 his position should be reallocated to a Correctional Hearings Officer. Respondent asserts that  
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28 <sup>1</sup> The term "Y-rate" refers to setting salaries higher than the range maximum of the classification to which a position  
29 is allocated.

Appellant's appeal should be dismissed because Appellant has not followed the procedures in the WACs to allow the Board to assert jurisdiction in this matter.

3.2 Appellant did not provide a response to the Motion to Dismiss.

#### IV. DISCUSSION

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

4.2 In order to preclude dismissal, Appellant, as the non-moving party, must set forth specific facts showing a genuine dispute of material fact. *See Hines v. Data Line Systems, Inc.*, 114 WN.2d 127, 787 P.2d 8 (1990).

4.3 WAC 357-52-010 provides that employees may file an appeal with this Board for a violation of merit system rules "by filing written exceptions to the director's review determination." A director's review, and not an appeal to this Board, is the "initial step of the appeals process." *See WAC 357-49-017*).

4.4 Appellant is not appealing a director's review.

4.5 This Board lacks jurisdiction to hear Appellant's Y-rate claim.

4.6 The merit system rules "grant employers the discretion of whether to set salaries higher than the maximum step of a lower level class as a result of a layoff." *Arnold v Dept. of Corrections*, PRB

1 Case No. R-LO-06-003 (2006). See also, WAC 357-28-135(2).

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3 4.7 WAC 357-28-135 is permissive.

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5 4.8 WAC 357-28-135 only refers to the employer's salary determination policy and this Board  
6 does not have jurisdiction to hear appeals of an agency policy.

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8 4.9 At the time of Appellant's layoff, DOC did not have a salary determination policy, but  
9 instead relied on the merit system rules. DOC's Executive Leadership Team's decision not to Y-rate  
10 employees affected by the Governor's directive was in force. Appellant's position was abolished as  
11 a result of the Governor's directive. Therefore, pursuant to its policy to not Y-rate employees  
12 affected by the Governor's directive, DOC properly refused to Y-rate Appellant's salary.

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14 4.10 DOC's failure to Y-rate Appellant's salary was in compliance with the merit system rules.

15  
16 4.11 WAC 357-13-080(1) provides that an employee "may request a director's review of the  
17 results of a position review or reallocation of the employee's position" by the employer. This  
18 request "constitutes the initial step of the appeal process" for a position reallocation. WAC 357-49-  
19 017. An employee "may appeal the results of the director's review to the board by filing written  
20 exceptions to the director's determination in accordance with chapter 357-52 WAC." WAC 357-49-  
21 018.

22  
23 4.12 Appellant's claim is not properly before this Board because Appellant has not followed the  
24 procedures necessary to allow this Board to assert jurisdiction.

25  
26 4.13 This Board lacks jurisdiction to hear Appellant's reallocation claim.

1 4.14 Based on the uncontroverted facts, Respondent's motion should be granted, and the appeal  
2 of Kenneth Jurgensen, should be dismissed.

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5 **V. ORDER**

6 NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is granted,  
7 and the appeal of Kenneth Jurgensen is dismissed without prejudice.

8  
9 DATED this \_\_\_\_ day of \_\_\_\_\_, 2006.

10 WASHINGTON PERSONNEL RESOURCES BOARD

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13 MARSHA TADANO LONG, Chair

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16 LARRY GOODMAN, Vice Chair

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18 \_\_\_\_\_  
19 LAURA ANDERSON, Member