

May 6, 2008

Debbie Brookman
Washington Federation of State Employees
1210 Eastside Street SE, Suite 100
Olympia, WA 98501

RE: Kay Doering v. Department of Social and Health Services (DSHS)
Allocation Review No. ALLO-07-057

Dear Ms. Brookman:

On March 14, 2008, I sent a letter to you and Pamela Pelton at DSHS, addressing the timeliness of Ms. Doering's Director's review request. In a letter dated March 31, 2008, you indicated Ms. Doering received the allocation decision letter, dated June 12, 2007, through regular mail via the United States Postal Service. You further indicated that Ms. Doering received her letter on June 15, 2007. DSHS did not respond to the issue of timeliness.

Article 41.2 of the Collective Bargaining Agreement (CBA) between the State of Washington and the Washington Federation of State Employees provides that an employee "may appeal the agency's decision to the Director of the Department of Personnel within thirty (30) calendar days of being provided the results of a position review or the notice of reallocation." Article 41.2 is consistent with WAC 357-13-080(1), which requires employees to request a Director's review within thirty calendar days "of being provided the results of a position review or the notice of reallocation."

While I recognize that Article 49.2 of the CBA indicates that with regard to Chapter 357 WAC, the CBA preempts all subjects addressed, in whole or in part, the CBA does not address service of notice. Therefore, the Civil Service Rules apply.

WAC 357-04-105(1) provides, in part, the following:

. . . when the civil service rules require an . . . employee . . . to receive notice, **the notice must be provided** by personal delivery, United States mail, or by telephone facsimile transmission **with same-day mailing of copies** unless the

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specific rule requiring notice allows for alternative methods of providing notice such as electronic mail ("e-mail"), state mail service, commercial parcel delivery or campus mail service (**emphasis added**).

WAC 357-04-105(2) then provides, in part, the following:

. . . service of notice upon parties will be regarded as completed when personal delivery has been accomplished; or upon deposit in the United States mail, properly stamped and addressed; or upon production by telephone facsimile transmission of confirmation of transmission. When a specific rule allows alternative methods of service, service upon parties will be regarded as completed when it is actually received by the party to which notice is being provided.

In your March 31, 2008 letter, you referenced the date Ms. Doering received her allocation decision letter. However, the service of notice, as indicated by WAC 357-04-105(2), is the date the letter is deposited in the United States mail. Based on the June 12, 2007 date on the letter from DSHS, Ms. Doering was provided (served with) the allocation decision on that date. The deadline for requesting review elapsed on July 12, 2007. Since Ms. Doering's request was not received until July 13, 2007, it was untimely. Therefore, the matter is closed.

Either party may appeal the Director's determination on timeliness to the Personnel Resources Board (Board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC. Please refer to the Collective Bargaining Agreement regarding appeal rights to the Personnel Resources Board.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The address for the Personnel Resources Board is 2828 Capitol Blvd., P.O. Box 40911, Olympia, Washington, 98504-0911.

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

Sincerely,

Teresa Parsons, SPHR
Director's Review Program Supervisor
Legal Affairs Division

c: Kay Doering