



**STATE OF WASHINGTON**  
**OFFICE OF FINANCIAL MANAGEMENT**

STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM  
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July 28, 2015

TO: Connie Goff, PHR  
Rules and Appeals Program Manager

FROM: Lucy Macneil  
Director's Review Program Investigator

SUBJECT: Brooks Salazar v Board of Industrial Insurance Appeals (BIIA)  
Allocation Review No. ALLO-14-074

**Director's Determination**

This position review was based on the work performed for the six-month period prior to April 25, 2014, the date BIIA HR received Brooks Salazar's request for a position review. As the Director's Designee, I carefully considered all of the documentation in the file, including the exhibits presented during the Director's review conference and the verbal comments provided by both parties. Based on my review and analysis of Mr. Salazar's assigned duties and responsibilities, I conclude his position is properly allocated to the Legal Secretary 1 classification.

**Background**

On April 25, 2014, BIIA HR received Mr. Salazar's Position Review Request (PRR) form, requesting that his Legal Secretary 1 (LS 1) position be reallocated to the Legal Secretary 2 class (LS 2). (Exhibit B-4)

BIIA HR conducted a position review and notified Mr. Salazar on June 20, 2014 that his position was properly allocated to the LS 1 class. (Exhibit B-1)

On July 11, 2014, Mr. Salazar filed a request for review with State HR. (Exhibit A-1)

On April 14, 2015, I conducted a review conference with the parties. Present for the conference were Mr. Salazar; Christy Sterling, Human Resource Manager/BIIA HR; and Janet Whitney, Chief Industrial Appeals Judge. Mr. Salazar waived the right to have his union representative present.

### **Rationale for Director's Determination**

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. *Liddle-Stamper v. Washington State University*, PAB Case No. 3722-A2 (1994).

### **Duties and Responsibilities**

Mr. Salazar is a Judicial Assistant in the Dispute Resolution Unit at BIIA.

Mr. Salazar's duties are described in detail in the PRR submitted for reallocation (Exhibit B-4). He describes the duties of his position as follows:

To perform legal technical, secretarial and administrative work for an Administrative Law Judge.

His major job duties are listed in the PRR as follows:

25%      **Duty:** Case Management

**Tasks**

Tracking cases using reports, responding properly to deadlines, and bringing cases that need action to the Judge's attention. Filing and organizing cases for trial and for superior court.

35%      **Duty:** Drafting Legal Documents

**Tasks**

Drafting letters: warning, Pro-Se, Pre-conference, Response, etc.

35%      **Duty:** Communication with constituents

**Tasks**

Scheduling, answering procedural questions, discussing case status, etc.

4%      **Duty:** Data Entry

1%      **Duty:** Other duties as required

### **Supervisor's Comments**

Mr. Salazar works in the Seattle office of the BIIA Dispute Resolution Unit and reports to Rick Foster, Industrial Insurance Program Coordinator, who in turn reports to Mark Jaffe, Assistant Chief Appeals Judge at BIIA.

Mr. Foster submitted the Supervisor Portion of the Position Review Request on May 29, 2014. He believes that the purpose of Mr. Salazar's position is better defined as follows:

Under the supervision of the Seattle Office's Program Coordinator, works as a judicial assistant to three industrial appeals judges under the guidance of agency policies and procedures, assisting them in the management of cases, conduct of judicial proceedings, and issuance of written orders and decisions in appeals arising under the Industrial Insurance Appeals Act, Crime Victim's Compensation Act, and the Washington Industrial Safety and Health Act. (Exhibit B-11)

Mr. Foster agrees in general with Mr. Salazar's description of his duties and his examples of decisions that he can make without prior approval, but he does not believe that Mr. Salazar accurately describes decisions that require approval as limited to "when signature is required." (Exhibit B-4) Mr. Foster states:

Changing any wording other than obvious typos in a dispositive order such as a Proposed Decision and Order written by the judge would require either my awareness and approval from a supervisory judge, or the approval of the judge who wrote the PDO Mr. Salazar is working with.

Mr. Foster goes on to note that he is aware of Mr. Salazar's concern about the pay level of his job, and notes that Legal Secretary 1s working for the Seattle Attorney General Offices receive special pay equivalent to a three range increase above Legal Secretary 1s in the BIIA Seattle office because of recruitment and retention issue documented in the past. (Exhibit B-11)

### ***Summary of Employee's Perspective***

Mr. Salazar's perspective is fully described in Exhibit B-2. Mr. Salazar asserts "I feel my duties should be considered "Entry-Level Paralegal duties." The Legal Secretary 2 classification lists the following as typical entry level paralegal duties:

Drafting standard interrogatories, assisting an attorney or paralegal in deposition summaries and case summaries; conducting basic legal research, drafting requests for production of documents and responses, organizing and preparing trial notebooks, pleadings and exhibits to be used at trial.

Mr. Salazar acknowledges that he does not perform these duties, but asserts that his work creating, amending and correcting Interlocutory Orders Establishing Litigation Schedules (LITs) is equivalent to drafting standard interrogatories. He believes that his responsibility for double-checking and correcting miscited RCW's and WAC's is work similar to conducting basic legal research. Mr. Salazar also believes that his responsibility for drafting the Order on Agreement of Parties when settlements have been reached is equal to drafting requests for production of documents and responses.

For these reasons, Mr. Salazar believes his position should be reallocated to the Legal Secretary 2 classification.

### ***Summary of BIIA HR's Perspective***

Ms. Sterling disagrees with Mr. Salazar's assertion that his responsibilities are best described by the Legal Secretary 2 classification. She notes that Janet Whitney, Chief Industrial Appeals Judge, who oversees the Dispute Resolution Division, does not consider Mr. Salazar's duties to be equivalent to "entry-level paralegal" duties. In addition, Ms. Sterling notes that individuals allocated to the Legal Secretary 2 classification must be "...recognized and designated in writing by management to be responsible...for specialized entry level paralegal or computer support duties." (Exhibit B 13) Because Mr. Salazar has not been so designated, and because his work is not equivalent to entry paralegal work, Ms. Sterling has determined that Legal Secretary 1 is the correct classification for Mr. Salazar.

### **Comparison of Duties**

When comparing the assignment of work and level of responsibility to the available class specifications, the Class Series Concept (if one exists) followed by the Definition and Distinguishing Characteristics (if they exist) are primary considerations. While examples of typical work identified in a class specification do not form the basis for an allocation, they lend support to the work envisioned within that class.

### **Classifications Reviewed**

#### ***Comparison of Duties to Legal Secretary 2***

The Definition of the Legal Secretary 2 states:

Performs legal technical, secretarial and administrative work or performs legal secretarial work for an attorney AND is recognized and designated in writing by management to be responsible, on a regular and ongoing basis for at least a quarter of the time, for specialized entry level paralegal or computer support duties.

The Distinguishing Characteristics are:

Incumbents who perform administrative duties but do not perform one of the specialized duties must function as the principal legal secretary to an Administrative Law Judge, review judge, or Assistant Attorney General who heads up a major legal division or section.

Entry level paralegal duties typically include the following functions: drafting standard interrogatories, assisting an attorney or paralegal in deposition summaries and case summaries; conducting basic legal research, drafting requests for production of documents and responses, organizing and preparing trial notebooks, pleadings and exhibits to be used at trial.

Computer support duties include all of the following functions: training staff in the use of computers and software in a network environment; assisting staff with problems or questions pertaining to computer production work; serving as liaison

with an information services division (or equivalent), communicating operational needs for increased programming, and serving as liaison in training and assisting staff in adapting to hardware, software and network changes.

Mr. Salazar does provide legal technical and secretarial work for a number of Administrative Law Judges, but does not serve as a principal legal secretary. He does not perform specialized computer support duties. Mr. Salazar believes that a significant portion of his duties are equivalent to the entry level paralegal duties identified as Distinguishing Characteristics for Legal Secretary 2, but Judge Whitney disagrees. For example, Mr. Salazar equates his responsibility for double-checking and correcting RCW and WAC citations in documents to conducting basic legal research. Judge Whitney does not agree that Mr. Salazar's checking citations constitutes basic research.

According to notes taken by Ms. Sterling after her meeting with Judge Whitney on June 12, 2014, Judge Whitney indicated that none of the duties Mr. Salazar identified as equivalent to entry level paralegal work are, in fact, paralegal work. (Exhibit B-16)

Mr. Salazar has not been recognized and designated in writing by BIIA management to be responsible for specialized entry level paralegal support. His work does not meet the definition of Legal Secretary 2.

### ***Comparison of Duties to Legal Secretary 1 (LS 1)***

The Definition of the Legal Secretary 1 states:

Performs legal technical and secretarial work for an attorney, Administrative Law Judge, Industrial Appeals Judge, review judge or equivalent. Acts as a liaison between Assistant Attorney(s) General and campus personnel, opposing counsel, court and/or judicial department personnel and/or members of the general public.

The Distinguishing Characteristics are:

This class differs from general clerical and secretarial classes in that Legal Secretaries work more as personal assistants to attorneys, Administrative Law Judges, Industrial Appeals Judges, review judges or equivalent to whom assigned. They also have greater responsibility than other clerical support classes to initiate their work in relieving the attorney, Administrative Law Judge, Industrial Appeals Judge, review judge or equivalent of technical aspects of legal practice. Performs complex legal secretarial duties; drafts documents and correspondence using legal, medical and/or other technical terminology; checks legal citations and references.

Mr. Salazar performs legal technical and secretarial services for Administrative Law Judges. He initiates work in relieving his Administrative Law Judges of technical aspects of legal practice. He performs complex legal secretarial duties, drafting documents and correspondence using legal and medical terminology, and checks legal citations and references. (Exhibit B 5-9)

In addition to meeting the definition and distinguishing characteristics of Legal Secretary I, many of Mr. Salazar's duties are specifically described in the Typical Work section of the Legal Secretary 1 class specification, including the following:

Schedules and completes arrangements for witness appearances at...hearings...using knowledge of specific...hearing schedules; (Exhibit B-5)

[Contacts] other attorneys and parties to legal action to obtain or relay technical information...makes note of the appearance of parties, witnesses and interpreters at hearing; makes note of non-appearance of appellant for default...(Exhibit B-6)

Most positions within the civil service system occasionally perform duties that appear in more than one classification. However, when determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. See *Dudley v. Dept. of Labor and Industries*, PRB Case No. R-ALLO-07-007 (2007).

Based on the above analysis of Mr. Salazar's duties, his position is properly allocated to the Legal Secretary 1 class.

### **Appeal Rights**

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides in relevant part, the following:

An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to . . . the Washington personnel resources board . . . . Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The mailing address for the Personnel Resources Board (PRB) is PO Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located on the 3rd floor of the Raad Building, 128 10th Avenue SW, Olympia, Washington. The main telephone number is (360) 407-4101, and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: Brooks Salazar  
Christy Sterling, BIIA HR

Enclosure: Exhibits List

## List of Exhibits

### A. Brooks Salazar Exhibits

1. Director's Review Form received July 11, 2014 (2 pages)
2. Allocation determination letter dated June 20, 2014 (3 pages)

### B. Bureau of Industrial Insurance Appeals Exhibits

1. Allocation determination letter dated June 20, 2014 (3 pages)
2. Position Description Form for position #0136
3. Organizational Chart
4. Position Review Request Form Employee Portion received by BIIA HR on April 25, 2014, (4 Pages)
5. Attachment #1 included with PRR Employee Portion
6. Attachment #2 included with PRR Employee Portion
7. Attachment #3 included with PRR Employee Portion
8. Attachment #4 included with PRR Employee Portion
9. Attachment #5 included with PRR Employee Portion
10. Email and attachments from Brooks Salazar dated May 15, 2014
11. PRR Supervisor Portion
12. Legal Secretary 1 (LS1) Job Specification
13. Legal Secretary 2 (LS2) Job Specification
14. Summary of LS1 and LS2 Definitions and Distinguishing Characteristics prepared by BIIA HR
15. Summary Chart prepared by BIIA HR
16. BIIA HR notes from June 12, 2014 meeting with Janet Whitney, Chief Industrial Appeals Judge and Beth Blue, Senior Program Administrator
17. Email from Christy Sterling dated April 14, 2015 correcting headings in Exhibit B-15

### C. Class Specifications

1. Legal Secretary 1
2. Legal Secretary 2