BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

LAWANDER THOMPSON, Appellant, vs. DEPARTMENT OF CORRECTIONS, Respondent.	)))))))))	CASE NO. R-DEMO-12-001 ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

1.1 **Consideration of Motion.** This matter came before the Personnel Resources Board, DJ MARK, Chair; JOSEPH PINZONE, Vice Chair; and NANCY HOLLAND YOUNG, Member, for consideration of Respondent's Motion for Summary Judgment. This matter was considered on written documents without oral argument.

1.2 **Representation.** Denise R. Pruitt, Assistant Attorney General, represented Respondent Department of Corrections (DOC). Appellant Lawander Thompson represented herself.

1.3 **Documents Considered.** The Board considered the files and documents in this matter including Respondent's Motion for Summary Judgment, filed July 10, 2012, and the Declaration of Donna Haley, with attached exhibits 1-7, also filed July 10, 2012. Appellant did not file a response to the motion.

II. BACKGROUND

2.1 On January 31, 2012, Appellant filed an appeal alleging that she was demoted and given a reduction in salary, effective January 3, 2012.

2.2 The Board acknowledged receipt of the appeal and a hearing was scheduled for October 10, 2012.

2.3 On July 10, 2012, Respondent filed a motion for summary judgment.

2.4 On July 11, 2012, Board staff issued a notice scheduling the motion to be consider on written argument. The notice stated that any responses to the motion were to be filed no later than Friday, July 24, 2012. On July 24, 2012, Board staff issued a corrected notice of scheduling. The corrected notice stated that any responses to the motion were due no later than Friday, July 27, 2012. Both notices provided the contact number for Board staff so that either party could contact staff with any questions. Appellant did not contact staff and did not file a response to the motion.

III. FINDINGS

3.1 Appellant was employed as a Human Resource Consultant 3 (HRC3)–Instructor in the Training and Development Unit of the Department of Corrections.

3.2 Appellant has a serious medical condition for which she sought reasonable accommodation.

3.3 Statewide travel is an essential function of an HRC3–Instructor position at the Department of Corrections. Additionally, working up to three hours in excess of the normal work day may be necessary to accommodate the travel.

3.4 Based on information from Appellant's medical provider, Appellant is permanently unable to travel long distances or work long hours.

3.5 Because Appellant was unable to perform the essential functions of an HRC3–Instructor, Respondent was unable to permanently accommodate Appellant as an HRC3-Instructor. Therefore, as the next step of the reasonable accommodation process, Respondent offered Appellant three permanent positions which she could successfully perform with the restrictions established by her medical provider.

3.6 Appellant accepted an Administrative Assistant position as an accommodation, which result in a lower salary for Appellant.

3.7 As of the date of her appeal, Respondent had not taken any disciplinary action against Appellant. Yet, on January 31, 2012, Appellant filed a disciplinary appeal with the Board.

IV. ARGUMENTS OF THE PARTIES

4.1 Respondent argues that Appellant filed a disciplinary appeal but that no disciplinary action occurred, therefore the appeal should be denied. Respondent explains that Appellant has a serious medical condition and sought reasonable accommodation. Respondent further explains that as result of the reasonable accommodation process, Appellant was offered three permanent positions which she could successfully perform given the restrictions identified by her medical provider. Respondent acknowledges that the position chosen by Appellant resulted in her receiving a lower salary but argues that this was not a disciplinary action. Respondent contends that Appellant's appeal should be dismiss because her reassignment to the Administrative Assistant position was a reasonable accommodation handled in accordance with the applicable rules and laws concerning accommodation of disabilities. Respondent further contends that the reassignment was not a disciplinary action as alleged by Appellant.

4.2 Appellant did not file a response to the motion.

V. DISCUSSION

5.1 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).

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

5.3 There are no disputes of fact that preclude summary judgment in this case. The issue before the Board is whether Appellant was subject to a disciplinary action resulting in a demotion or a reduction in salary, as alleged by Appellant.

5.4 The undisputed facts establish that Appellant accepted a lower level position as a result of the reasonable accommodation process. Therefore, Appellant's reassignment to a lower level position was not a disciplinary action. Respondent's Motion for Summary Judgment should be granted and the appeal should be denied.

5.5 The Board having reviewed the files and documentation, being fully advised in the premises now enters the following:

VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion for Summary Judgment is granted and the appeal of Lawander Thompson is denied.

DATED this _____ day of _____, 2012.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Chair

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JOSEPH PINZONE, Vice Chair

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NANCY HOLLAND YOUNG, Member