

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

August 20, 2014

TO: Connie Goff, PHR
Rules and Appeals Section Chief

FROM: Kris Brophy, SPHR
Director's Review Investigator

SUBJECT: Heidi Braley v. Liquor Control Board (LCB)
Allocation Review Request ALLO-13-085

Director's Determination

Ms. Braley's position was reallocated effective October 4, 2013, following a management-initiated position review based upon an updated Position Description form received by the LCB Human Resource Services (LCB HR) office. 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 Ms. Braley's assigned duties and responsibilities, I conclude her position is properly allocated to the Licensing Specialist 3 class.

Background

LCB HR conducted a position review as part of a management-initiated position review request submitted for Ms. Braley's position on July 3, 2013. (Exhibit B-1).

On October 4, 2013, LCB HR notified Ms. Braley that her position was being reallocated from the Program Specialist 4 class to the Licensing Specialist 3 class (Exhibit B-1).

On October 18, 2013, the State HR Director's Review Program received Ms. Braley's request for a Director's review of LCB's allocation determination (Exhibit A-1).

On July 8, 2014, I conducted a Director's review conference with the parties. Present during the meeting were Heidi Braley; Alan Rathbun, Director of Licensing, LCB; and Beverley Burdette, Labor Relations/Operations Manager, LCB HR.

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

The PDF for Ms. Braley's position states that her position plans, directs and coordinates the functions of a team of licensing specialists working in the Manufacturers, Importers and Wholesalers (MIW) unit of the LCB Licensing division.

Ms. Braley's duties and responsibilities are summarized from the PDF (Exhibit B-1) as follows:

55% **Duty**

As the subject matter expert, plans and directs the functions of a team of Licensing Specialists and a customer service specialist by conducting routine check sheets and periodic full document reviews on files to ensure timelines are being met and quality work is being done. Makes approval or commitment decision and prepares threshold folder for applications requiring director consideration. Assigns casework on a regular basis.

Tasks

Review the check sheet and documentation and prepare a report for each file. Discuss with the investigator as appropriate regarding the content of the file/report or any other issues with the file. Assess any problems with the investigation, complete corrections or return the investigative report to the investigator for correction/completion. Complete decision and forward as appropriate for commitment or issue work.

Perform as a resource and subject matter expert for both retail and non-retail (MIW) information. Reviews and advises investigators with files with higher level of complexity.

Delegate and/or take on daily case work as necessary to provide service to applicants in the absence of a team member.

15% **Duty**

Review floor plans for approval or denial.

Tasks

Review floor plans and decide on approval or denial based upon regulatory requirements. If not approved, completes a determination letter to the applicant addressing the issues/problems and what can be done to bring the plans into compliance. Utilizes telephone or e-mail for supplemental conversations to work out any problems. Adds decision on floor plans to the investigator's report.

10% **Duty**

Monitor investigator timelines and workload to ensure efficient and quality processing of liquor license applications. Answer complex questions from investigators, applicants (or their representatives), divisions, agencies and the general public. Conduct in-depth periodic reviews of the investigator's files to ensure timeliness and quality. Mentor investigators. Provide formal one-on-one training to new investigators or delegate training duty to experienced

investigators.

Tasks

Research, interpret and apply laws, regulations, policies and procedures as applicable to the licensing process. Research and provide relevant RCWs, WACs and references to support information provided to applicants. Provide conflict resolution as necessary between investigators and applicants or their representatives.

5% **Duty**

Independently manage a caseload of special investigations assigned on an as needed basis. Oversight of applications for non-retail permits and product label tracking.

Tasks

Conduct in-depth interviews to determine eligibility. Request necessary documentation. Communicate with applicants on the phone regarding questions/problems. Analyze written and oral information received from applicants and outside sources to determine impact on investigation. Research violation history of applicant(s) to determine recommendation. Research Washington State Liquor Laws, regulations and procedural manuals to inform and assist applicants through the liquor licensing process. Document and summarize investigative findings in a written report. Recommend approval, commitment or denial of the application. Approve non-controversial applications for liquor licenses. Oversee applications for class 8, 9, and 10 permits. Review product labels for packaging for those that may be questionable and make recommendations for approval or denial.

5% **Duty**

Administrator for Oracle optical imaging system.

Tasks

Primary and initial point of contact to troubleshoot and diagnose system issues. Input Change of Corporate officer application type into system, creates and updates profiles for users.

5% **Duty**

Attend and coordinate team meetings. Attend staff, division, and licensing Leadership Team meetings on a regular basis. Attend special project meetings, volunteer committees (statewide and interagency) and other agency related meetings which may impact or be impacted by legislation.

Tasks

Developing and collaborating to develop new procedures and policies, revising forms, brainstorming, discussing current processes, etc. Prepare and deliver presentations to internal and external stakeholders in a public setting.

5% **Duty**

Miscellaneous

Tasks

Compose or respond to email from different sources (management, other agency divisions, applicants/representatives, or other outside sources including the Federal Alcohol and Tobacco Tax and Trade Bureau (TTB). Some responses may require further research or provide referrals for services, indentifying and correcting errors found in the computer database and license files for services. Identifying and correcting errors found in the computer database and license files for current liquor licensees. Initiate proper procedures and documentation to support corrective actions as necessary. Work with random applicants/current licensees to answer questions, helping with problems and referring them to optional services and other agencies as necessary. Attend meetings in manager's absence as requested and accomplish the liquor license application process.

Summary of Ms. Braley's Perspective

Ms. Braley acknowledges a portion of her duties are consistent with the duties performed by licensing specialists such as assigning and assisting in basic license investigations, reviewing floor plans, training staff, being available to answer questions, and approving or forwarding applications for threshold decisions by higher level managers.

However, Ms. Braley asserts she performs other higher level specialized duties consistent with the scope of the Program Specialist 4 class. Ms. Braley asserts she directs the operation of the MIW unit which is a highly specialized and complex program within LCB. She asserts she performs higher level specialized duties such as acting as the unit's subject matter expert which involves working with manufacturers regarding labeling, nationwide licensees, individual Agent's licenses and permits. She also contends she has responsibility for serving as the Licensing Division's Oracle Administrator. She contends she has increased contact with upper management, enforcement officers, financial auditors, other agencies such as federal TTB, and stakeholders (Washington Wine Institute). Ms. Braley asserts she does more presentations and serves on several rulemaking committees which exceeds what other leads are asked to do.

In total, Ms. Braley asserts her position is best described by the Program Specialist 4 class.

Summary of LCB's Reasoning

LCB asserts Ms. Braley's duties are consistent with the duties performed by the Retail Licensing Specialist 3 class such as assigning and assisting in liquor license approvals and investigations, reviewing floor plans, training staff, and approving or forwarding applications for threshold decisions by higher level managers. LCB asserts the functions Ms. Braley performs in directing the MIW unit is similar to those performed by other Licensing Specialists in other licensing units.

In total, LCB asserts Ms. Braley's position is properly allocated to the Licensing Specialist 3 class.

Comparison of Duties to Class Specifications

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 Class Series Concept for the Program Specialist series states.

Positions in this series coordinate discrete, specialized programs consisting of specific components and tasks that are unique to a particular subject and are separate and distinguished from the main body of an organization. Positions coordinate program services and resources; act as a program liaison and provide consultation to program participants and outside entities regarding functions of the program; interpret, review and apply program specific policies, procedures and regulations; assess program needs; and develop courses of action to carry out program activities. Program coordination also requires performance of tasks and application of knowledge unique to the program and not transferable or applicable to other areas of the organization.

Examples of program areas may include, but are not limited to: business enterprises, fund raising, volunteer services, community resources, election administration and certification, juvenile delinquency prevention, recreational education and safety, energy education, aeronautic operations and safety, student housing, financial aid, and registration.

Comparison of Duties to Program Specialist 4

The Definition for Program Specialist 4 class states:

Positions at this level work under administrative direction, and have organization-wide program management responsibilities, and are recognized as program specialists. For programs with statewide impact, incumbents are specialists who manage two or more components of the program. Incumbents administer, oversee, and direct all program activities and advise public entities and higher level administrative staff on the program components. Program components are comprised of specialized tasks (e.g., reservations, administration, and budget coordination) within a specialty program. Incumbents provide and coordinate program activities affecting an essential service within the organization or activities with statewide impact. Incumbents perform a wide scope of complex duties and responsibilities in the management of a program, exercise independent judgment, and have delegated decision-making authority. Programs include but are not limited to, salmon, marine and shell fish enhancement programs; boating, concession, or winter recreation programs; missing children's clearinghouse; and fund-raising programs which include prospect identification, endowment campaigns, annual funds, direct mail marketing and membership development.

The licensing activities and functions performed by the MIW unit do not meet the definition of a program. A program consists of specific components and tasks that are unique to a particular subject and are separate and distinguished from the main body of an organization. Although the MIW unit performs a specialized function within the agency of licensing manufacturers, the nature and scope of the licensing unit's functions are not fully separate and distinguished from the similar type of administrative licensing functions and activities performed by other licensing units within the LCB. In general, the focus and scope of these administrative licensing activities are transferable and applicable to other licensing units within the LCB organization.

In addition, positions at the Program Specialist 4 level work under administrative direction and have organization-wide program management responsibilities. For programs with statewide impact, incumbents are specialists who manage two or more components of the program. Incumbents perform a wide scope of complex duties and responsibilities in the management of a program, exercise independent judgment, and have delegated decision-making authority.

Ms. Braley's position does not reach this scope and level of responsibility. Ms. Braley does not work under administrative direction or have program management level responsibility. Rather, her duties consist of planning and directing the functions of a team of Licensing Specialists and a customer service specialist who perform a variety of licensing activities within the MIW unit.

Further, allocation to the "Program" series requires an assignment of work that is unique and specific to a particular program and not work that is specifically described by another existing class specification. If there is a class that encompasses the body of work, allocation to the specific class must take primary consideration. Allocation to a "Program" class should only occur when there are no other viable options for allocation.

The Licensing Specialist series specifically addresses the body of work under review in this appeal. Ms. Braley's position plans, directs and coordinates functions of license specialists in the Manufacturers, Importers and Wholesalers (MIW) unit within the LCB Licensing division. Because these classes specifically describe the scope of work and specific duties performed by Ms. Braley, allocating her position to a class within the Program series is not appropriate.

This is further supported by Personnel Resources Board (PRB) decisions in which the Board has 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. In Alvarez v. Olympic College, PRB No. R-ALLO-08-013 (2008), the Board held that "[w]hen 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 that specifically includes the position. [See Mikitik v Depts. of Wildlife and Personnel, PAB No. A88-021 (1989)."

For these reasons, Ms. Braley's position should not be allocated to the Program Specialist 4 class.

Comparison of Duties to Licensing Specialist 3

The Definition for the Licensing Specialist 3 class states:

Supervises, plans, directs, and coordinates functions of a unit or team of liquor or gambling license specialists.

OR

In the Liquor Control Board (LCB):

Within the liquor program: During the licensing application process examine and analyze floor plans submitted by applicants with authority to approve or disapprove these plans. Reviews and approves Alcohol Operating plans for Sports Entertainment Facilities (SEF) and renewal licenses for Amateur SEF licenses. Evaluates Bankruptcy and Receivership document and issues Special

Permission Letters to court-appointed Trustees and Receivers. Evaluates and investigates "Threshold Decision" and Master License types. Trains new employees.

...

Ms. Braley's position meets the requirements of the Definition of this class. The majority of her time is spent performing a variety of specialized technical and administrative licensing tasks to support the MIW licensing process. Ms. Braley serves as the unit's expert providing information regarding both retail and non-retail rules and regulations to customers and staff.

She plans, directs and coordinates the functions of a team of license specialists. She regularly assigns case work to staff. She conducts quality control reviews and directs staff in the collection, review, computer input and verification of license applications. She reviews investigative files and reports.

She also reviews and makes approval or commitment decisions and prepares and presents the threshold folder to higher level management for applications requiring the Director's consideration. This includes independently making recommendations regarding the suspension and/or revocation of existing licenses. The scope and level of responsibility assigned to her position is consistent with the Definition of this class.

In addition, although the typical work statements are not allocating criteria, they lend support to the type of work performed by incumbents in this class. Ms. Braley's duties and responsibilities are further supported in the typical work statements which provide examples of work performed at this level.

For example, Ms. Braley examines investigator files and accompanying legal documents and reports to ensure accuracy and completeness. She also provides guidance on issues and may complete application processes on her own or provide specific or general instructions to assigned staff depending on the complexity of the situation.

Ms. Braley also handles complex questions and complaints from applicants and their representatives, the general public and other agencies. She consults with, assists, and provides expertise to staff, license applicants, the public, federal governmental officials, attorneys, and others on technical matters involving applicable statutes, regulations, laws, policies and procedures such as the Washington Wine Commission and the federal TTB. She also works closely with MIW Enforcement on licensing issues and applicants.

Ms. Braley responds to telephone, written or in-person inquiries from persons seeking information on MIW licensing matters. She collects and provides data and information such as craft distillery information provided to the legislature. She compiles statistics and composes correspondence to licensees, applicants and agency staff. She works closely with other divisions regarding legislative changes.

Ms. Braley provides training and makes presentations to agency staff, other agencies and/or the public. She also directs and assists staff functioning in liaison with other state, local, or federal agencies to obtain information to verify or coordinate statutory and WAC rule requirements or to resolve problems prior to recommending licensure, re-licensure, or other functions.

As a whole, the depth of Ms. Braley's assigned duties is fully consistent with the Licensing Specialist 3 class.

It is clear the work Ms. Braley performs is very important and valued by LCB. A position's allocation is not a reflection of performance or an individual's ability to perform higher-level work. Rather, it is based on a comparison of duties and responsibilities to the available job classifications. The Licensing Specialist 3 classification best encompasses the overall scope of work and level of responsibility assigned to her position.

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. Dudley v. Dept. of Labor and Industries, PRB Case No. R-ALLO-07-007 (2007).

In this case, the majority of the duties assigned to Ms. Braley's position and her level of responsibility and delegated authority are best described by the Licensing Specialist 3 classification. Ms. Braley's position should remain allocated to that 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: Heidi Braley
Beverley Burdette, LCB
Lisa Skriletz, OFM

Enclosure: List of Exhibits

HEIDI BRALEY v LCB

ALLO-13-085

List of Exhibits

A. Heidi Braley Exhibits

1. Director's Review form received October 13, 2014
 - a. PRB form/Position Description filled out by Ms. Braley as attachment p.4-8
2. Letter of Appeal Statement p. 9-15
3. Personnel Action Forms allocating from WMS to Program Specialist 4 dated January 11, 2007 p.16-18
4. Licensing p.19-35
 - a. Federal Tax and Trade Bureau applications and Certificate of Approval Holder p.37-55
 - b. Class 8, 9 and 10 Permits p.56-59
 - c. Farmer Market's Certifications p.60-63
 - d. Storage Facility Approvals p.64-65
5. Agent's Licenses p.66-67
6. Labeling p.68-73
7. Auditor paperwork p.74-85
8. Rule Making p.86-88
9. Subject Matter Expert's additional responses p.89-111
10. Enforcement Issue responses p.112-133
11. Advertising examples p.134-152
12. Oracle Administrator examples p.153-180
13. 2013 PDF for Heidi Braley dated July 3, 2012 p.181-183
14. 2008 Draft PDF document for proposed Program Specialist 4 p.184

B. LCB Exhibits

1. Determination letter from Beverly Burdette to Heidi Braley dated October 4, 2013. (includes, position description form, and organizational chart for Licensing Division).
2. State HR Class Specification for Program Specialist 4 and Program Specialist 5.
3. State HR Class Specification for Program Specialist 3.
4. List of duties submitted by Heidi Braley - Daily Oracle System, creating profiles, trouble shooting issues, corrections to issues.
5. Mandell Menkes LLC – cover sheet.
6. Mandell Menkes LLC – re: Preapproval request for Evan Williams....

7. Evan Williams Bourbon Experience Sweepstakes.
8. Evan Williams Bourbon Experience Sweepstakes Headline.
9. Pacific Rim, letter dated September 27, 2012.
10. Email dated April 3, 2017 from Camille Green to Johanna P. Williams re: Label Registrations for Pacific Rim, Rainstorm and Sweet Bliss.
11. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau, Application for and Certification/Exemption of Label/Bottle Approval.
12. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau, Application for and Certification/Exemption of Label/Bottle Approval.
13. Part III – TTB Certificate.
14. 2012 Chenin Blanc, Columbia Valley.
15. TTB F 5100.31 (7/2012) Previous Editions are obsolete.
16. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau, Application for and Certification/Exemption of Label/Bottle Approval.
17. Part III – TTB Certificate.
18. 2011 Dry Riesling, Columbia Valley & Pacific Rim.
19. Blank sheet - 4 of 4.
20. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau, Application for and Certification/Exemption of Label/Bottle Approval.
21. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau, Application for and Certification/Exemption of Label/Bottle Approval.
22. Part III – TTB Certificate.
23. 2011 Gewurztraminer, Columbia Valley & Pacific Rim
24. (Blank page)
25. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau, Application for and Certification/Exemption of Label/Bottle Approval.
26. Letter dated July 8, 2013 from Siegel & Moses PC – Michael A. Moses.
27. Power point presentation – Heidi Braley – Non-Retail Compliance Administrator and Richard Manoli, LT., Education & Outreach.
28. Winery License Requirements and Privileges.
29. Alcohol Infused Food Products.
30. Wine based Jell-O shots.
31. 2S2B, letter dated December 29, 2010, to Alan Rathbun.
32. Email dated Wednesday, July 17, 2013 from Heidi Braley to Mhairi Voelsgen.
33. Email to Beverley Burdette from Heidi Braley re: PAR Heidi Ensign Reallocation.doc
34. Personnel Action Request Form – Heidi Ensign – Program Specialist 4, dated 12/20/2006, Printed Name: Karen McCall.
35. Washington State Liquor Control Board, Personnel Data Sheet.
36. Washington State Liquor Control Board - Employee Report of Injury/Illness Form.

37. M.I.W Label Tracking.
38. M.I.W Label Tracking.
39. Questions for Eddie Cantu – Supervisor, Heidi Braley – Desk Audit – July 30, 2013;
and Follow-up Questions for Clarification – Desk Audit – Heidi Braley.
40. Heidi Braley – Desk Audit – Interview Questions, July 17, 2013.

C. Class Specifications

1. State HR class specification for Program Specialist 2, 102I
2. State HR class specification for Program Specialist 3, 107J
3. State HR class specification for Program Specialist 4, 107K
4. State HR class specification for Program Specialist 5, 107L
5. State HR class specification for Licensing Specialist 3, 458O