

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

CHANDRAMA MISHRA,

Appellant,

vs.

UNIVERSITY OF WASHINGTON,

Respondent.

CASE NO. R-RULE-07-002

ORDER OF THE BOARD  
FOLLOWING HEARING ON  
EXCEPTIONS TO THE  
DETERMINATION OF THE DIRECTOR

**Hearing on Exceptions.** This appeal came on for hearing before the Personnel Resources Board, LAURA ANDERSON, Chair, and MARSHA TADANO LONG, Vice Chair, on Appellant's exceptions to the director's determination dated August 31, 2007. The hearing was held at the office of the Personnel Resources Board in Olympia, Washington, on December 6, 2007.

**Appearances.** Appellant Chandrama Mishra was represented by Edward E. Younglove III, Attorney at Law with Younglove, Lyman and Coker, P.L.L.C. Respondent University of Washington (UW) was represented by Helen Arntson, Assistant Attorney General.

**Background.** Appellant was employed in an exempt position as the Harborview Medical Center (HMC) Safety Officer. By letter dated September 22, 2006, Johnese Spisso, Chief Operating Officer at Harborview Medical Center and Appellant's appointing authority, notified Appellant that he was being dismissed from his position. The letter advised Appellant that if he had any questions about the letter, he should contact Lynn Diaz, Human Resource Consultant.

On October 2, 2006, Appellant met with Ms. Diaz and with Janelle Browne, Executive Director of Human Resource Operations. During the meeting, Appellant provided Ms. Browne with a letter addressed to David Jaffe, CEO of Harborview Medical Center, requesting to exercise his reversion right to a classified position. Following the meeting, on October 3, 2006, Appellant sent an email to Ms. Diaz in which he challenged her interpretation of the RCW in question and asked her to "read the actual law."

1 By letter dated November 21, 2006 to Mr. Jaffe, Appellant again requested to exercise his  
2 reversion right to a classified position.

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4 On December 19, 2006, the Department of Personnel received Appellant's request for a  
5 Director's review, alleging the UW violated RCW 41.06.070.

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7 On August 28, 2007, Teresa Parsons, the director's designee, conducted a review of the  
8 timeliness of Appellant's request for review. By letter dated August 31, 2007, Ms. Parsons  
9 determined that Appellant's request was untimely. Ms. Parsons stated, in part:

10 Mr. Mishra's October 3, 2006 email to Ms. Diaz establishes his awareness of the  
11 RCW and his disagreement with the University's interpretation. In considering  
12 whether or not Mr. Mishra could have reasonably had knowledge the UW did not  
13 plan to reinstate him to classified service, it would be reasonable for him to  
14 expect such an answer, verbal or written, could come from Ms. Browne, as the  
15 Executive Director of HR Operations, or Ms. Diaz as an HR Consultant.  
16 Regardless of whether he was waiting for a written response from the CEO of  
17 Harborview, Mr. Jaffe, it is reasonable to expect he had knowledge the UW did  
18 not agree he had reversion rights in light of his discussion with Ms. Browne and  
19 Ms. Diaz on October 2, 2006, even though they discussed other personnel issues  
20 as well.

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22 On September 7, 2007, Appellant filed exceptions to Ms. Parson's determination. Appellant's  
23 exceptions are the subject of this proceeding.

24 **Summary of Appellant's Arguments.** Appellant argues that when he delivered the October 2,  
25 2006 letter to Mr. Jaffe, he was told by Ms. Browne that UW would get back to him in writing with  
26 a response to his request. When he did not hear anything back from the UW, Appellant sent a second  
27 letter to Mr. Jaffe on November 21, 2006 requesting a response to his request. Appellant contends  
28 that it was reasonable for him conclude on or about December 19, 2006, that UW would not grant  
29 him reversion rights. Appellant asserts that he filed his request for review immediately upon making  
this conclusion. Therefore, Appellant argues that his request for review was timely filed.

1 **Summary of Respondent's Arguments.** Respondent argues that during the October 2, 2006  
2 meeting with Ms. Diaz and Ms. Browne, Appellant was told that he had no reversion rights.  
3 Respondent contends that Appellant was provided with a document supporting UW's position  
4 (Employer's Exhibit 3) which he referenced in his October 3, 2006 email. Respondent contends that  
5 based on the document provided to Appellant and on his email dated October 3, 2006, Appellant had  
6 knowledge of the action giving rise to his request for review by no later than October 3, 2006.  
7 Therefore, Respondent asserts that the request for review was untimely.

8 **Primary Issue.** Whether the director's determination that Appellant's request for review was  
9 untimely filed should be affirmed.

10 **Decision of the Board.** RCW 41.06.170 provides an employee the right to appeal. Specifically,  
11 RCW 41.06.170(2) states, in part:  
12

13       An employee who is . . . adversely affected by a violation of the state civil  
14 service law, chapter 41.06 RCW, or rules adopted under it, shall have the right  
15 to appeal . . . not later than thirty days after the effective date of such action . . .

16 **WAC 357-49-010(4) states, in part:**  
17

18       . . . an employee who has been adversely affected by a violation of the civil  
19 service laws or rules may request a director's review within thirty calendar days  
20 of the date the employee could reasonably be expected to have knowledge of the  
21 action giving rise to a law or rule violation claim or the stated effective date,  
22 whichever is later.

23 The issue of reasonable knowledge was established in Barrington, et al, v. Eastern Washington  
24 University, 41 Wn. App. 259 (1985). However, the facts in this case differ significantly from the  
25 facts in Barrington. In Barrington, the employees received new information which gave rise to  
26 their appeal of a previous action. Here, there is no evidence that Appellant received new  
27 information after his October 3, 2006, email.  
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1 The facts in this case are more similar with those of Roberts v. Dept. of Corrections, PAB Case  
2 No. RULE-03-006 (2004), in which the Personnel Appeals Board determined that:

3 . . . [a]ppellant had knowledge of the actions giving rise to this appeal . . . when  
4 he was informed that he could not return because his doctor's note was  
5 unacceptable. Appellant was fully aware, as evidenced by his note to the  
6 department, that the reason the department was not returning him to work was  
7 because he was restricted to working eight hours per day. Appellant filed this  
8 appeal on October 30, 2003, more than thirty days after July 22, 200[3].  
Therefore, even when considering the facts in the light most favorable to  
Appellant, we must conclude that the appeal was untimely filed, therefore, the  
appeal should be dismissed.

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10 In this case, Appellant was aware, as evidenced by his October 3, 2006, email, that UW was not  
11 granting his request to exercise his reversion rights.

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13 Further, as stated in the director's determination:

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15 The [Personnel Appeals Board (PAB)] had a long history of making decisions on  
16 this point "dealing with a host of unfortunate circumstances in which an appeal  
17 was not timely filed," as noted in Birkland v. Dep't of Social & Health Services,  
18 PAB No. L-93-011 (1994). One example is the case of Brown v. Dep't of Social  
& Health Services, PAB No. V93-006 (1993) in which the department's  
personnel incorrectly advised employees they must exhaust administrative  
procedures before filing an appeal of a rule violation with the [PAB].

19  
20 Another example can be found in Lapp v. Washington State Patrol, PAB No.  
21 V94-079 (1995), where the [PAB] determined an appeal was untimely even  
22 though the affected employee had been unintentionally misled by an agency  
23 policy and erroneously informed an internal grievance procedure had to first be  
24 exhausted before filing an appeal of a rule violation. In a more recent decision,  
the [PAB] continued to maintain the rule is clear that an appeal of a rule violation  
must be filed within 30 days of the date an employee has "knowledge of the  
25 action giving rise to a law or rule violation claim." Kinney v. Superintendent of  
Public Instruction, PAB No. RULE-05-0003 (2005). In Kinney, the [PAB]  
26 continued to cite earlier decisions, including Lapp, where the [PAB] determined it  
27 had "long held that [filing within 30 days] is a jurisdictional requirement pursuant  
28 to RCW 41.06.170."  
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1 Appellant's assertion that he was attempting to get a written response from the CEO of HMC is not  
2 persuasive in determining when he had knowledge giving rise to his request for review. Appellant's  
3 email following his meeting with HMC human resource staff clearly establishes that he was aware  
4 of UW's position regarding his request to revert to classified service. Regardless of whether he was  
5 seeking additional information, he must comply with the jurisdictional requirements of the RCW and  
6 WAC.

7  
8 Appellant has the burden to file a timely appeal. In addition, Appellant has the burden of proof to  
9 show that the director's determination should be overturned. He failed to meet his burden in both  
10 instances.

11  
12 **ORDER**

13 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Chandrama  
14 Mishra is denied and the Director's determination dated August 31, 2007, is affirmed and adopted.

15 DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

16 WASHINGTON PERSONNEL RESOURCES BOARD

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LAURA ANDERSON, Chair

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MARSHA TADANO LONG, Vice Chair