BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

PETER TRAN, Appellant, v. DEPARTMENT OF AGRICULTURE, Respondent.	)	PRB Case No. R-JUR-10-004 **ORDER OF DISMISSAL**

This matter came before the Personnel Resources Board, LAURA ANDERSON, Chair, and JOSEPH PINZONE, 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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> . . .
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> (3) An appeal is not filed on time . . . .

By appeal form signed October 19, 2010 and received November 29, 2010, Peter Tran filed an appeal of his dismissal. The dismissal was effective October 15, 2010. Mr. Tran mailed his appeal by United States Postal Service Express Mail. The Express Mail envelope indicates that the appeal was provided to the postal service on November 26, 2010.

Mr. Tran's appeal was received by the Personnel Resources Board forty-five (45) days after the effective date of his dismissal and appeared to be untimely.

Pursuant to WAC 357-52-045, by letter dated November 30, 2010, Board staff directed the parties to submit affidavits and/or written argument addressing the timeliness of the appeal. Affidavits and/or written argument were to be submitted within twenty-one (21) calendar days of the date of the letter.

On December 17, 2010, Respondent filed written argument contending that dismissal of the appeal was appropriate because the appeal was untimely. Respondent asserted that the Board cannot waive the jurisdictional requirements for filing appeals and accordingly, the appeal must be dismissed.

Mr. Tran did not file written argument addressing the issue of timeliness.

RCW 41.06.170(2) establishes the timeframe for filing appeals to the Personnel Resources Board. The RCW states, in relevant part: "[a]ny employee who is . . . dismissed . . . shall have the right to appeal, either individually or through his or her authorized representative, not later than thirty days after the effective date of such action. . . ."

In addition, WAC 357-52-015 provides, in relevant part: "[i]n order to be considered timely, an appeal must be received in writing at the office of the board within thirty calendar days after: . . . The effective date of the disciplinary action. . . ."

WAC 357-52-225 provides, in part: "[p]apers that must be filed with the board are considered to be filed only when the papers are actually received in the board's office in Olympia, Washington."

The Board has addressed the issue of timeliness on numerous occasions. For example, in Daniels v. Dept. of Corrections, PRB Case No. R-DEMO-09-007 (2009), Mr. Daniels believed he had deposited his appeal with the United States Postal Service with sufficient time for the appeal to arrive timely at the Board's office. In its order dismissing the appeal request, Board stated that "[i]t is 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. However, there is a history of cases in which this Board and the Personnel Appeals Board (predecessor to this Board) has 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)." In Daniels, the Board further stated that,

"[w]hile the Board understands that Mr. Daniels relied on information given to him by postal staff, the Board may not waive the jurisdictional timelines found in statute."

In Heath v. Central Washington University, PRB Case No R-SUSP-08-007 (2008), Mr. Heath argued that he intended to mail his appeal on time and asked the Board to consider the extra distance required for the mail to travel be considered the mitigating factor for his appeal being one day late. In its order dismissing the appeal, the Board stated that "[n]either the RCW nor the civil service rules allow the Board to waive the jurisdictional requirements for filing appeals. The RCW and the rules require that the appeal must be received by the Board within thirty (30) days of the effective date of the disciplinary action."

The Board has consistently held that neither the RCW nor the civil service rules allow the Board to waive the jurisdictional requirements for filing appeals. The RCW and the rules require that an appeal must be received by the Board within thirty (30) days of the effective date of the action appealed.

On December 28, 2010, Board staff served the parties with a Notice of Potential Dismissal. The notice stated 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 January 12, 2011, Mr. Tran filed a response to the Notice of Potential Dismissal. In summary, Mr. Tran argues that the actions taken by Respondent resulting in his dismissal were untimely, unfair, and malicious; that at the time of the dismissal, he lacked the mental capacity to respond to the charges; that Respondent's delay tactics caused him mental distress; and that Respondent's action violated the Family Medical Leave Act. Mr. Tran asks the Board to give fair consideration to all the facts and his unique situation and to allow a hearing on his appeal.

Respondent did not file a response to the Notice of Potential Dismissal.

Mr. Tran's dismissal was effective October 15, 2010. He was informed of his dismissal by letter dated October 1, 2010. The October 1, 2010 letter also informed him of his right to appeal to the Board within thirty calendar days after the effective of his dismissal. But, the appeal was not filed until November 29, 2010. The appeal was received forty-five (45) days after the effective date of the dismissal.

RCW 41.06.170 sets forth the jurisdiction requirements for filing appeals to the Board. One of those requirements is that appeals of dismissals must be filed within thirty (30) days of the effective date of the dismissal. The Board may not waive this jurisdictional requirement. Mr. Tran's appeal was not filed within thirty days of the effective date of his dismissal. Therefore, the appeal 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 request of Peter Tran v. Department of Agriculture, PRB Case No. R-JUR-10-004, is dismissed.

DATED AND MAILED this _____ day of _____, 2011.

WASHINGTON PERSONNEL RESOURCES BOARD

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LAURA J. ANDERSON, Chair

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JOSEPH PINZONE, Member