

September 8, 2010

Jennifer Swogger

RE: Jennifer Swogger v. Department of Social and Health Services
Allocation Review Request ALLO-10-026

Dear Ms. Swogger:

On June 8, 2010, Director's Review Coordinator, Karen Wilcox, sent a letter to both parties addressing the timeliness of your request. On June 10, 2010, Pamela Pelton, Classification & Recruitment Manager in DSHS's Human Resources Division, provided an email response. In her response, Ms. Pelton indicated the allocation determination letter was provided to your supervisor on May 4, 2010; however, the letter was dated May 5, 2010, and mailed no later than May 5, 2010. You did not provide a response to the timeliness issue.

WAC 357-13-080(1) requires employees to request a Director's review (per WAC 357-49-010) within thirty calendar days "of being provided the results of a position review or the notice of reallocation."

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 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.

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.

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Based on Ms. Pelton's indication the May 5, 2010 allocation determination letter "was in the mail no later than May 5th," you were provided (served with) the allocation determination on that date. The deadline for requesting review elapsed on June 4, 2010. Although you emailed a request for a Director's review to Department of Personnel's Classification Unit on June 4, 2010, WAC 357-49-023(3) states, in part, that "filing of papers for director's review requests by electronic mail ("e-mail") is not authorized without the express prior approval of the director . . ." The Director's Review Program received your request on June 7, 2010. As a result, your request is untimely, and the matter is closed.

Either party may appeal the Director's determination on timeliness to the Personnel Resources Board by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC.

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 600 South Franklin, 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: Pam Pelton, DSHS