STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT
STATE HUMAN RESOURCES | DIRECTOR'S REVIEW PROGRAM
P.O. Box 40911 · Olympia, WA 98504-0911 · (360) 407-4101 · FAX (360) 586-4694

July 31, 2014

TO: Connie Goff, PHR
Office Chief, Rules and Appeals

FROM: Kris Brophy, SPHR
Director's Review Program Investigator

SUBJECT: Terry Shew v. Department of Licensing (DOL)
Allocation Review Request ALLO-13-079

This position review was based on the work performed for the six-month period prior to September 20, 2012, the date DOL Human Resources (DOL HR) received Ms. Shew's request for a position review. As the Director's Review Investigator, I carefully considered all of the documentation in the file, the exhibits, and the written comments provided by both parties. Based on my review and analysis of Ms. Shew's assigned duties and responsibilities, I conclude her position is properly allocated to the Hearing Scheduler classification**.**

Background

On September 20, 2012, DOL HR received Ms. Shew's Position Review Request (PRR) form, requesting that her Hearing Scheduler position be reallocated to Legal Secretary 1 (LS 1) (Exhibit B-2).

DOL HR conducted a position review and notified Ms. Shew on September 12, 2013 that her position was properly allocated to the Hearing Scheduler class (Exhibit B-1).

On October 3, 2013, State Human Resources, OFM received Ms. Shew's request for a Director's review of DOL's allocation determination (Exhibit A-1).

On June 11, 2014, I conducted a consolidated Director's review conference regarding the allocation of the following positions:

Duane Guertin	(ALLO-13-078)
Terry Shew	(ALLO-13-079)
Amy Tran	(ALLO-13-080)

Also present for the conference were Lisa Goldschmidt, Council Representative, WFSE; Toni Hood, Hearings and Interviews Manager, DOL; Gynger Steele, Hearings & Interviews Assistant Administrator, DOL; DOL; Brett Alongi, HRC, DOL; and Jeanne Wright, HRC, DOL.

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

Ms. Shew is a member of the Hearings and Interviews Unit located within the Programs and Services Division of DOL. Ms. Shew reported to Ms. Rita Nucciarone, Customer Service Specialist 4 during the review period.

Ms. Shew's duties are summarized from the PRR as follows:

30% **Duty:** Liaison

Provide legal research and explain the technical and detailed RCW and WAC requirements and procedures to the Attorney(s) General Office, members of the campus community, opposing and co-counsel, drivers, law enforcement, internal personnel, Governor's office, Hearing Examiners and the general public.

Initiate telephone hearings upon Hearing Examiner's request. Connect parties in order to start the hearing. Notify Hearing Examiner if a party is not reachable and unable to appear. Arrange for interpreter at request of the driver and/or defense attorney.

Communicate any additional coverage arrangements regarding the hearing. Maintain contact with law enforcement agencies, defense attorneys and drivers as necessary. Notify parties and Hearing Examiners of the accuracy of the legal documents and inconsistency with RCW's and provide technical information for compliance.

Identify and provide information regarding timelines and guidelines. Analyze and extract data from state systems using extreme caution with respect to confidential data.

May reschedule hearings upon a scheduling conflict and provide assistance and serve as a liaison to witnesses, defense attorneys and drivers.

25% **Duty:** Preparation for Hearing

Prepare for hearings by organizing and verifying documents for accuracy and completeness in accordance with RCWs, WACs, and policies and procedures.

Verify, update, and advise Hearing Examiners of any new information. Notify defense attorneys and/or drivers of accuracy/completeness of legal documents identifying any inconsistency with RCWs and WACs and provide technical information for compliance.

Receive and review incoming documents and process them according to RCW, WAC, and policy and procedures. Verify that appropriate information is included on documentation and/or imaging to ensure accurate processing. Verify accuracy and completeness of legal documents identifying any inconsistency with RCWs and WACS and provide technical information for compliance.

Prepare case files for scheduling by organizing and verifying documents for accuracy and completeness. Enter and retrieve case information using computer based data system. Review and input pertinent case information into database. Ensure timely action or review in accordance with RCWs, WACs and policies and procedures.

Prepare hearing exhibits for telephone hearing. May obtain, review, redact, and create and prepare Hearing Notice to be mailed with discovery to defense council and/or driver. Additional documents may be submitted for approval on a case by case basis.

Monitor and verify deadlines in accordance with RCWs, WACs and policies and procedures. Verify documents for accuracy and completeness upon request of hearing or reschedule to avoid dismissals. Verify, update, notify parties of any new information, and update calendars in accordance with policy and procedure.

20% **Duty:** Scheduling of a Hearing

Schedule hearings in a timely and efficient manner. Review, organize, and verify documents for accuracy and completeness.

Manage, maintain, and coordinate state wide calendars for Hearing Examiners to ensure coverage for all hearings. Schedule hearings in a timely manner. Prepare and send out electronically the initial document to hearing examiner, prepare/send all legal documents to imaging. At the time of scheduling arrange for an interpreter at request of the driver and/or defense attorney and prepare the voucher for payment. Immediately notify the Hearing Examiner of anything that requires their immediate attention. Notify the Hearing Examiners of any changes or additional documents that may affect the outcome of the hearing.

May reschedule hearings to accommodate the availability of all parties involved upon a scheduling conflict and provide assistance to witnesses, defense attorneys, and drivers regarding the scheduling of a hearing.

20% **Duty:** Records Management

Enter and retrieve case information using computer based system. Monitor cases to ensure timely action or review. Review and input pertinent case information into the database. Provide and request additional information as necessary. Immediately notify Hearing Examiner of anything that requires their immediate attention. Notify the Hearing Examiners of any changes or additional documents received that may affect the outcome of a hearing.

Review, process and mail the Findings of Fact and Conclusions of Law [i.e. decision] along with a letter of Suspension/Revocations or Dismissal to the defense attorney and/or the driver. Review the decision for accuracy, missing

information, conflicting information between the schedule memo and the decision, and to verify the use of the correct templates.

As the Custodian of Records, maintain, review, revise, update and correct driver's records using the appropriate computer based system in accordance with RCWs, WACs and policies and procedures.

Supervisor's Comments

Ms. Nucciarone completed the supervisor's portion of the PRR and indicates that Ms. Shew's description of her assigned duties and responsibilities is accurate and complete.

Summary of Ms. Shew's Perspective

Ms. Shew asserts that over the last eight years her duties have expanded beyond scheduling DUI hearings and processing final orders to now performing the duties of the Legal Secretary 1 class.

Ms. Shew contends the Legal Secretary 1 class does not require supervision by an attorney and she works with a specific set of examiners directly assigned to her position. Ms. Shew asserts that although she reports to a different supervisor, she works directly with her assigned hearings examiners when there are problems with final orders or when documents are missing. She also contends that she answers their questions directly about procedures, and when something is wrong with the final order she works directly with them to resolve the situation. Ms. Shew also acknowledges that while she does schedule hearings, the majority of her job now involves reviewing final orders for accuracy on behalf of the hearing examiner.

Additionally, Ms. Shew asserts that her position meets the Legal Secretary 1 class by providing direct legal secretarial support to Hearing Examiners. Ms. Guerin asserts her position acts as a liaison between the Hearing Examiners and the parties. She contends she provides legal research which includes explaining the technical requirements of the RCWs, WACs and procedures regarding the hearings process. She contends she responds to questions and educates external customers on processes and procedures regarding the hearings process as well as other DOL licensing policies. She states that she answers questions for defense attorneys or police officers and also works directly with her assigned Hearing Examiners to answer clerical questions regarding their final orders. For example, if a driver calls in with questions, she acts as a buffer to the Hearing Examiner. She asserts her position serves to relieve the Hearing Examiners of these tasks so that they can focus on holding hearings, researching the laws, and issuing decisions.

She also states that she performs other legal secretarial duties such as reviewing and approving submitted documents for completeness and compliance in order to schedule hearings. Ms. Shew asserts she initiates telephone hearings upon the Hearing Examiner's request.

Ms. Shew asserts she serves as a Custodian of Record which includes maintaining, reviewing and updating driver's records. She states she has authority to update the driver's record and perform other related functions as a result of the hearing.

For these reasons, Ms. Shew asserts her position should be reallocated to the Legal Secretary 1 class.

Summary of DOL's reasoning

DOL asserts the scope of Ms. Shew's work does not meet the definition and distinguishing characteristics of the Legal Secretary 1 class. DOL contends Ms. Shew's position is not directly assigned to or supervised by an attorney. DOL asserts that her position does not function as a personal assistant or secretary. DOL states that Ms. Shew's position is assigned to the Hearings and Interviews processing unit and that her position reports to the CSS 4 responsible for managing the unit. In addition, DOL asserts her duties do not include performing complex legal secretarial tasks.

As a whole, DOL contends the majority of Ms. Shew's job duties are consistent with the Definition and job duties described in the Hearing Scheduler class.

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 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.

Comparison of Duties to Legal Secretary 1

The Definition for this class 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 for this class states:

> 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. [Emphasis added]

The primary focus of Ms. Shew's position does not meet the Definition and Distinguishing Characteristics of the Legal Secretary 1 class. Her position does not meet the primary allocating factor stated in the Definition of this class of performing legal technical and secretarial work for an attorney. Ms. Shew does not function as a personal assistant to an attorney as required by the Distinguishing Characteristics of this class. Rather, her position provides specialized technical support to the agency's administrative hearings function which includes interacting and working with the agency's Hearings examiners to schedule hearings and coordinate the hearing process which includes assisting in processing the final orders. As a

whole, Ms. Shew's position does not provide direct legal technical and secretarial work to the agency's Hearing's Examiners at the level intended by this class.

For example, Ms. Shew's position is assigned to the Hearings and Interviews processing unit. Rather than reporting directly to the Hearings Examiners, her position reports to Ms. Nucciarone, the CSS 4 responsible for managing the Hearings and Interviews unit. Ms. Shew's position functions in a centralized role to provide assistance and administrative processing clerical support to the agency's hearings process. Her position has primary responsibility to schedule and coordinate administrative hearings for drivers following actions taken against their driving privileges.

Ms. Shew performs a variety of technical work to support that function such as setting hearing dates for Region 2 Hearing Examiners and to provide backup support to Region 1 and 3 as needed. However, Ms. Shew's position does not serve as a personal assistant to the Hearing Examiners. Further, the scope of Ms. Shew's duties do not include responsibility for performing complex legal secretarial duties in direct support of an attorney such as drafting original documents and correspondence using legal, medical and/or other technical terminology. Her duties do not require her to check legal citations and references.

For example, it is the Hearing Examiner's independent responsibility to prepare for and conduct their hearings and to write their decisions. Ms. Shew does review the Hearing Examiner's final order for grammatical accuracy and technical accuracy with respect to the impact to the driver's driving record based on time served and any sanctions that are imposed. However, the scope of these duties are more accurately described as providing specialized technical support to the agency's administrative hearings and interview process rather than providing direct technical legal support to an assigned attorney as required.

In addition, the role Ms. Shew's position has in working as a liaison between the parties and the Hearing Examiners is performed within the context of providing technical support to the agency's administrative hearings and interview process rather than performing direct legal secretarial support. For example, Ms. Shew provides technical and administrative clerical support to schedule hearings and facilitate the completion of administrative hearings by working within a centralized unit to coordinate hearing telephone conference calls for hearing examiners in her assigned region. She also follows prescribed standards and templates to create generally standard correspondence. She also has responsibility for preparing case files for hearing and processing hearing results into the agency's databases after the administrative hearing process is completed.

Thus, while a portion of her work supporting the hearings review process overlaps with certain aspects of performing legal secretarial work, the thrust and focus of her position and the majority of her assigned work duties as a whole do not reach the primary allocating factors required for allocation to this class. For these reasons Ms. Shew's position should not be reallocated to the Legal Secretary 1 class.

<u>Comparison of Duties to Hearing Scheduler</u>

The Definition for the for the Hearing Scheduler class states:

> Responsible for <u>scheduling</u> <u>and</u> <u>coordinating</u> <u>contested case hearings</u> in accordance with the Administrative Procedures Act.

The Distinguishing Characteristics for this class state:

> Positions work independently and have responsibility for the scheduling process to include: (1) identifying issues and interested parties; (2) reviewing case to ensure presence of complete documentation before scheduling and obtaining missing information as needed; (3) determining need for and type of hearing/notice form; (4) preparing hearing calendars for and coordinating with Administrative Law Judge(s), Hearings Examiners, judges or similar positions; (5) assigning or adjusting hearing date and place; and determining time needed for hearing based on type of issues and number of parties; (6) coordinating scheduling services (e.g., interested parties, attorneys, witnesses, subpoena requests, court reporter, hearing space, postponements, withdrawals); and (7) maintaining tracking system.

The overall scope and focus of the majority of Ms. Shew's duties are fully consistent with these statements.

For example, Ms. Shew performs a variety of technical work to schedule and coordinate case hearings for Hearing Examiners. Ms. Shew works independently. She reviews case information following the initial intake process to ensure the coding is accurate and complete before scheduling hearings. She works with the parties to verify and obtain missing information as needed.

She directly schedules hearings in accordance with statutory requirements and timelines. She sends a scheduling memo to regional field scheduling staff so that hearing notices can be issued to the parties. She also answers inquiries and resolves problems from internal staff and external clients including attorneys and law enforcement personnel. Ms. Shew's duties also include coordinating with the field scheduling staff which includes assisting with processing exhibits as part of the discovery process and working with the parties regarding interpreter services and other actions prior to the hearing. Ms. Shew also assists in tracking and maintaining cases as they progress through the hearings process.

Ms. Shew receives and reviews the Hearing Examiner's draft decision in order to review and proof read the decision for grammatical accuracy and technical compliance with respect to the driver's driving record such as giving the driver credit for time served. She uses her knowledge of driver licensing policies and procedures to review and process accurate records of the driver's sanctions or other actions following the conclusion of the hearing.

Ms. Shew possesses the depth of knowledge needed to perform her work independently and to resolve problems within the scope of her area of responsibility. Ms. Shew routinely assists other Department of Licensing staff in understanding agency-related policies, procedures and laws.

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).

When there is a definition that specifically includes a particular assignment and there is a general classification that has a definition which could also apply to the position, the position will be allocated to the class with the definition that includes the position Mikitik v Depts. of Wildlife and Personnel, PAB No. A88-021 (1989).

In addition, the PRB concluded that while one class appeared to cover the scope of a position, there was another classification that not only encompassed the scope of the position, but specifically encompassed the unique functions performed. Alvarez v. Olympic College, PRB No. R-ALLO-08-013 (2008).

In total, the primary purpose of Ms. Shew's position is to schedule and coordinate hearings for her assigned regional Hearing Examiners. The overall scope and focus of this work is appropriately aligned with the Hearing Scheduler duties and are best described by the Hearing Scheduler class.

Ms. Shew's position is properly allocated to the Hearing Scheduler 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: Terry Shew, DOL
Lisa Goldschmidt, WFSE
Brett Alongi, DOL
Lisa Skriletz, OFM

Enclosure: List of Exhibits

TERRY SHEW v DOL
ALLO-13-079

List of Exhibits

A. Terry Shew Exhibits
   1. Request for Director's Review, (3 pages)
   2. Allocation Determination Letter, (5 pages)
   3. Allocation Determination Letter, (5 pages)
   4. Regional Breakdown, (1 page)
   5. Regional Breakdown, (1 page)
   6. Position Description Form, (4 pages)
   7. State of Washington Class Specification, Legal Support Trainee, (2 pages)
   8. State of Washington Class Specification; Legal Secretary 1, (2 pages)
   9. State of Washington Class Specification, Legal Secretary 2, (2 pages)
   10. State of Washington Class Specification, Legal Secretary 3, (2 pages)
   11. State of Washington Class Specification, Paralegal 1, (2 pages)
   12. State of Washington Class Specification, Paralegal 2, (2 pages)
   13. State of Washington Class Specification, Paralegal 3, (1 page)
   14. Abolished Job Classes, (1 page)
   15. Washington State Department of Personnel Class Specification, Hearing Coordinator, (3 pages)
   16. Chapter 34.05 RCW, Administrative Procedure Act, (4 pages)
   17. Washington State Legislature, RCW 46,20.308, implied Consent - Test refusal – Procedures (7 pages)
   18. RCW 46,20.329, Formal hearing -- Procedures, notice, stay, (1 page)
   19. RCW 46,20.332, Formal hearing - Evidence -- Subpoenas - Reexamination - Findings and recommendations, (1 page)
   20. Washington Administrative Code (WAC's) 308-103-010, (1 page)
   21. Washington Administrative Code (WAC's) 308-103-020, (1 page)
   22. Emails, (11 pages)
   23. Calendars, (9 pages)
   24. Calendar Appointments, (9 pages)
   25. Schedule Memos/1 day (46 pages additional)
   26. Emails (51 pages additional)

B. DOL Exhibits

1. Allocation Determination Letter, dated September 12, 2013 (5 pages)
2. Position Review Request – Employee Portion, dated September 20, 2012 (9 pages)
3. Position Review Request – Supervisor Portion, dated November 28, 2012 (2 pages)
4. Reallocation Request Supplemental Information, dated October 11, 2012 (3 pages)
5. Mikitik v. Dept's of Wildlife and Personnel, PAP No. A88-021 (1989) (7 pages)
6. Organization Chart, DOL, Hearing and Interviews HQ Unit (1 page)
7. Position Description Form, dated November 28, 2012 (5 pages)
8. Annual Performance Plan, dated November 27, 2012 (3 pages)
9. Hearings Scheduler Class Specification (1 page)
10. Legal Secretary 1 Class Specification (2 pages)
11. Glossary of Classification terms, OSHRD/OFM (5 pages)