BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

IVAN TURNER, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	)	PRB Case No. R-JUR-13-008 **ORDER OF DISMISSAL**

This matter came before the Personnel Resources Board, JOE PINZONE, Chair; DJ MARK, Vice Chair; and NANCY HOLLAND YOUNG, Member, for dismissal pursuant to WAC 357-52-215 and WAC 357-52-220.

WAC 357-52-215 provides, in relevant part:

> The board may dismiss an appeal on its own motion when:
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> . . . .
>
> (3) An appeal is not filed on time . . . .

On July 9, 2013, the Personnel Resources Board received Mr. Turner's appeal form and layoff letter. The layoff letter was dated May 7, 2013, and stated that Mr. Turner's layoff was effective June 7, 2013. In addition, in his appeal form, Mr. Turner indicated that his layoff was effective June 7, 2013.

Mr. Turner's appeal was received thirty-two (32) days after the effective date of his layoff. Therefore, the appeal appeared to be untimely.

RCW 41.06.170 establishes the timeframe for filing appeals to the Personnel Resources Board. In summary and in relevant part, the RCW provides that appeals must be filed not later than thirty days after the effective date of the action being appealed.

In addition, WAC 357-52-015 provides, in relevant part:

> In order to be considered timely, an appeal must be received in writing at the office of the board within thirty calendar days after:
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> (1) The effective date of the . . . layoff . . . .
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> (Emphasis added.)

In accordance with WAC 357-52-045, by letter dated July 9, 2013, Board staff directed the parties to provided written argument addressing the issue of timeliness.

On July 25, 2013, Mr. Turner filed a response. Mr. Turner explained that he understood that because the thirtieth day for filing his appeal fell on a Sunday, his appeal would be considered timely if it was received on Monday, July 8, 2013. Mr. Turner argued that he mailed his appeal on July 3, 2013. Mr. Turner indicated that mailing his appeal on July 3, 2013, should have provided adequate time for delivery on July 8, 2013. Mr. Turner asked that his appeal be considered timely because he felt that conditions surrounding his layoff warranted further investigation.

In regard to the thirtieth day falling on a Sunday, Mr. Turner is correct. If his appeal had been received on Monday, July 8, 2013, it would have been timely. However, his appeal was received on July 9, 2013.

On July 29, 2013, the University of Washington filed a response addressing the issue of timeliness. In summary, the University argued that Mr. Turner was provided notice of his layoff, including the effective date of the layoff, by email, regular mail and certified mail. He was also provided numerous emails confirming that his appeal must be filed within thirty days of the effective date of his layoff. The University asserted that Mr. Turner filed his appeal thirty-two days after the effective day of the layoff and that the appeal was untimely. The University argued that consistent with the Board's statute, rules and rulings in other cases with similar facts, the appeal was untimely and should be dismissed.

On July 31, 2013, the Board served the parties with a Notice of Potential Dismissal. The Notice of Potential Dismissal notified that parties that the appeal would be dismissed unless, within fifteen

calendar days following the date of service of the notice, the Board received a written request showing good cause why the appeal should not be dismissed.

On August 8, 2013, Mr. Turner filed a response to the Notice of Potential Dismissal. Mr. Turner asked that the envelope in which he mailed his appeal be examined to determine if the mail had been misrouted. Because timeliness of an appeal is determined by the date that the document is actually received in the Board's office, envelopes are not routinely retained in the Board's files.

Mr. Turner also noted that the street address in the return address portion of the envelope the Board sent to him was crossed out. Mr. Turner questioned when the Board had moved from its former address. While this has no bearing whatsoever on the timeliness of Mr. Turner's appeal, the Board's offices relocated from the 600 South Franklin address in July 2011.

The University of Washington did not respond to the Notice of Potential Dismissal.

The Board has addressed the issue of timeliness on numerous occasions. For example, in Bushey v. Washington State University, PRB No. R-RULE-10-002 (2010), Mr. Bushey mailed his appeal by overnight delivery on January 28, 2010, with the understanding that it would be delivered on January 29, 2010. However, the appeal was delivered on February 1, 2010. Mr. Bushey argued that he exercised due diligence to pursue his appeal and the fact that Federal Express failed to deliver his appeal until February 1, 2010 was beyond his control. The Board dismissed the appeal as untimely and confirmed that, "[n]either the RCW nor the civil service rules allow the Board to waive the jurisdictional requirements for filing appeals."

In Daniels v. Department of Corrections, PRB Case No. R-DEMO-09-007 (2009), Mr. Daniels argued that when he mailed his appeal on September 18, 2009, he was told by the US Postal staff that the letter should reach the Board by Monday, September 21, 2009. However, the Board did not receive the appeal until September 22, 2009, thirty-two (32) days after the effective date of Mr. Daniels' demotion. The Board found that it was unfortunate that Mr. Daniels was given misleading information by United States postal staff regarding the delivery time for mail from Lacey,

Washington, to the Board's office in Olympia. The Board referenced a history of cases in which the Board and the Personnel Appeals Board (predecessor to the Board) held that an appeal is untimely even when the affected employee had been unintentionally misled by an agency or given erroneous information about a process. See for example, Lapp v. Washington State Patrol, PAB No. V94-079 (1995) and Yialelis v. Dept. of Transportation, PRB No. R-ALLO-08-016 (2008).

While the Board understands that Mr. Turner believed he had allowed sufficient time for his appeal to be delivered timely, the Board may not waive the jurisdictional timelines found in statute. Mr. Turner's layoff was effective June 7, 2013, and his appeal was received July 9, 2013. Mr. Turner's appeal was received thirty-two (32) days after the effective date of his layoff. Therefore, the appeal is untimely and should be dismissed.

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

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Ivan Turner vs. University of Washington, PRB Case No. R-JUR-13-008, is dismissed.

DATED AND MAILED this _____ day of _____, 2013.

WASHINGTON PERSONNEL RESOURCES BOARD

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JOSEPH PINZONE, Chair

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DJ MARK, Vice Chair

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NANCY HOLLAND YOUNG, Member