BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

LISA BUCCARELLI & CLAUDETTE MITZEL, Appellants, vs. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	CASE NOS. R-RULE-11-002 & R-RULE-11-003 ORDER OF THE BOARD FOLLOWING HEARING ON EXCEPTIONS TO THE DETERMINATIONS OF THE DIRECTOR

Hearing on Exceptions. These appeals came before the Personnel Resources Board, DJ MARK, Chair, and JOSEPH PINZONE, Vice Chair, for a consolidated hearing on Appellants' exceptions to the director's determinations dated June 15, 2011. The hearing was held at the office of the Personnel Resources Board in Olympia, Washington, on August 31, 2011.

Appearances. Appellants Lisa Buccarelli and Claudette Mitzel were present and represented themselves. Glen Christopherson, Senior Director of DSHS's Human Resources Division, represented Respondent Department of Social and Health Services (DSHS).

Background. Effective March 1, 2009, Appellant Buccarelli and Appellant Mitzel were appointed to nonpermanent positions. Their positions were to end on February 28, 2010, but they were extended to February 28, 2011.

By letter dated February 8, 2011, prior to the end of Appellants' appointments, DSHS asked the director of the Department of Personnel to extend the appointments through February 28, 2012. The Department of Personnel received the letter on February 16, 2011. By email dated March 11, 2011, the Department of Personnel approved DSHS's request for the extension of Appellants' nonpermanent appointments through February 29, 2012.

On March 17, Appellant Mitzel filed a request for a director's review and asked the director to take remedial action to confer her permanent status in the nonpermanent position. On March 23, Appellant Buccarelli filed a request for a director's review and asked the director to take remedial action to confer her permanent status in the non-permanent position.

By letters dated March 30, 2011, DSHS notified Appellants of the extension of their nonpermanent appointments, effective March 1, 2011, through February 29, 2012.

On June 2, 2011, the director's designee conducted a review of Appellants' remedial action requests. On June 15, 2011, the designee issued review determinations denying the requests.

On July 12, 2011, Appellant Buccarelli filed exceptions to director's determination. On July 13, 2011, Appellant Mitzel filed exceptions to the director's determination. Appellants' exceptions are the subject of this proceeding.

Summary of Appellants' Arguments. Appellant Buccarelli argues that she should be given permanent status because she worked thirty days without being notified of an extension to her nonpermanent appointment. She clarified that she is not claiming DSHS violated a rule but she is appealing the length of time it took to receive the extension of her appointment. Ms. Buccarelli states that she loves her job and wants to continue working in the position.

Appellant Mitzel argues that she was in her position for over two years, has interviewed twice for a permanent appointment to the position, and does not feel she should be required to interview for the position again. Ms. Mitzel expresses concern about upcoming layoffs and the possibility that she may be bumped from the nonpermanent appointment. Ms. Mitzel explains that she has worked for the state for 20 years and acknowledges that she could return to her permanent position if she was bumped. But, she further explains that she loves her work and would like to remain in the position she currently occupies.

Summary of Respondent's Arguments. DSHS acknowledges that Appellants do excellent work and that the agency would like to retain them but explains that the state has been under a hiring freeze which hindered their desire to make permanent appointments. DSHS argues that the agency did not violate the rules regarding nonpermanent appointments. DSHS further argues that they requested the extensions prior the end of the appointments but that the Department of Personnel failed to respond to the request before the ending dates of the appointments. DSHS explains that the rules contain no time constraints regarding when the Department of Personnel must respond to requests to extend nonpermanent appointments and therefore, the March 11, 2011 response was timely under the rules.

Primary Issue. Whether the director's determinations denying Appellants' remedial action requests should be affirmed.

Decision of the Board. WAC 357-19-430 addresses when the director may take remedial action for nonpermanent general government appointments. WAC 357-19-430 states:

> The director <u>may</u> take remedial action to confer permanent status, set base salary, and establish seniority when it is determined that the following conditions exist:
>
> (1) The employer has made an appointment that does not comply with rules on nonpermanent appointment; or
>
> (2) The duration of a nonpermanent appointment as defined in WAC 357-19-360 (1) through (4) has exceeded twenty-four months without director approval.
>
> (Emphasis added.)

There is no dispute regarding whether DSHS complied with the rules governing nonpermanent appointments when it appointed Appellants to their positions. Therefore, remedial action is not appropriate under section (1) of the rule.

Additionally, DSHS requested approval from the director to extend Appellants' nonpermanent appointments before they exceed twenty-four months in the positions. The request was submitted sufficiently in advance to allow the director to respond before the appointments expired. DSHS followed a reasonable course of action, yet, through no fault of DSHS's, the approvals were not forthcoming in sufficient time to provide Appellants with proper notice of the extensions. However, the director ultimately extended Appellants' nonpermanent appointments through February 29, 2012. Therefore, remedial action is not appropriate under section (2) of the rule.

Finally, WAC 357-19-430 is permissive. The rule does not automatically confer permanent status if the conditions in section (1) or (2) exist. Rather, the rule allows the director to use discretion in considering the facts and circumstances of each request in determining whether remedial action is appropriate. Under the unique and specific circumstances of this case, DSHS complied with the rules governing nonpermanent appointments and remedial action is not appropriate.

In an appeal on exceptions, the party filing the appeal has the burden of proof. WAC 357-52-110. Appellants have failed to meet their burden of proof.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeals on exceptions by Lisa Buccarelli and Claudette Mitzel are denied and the director's determinations dated June 15, 2011, are affirmed.

DATED this _____ day of _____, 2011.

WASHINGTON PERSONNEL RESOURCES BOARD

_____

DJ MARK, Chair

_____

JOE PINZONE, Vice Chair