

February 16, 2010

TO: David Kerr

FROM: Teresa Parsons, SPHR
Director's Review Program Supervisor

SUBJECT: David Kerr v. Employment Security Department (ESD)
Allocation Review Request ALLO-09-035

On December 17, 2009, I conducted a Director's review telephone conference regarding the allocation of your position. In addition to you, the following individuals participated in the conference: Shelly Swanson, Shop Steward/Union President Local 435; Lorna Mance, Human Resource Consultant; Teresa Eckstein, Classification Manager; and Gene Walker, Adjudication Manager.

Director's Determination

As the Director's designee, I carefully considered all of the documentation in the file and verbal comments provided by both parties. Based on my review and analysis of your assigned duties and responsibilities, I conclude your position is properly allocated to the Unemployment Insurance Specialist 3 classification.

Background

On April 23, 2009, Human Resource Consultant Lorna Mance notified you that your position (#1021C) was being reallocated downward from an Unemployment Insurance Specialist 4 to the Unemployment Insurance Specialist 3 classification (Exhibit B-2). The effective date of the action was May 16, 2009 (Exhibit B-3). At the time of your position's reallocation, you were assigned to the King County TeleCenter, Training and Benefits Unit (TB Unit) under supervisor Mark Lambert (Exhibit B-9).

Prior to January 2006, your position had been assigned to the Adjustment Unit of the TeleCenter (see organizational structure - Exhibit B-9). At that time, you reported to Norris Aylesworth (Exhibit B-6). During the Director's review conference, both parties explained that around January 2006, your position was transferred to the Training and Benefits Unit. While you believed you had taken a different, temporary position in the Training and

Benefits Unit, ESD clarified that you remained in Position #1021C and that Position #1021C had actually been reassigned to the Training and Benefits Unit.

On May 26, 2009, the Department of Personnel received your request for a Director's review of ESD's action. In your request for a Director's review, you referenced law and rule violations regarding "the opportunity to return to [your] original position" (Exhibit A-1). However, an appeal of an alleged rule violation is not an action available to an employee subject to the provisions of a collective bargaining agreement (RCW 41.06.170(5)). Therefore, the focus of the Director's review is on the allocation of your position.

The following summarizes your viewpoint, as well as your employer's:

Summary of Mr. Kerr's Perspective

Mr. Kerr asserts that he worked as an Unemployment Insurance Specialist 4 prior to moving to the Training and Benefits Unit and that he understood he was filling a temporary Unemployment Insurance Specialist 4 position when a person in the same job class retired. After moving to the Training and Benefits Unit, Mr. Kerr asserts he continued to adjudicate claims and perform duties at the Unemployment Insurance Specialist 4 level. Mr. Kerr does not question management's right to reallocate the Training Benefit positions; however, he believes his position should remain in the same classification as an Unemployment Insurance Specialist 4 in an adjudicator position.

Summary of ESD's Reasoning

ESD clarifies that Mr. Kerr's position moved to the Training and Benefits Unit, and as the incumbent, he moved with the position. ESD contends that Mr. Kerr's duties and responsibilities changed when his position was reassigned. As a result, ESD asserts Mr. Kerr was no longer performing work at the Unemployment Insurance Specialist 4 level. ESD indicates that the scope of work assigned to Unemployment Insurance Specialists in the Training and Benefits Unit involves writing training benefit decisions, which are not as in-depth as determinations written by adjudicators working in the Adjustment Unit. ESD asserts that adjudicators allocated to the Unemployment Insurance Specialist 4 class handle a full scope of claims involving more complex issues. ESD states that Mr. Kerr had been performing Unemployment Insurance Specialist 3 level work for about three years, since he moved to the Training and Benefit Unit. After conducting a review of the positions in his work unit, ESD determined that his position should be reallocated downward.

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).

A summary of the Position Objective for Position #1021C includes the following:

As an Unemployment Insurance (UI) Specialist 3, have a thorough understanding of UI law and policy to produce quality decisions. Write a minimum of forty non-monetary decisions in a normal forty hour week so timeliness and quality standards are met for Training Benefit applicants.

A summary of the majority of work described as 80% includes the following:

- Maintaining full workload of Training Benefit applications involving non-monetary issues;
- Making out-bound and in-bound calls in response to requests for claim-related information to interview claimants and others to obtain facts necessary to make eligibility decisions and redeterminations;
- Accessing document imaging system to retrieve claim issues;
- Reviewing documents to identify and analyze key factors relevant to issues;
- Applying knowledge of law and policy to key factors to decide whether to allow or deny benefits;
- Accessing electronic benefit payment system and selecting appropriate issue resolution codes;
- Composing text of decisions into electronic letter writing system.

When comparing the assignment of work and level of responsibility to the available class specifications, the class series concept (if one exists) followed by definition and distinguishing characteristics 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 a classification.

The **Unemployment Insurance Specialist 4** definition states, in part, that positions adjudicate unemployment insurance claims and apply complex laws, rules, regulations, policies and procedures applicable to the unemployment insurance program. The distinguishing characteristics include the following:

Adjudication: This is the fully qualified adjudicator. Works independently. Makes and issues determinations or redeterminations to allow or deny UI benefits that involve non-monetary issues. The majority of the time is spent maintaining a full workload of unemployment insurance claims involving non-monetary issues such as quits, discharges, availability, suitability, fraud and routine overpayment. Conducts fact-finding with claimants, employers, employer representatives, and third parties when required. Determines rebuttal requirements and need to obtain additional facts, and advises claimants of final rights and responsibilities. Represents the agency in appeal hearings.

During the Director's review conference, Ms. Walker, as the Adjudication Manager, emphasized that positions allocated to the Unemployment Insurance Specialist 4 level maintain a full workload of unemployment insurance claims the majority of the time. As an example, Ms. Walker referenced the full scope of issues identified by the list of UI functions, and she stated that adjudicators at the Unemployment Insurance Specialist 4 level perform this full range of duties (Exhibit B-10). Ms. Walker indicated that all of these functions are handled by adjudicators in the Adjustment Unit. By contrast, Ms. Walker stated the majority of claim issues assigned to your position primarily fit within the section identified as training in items T-1 through T-9 (Exhibit B-10). The scope of work assigned to your position does not fit the Unemployment Insurance Specialist 4 classification.

The **Unemployment Insurance Specialist 3** definition includes the following:

. . . as an adjudicator, makes and issues formal and informal written decisions to allow or deny unemployment insurance claims that involve non-monetary issues. All positions apply complex laws, rules, regulations, policies, and procedures applicable to the unemployment insurance program.

The Unemployment Insurance Specialist 3 distinguishing characteristics, in relevant part, include:

Adjudication:

Entry level adjudicator. Works under close supervision. Makes and issues determinations or redeterminations to allow or deny UI benefits that involve non-monetary issues. The majority of the time is spent gaining proficiency to maintain a full workload of unemployment insurance claims involving non-monetary issues such as quits, discharges, availability, suitability, fraud and routine overpayment. Conducts fact-finding with claimants, employers, employer representatives, and third parties when required, determine rebuttal requirements and need to obtain additional facts, and advise claimants of final rights and responsibilities.

The duties and responsibilities assigned to your position fit within this classification. Your position has been tasked with issuing formal and informal written decisions to allow or deny unemployment insurance claims that involve non-monetary issues as they relate to training benefits. Based on Ms. Walker's comments regarding the variety and scope of work assigned to your position, the Unemployment Insurance Specialist 3 classification is the best fit for your position (#1021C).

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 P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located at 600 South Franklin, Olympia, Washington. The main telephone number is (360) 664-0388, and the fax number is (360) 753-0139.

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

c: Lorna Mance, ESD
Lisa Skriletz, DOP

Enclosure: List of Exhibits

David Kerr v. Employment Security Department (ESD)

ALLO-09-035

List of Exhibits

A. David Kerr Exhibits

1. Request for Director's Review May 26, 2009
2. ESD's Allocation determination letter April 23, 2009
3. July 21, 2009 letter to Karen Wilcox from Shelly Swanson, Union President Local 435, with further explanation of Director's review request (with attachments that are duplicates of B-2, B-3, B-4, and B-6 below).

B. ESD Exhibits

1. June 24, 2009 memo from Lorna Mance, ESD, addressing timeliness
2. ESD's Allocation determination letter April 23, 2009
3. May 13, 2009 allocation letter with amended effective date
4. Position Action Request May 1, 2009
5. Position Description Form, April 2009
6. Classification Questionnaire from March 2000
7. Class Specification: Unemployment Insurance Specialist 3
8. Class Specification: Unemployment Insurance Specialist 4
9. Organizational Structure
10. List of UI Codes, Functions, and Systems