



**STATE OF WASHINGTON**  
**OFFICE OF FINANCIAL MANAGEMENT**  
STATE HUMAN RESOURCES | DIRECTOR'S REVIEW PROGRAM  
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March 2, 2015

TO: Connie Goff, PHR  
Rules and Appeals Program Manager

FROM: Kris Brophy  
Director's Review Program Investigator

SUBJECT: William Bogen v. Washington State Patrol (WSP)  
Allocation Review Request ALLO-14-030

**Director's Determination**

This position review was based on the work performed for the six-month period prior to November 18, 2013, the date WSP Human Resource Division (WSP HR) received Mr. Bogen's request for a position review. 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 Mr. Bogen's assigned duties and responsibilities, I conclude his position is properly allocated to the Forensic Scientist (FS) 2 class.

**Background**

On November 18, 2013, WSP HR received Mr. Bogen's Position Review Request (PRR) form, requesting that his FS 1 position be reallocated to the FS 3 or FS 4 class (Exhibit B-4).

WSP HR conducted a position review and notified Mr. Bogen on February 28, 2014 that his position was being reallocated to the FS 2 class (Exhibit B-1).

On March 20, 2014, Mr. Bogen filed an appeal with State HR requesting reallocation to the FS 3 or FS 4 class.

On January 27, 2015, I conducted a review conference with the parties. Present for the conference were William Bogen; Amy Murphy, Council Representative, WFSE; Dr. Ben Lastimado, HR Director, WSP; Melissa Rasmussen, WSP HR; Lieutenant Sharp, Impaired Driving Section (IDS), WSP; Sergeant Vilanti, IDS, WSP; and Yvette Fabregas, HR Consultant, WSP 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

Mr. Bogen works in the Impaired Driving section of the WSP. His position has primary responsibility for installing, calibrating, and maintaining of breath alcohol content (BrAC/BAC testing and training instruments located in multiple counties throughout his assigned area of responsibility. His other duties include testifying at administrative hearings and judicial court proceedings regarding BAC instrument operation, calibration, and the effects of alcohol on the body; providing a variety of technical and operator training and certification to law enforcement personnel, technicians and others; preparing, entering and maintaining records, and providing requested information to various stakeholders and others regarding BAC instruments, testing, and training.

Mr. Bogen's duties are described in detail in the PRR submitted for reallocation. His major job duties are summarized from the PRR as follows:

50% **Duty**

Instrument Calibration, Quality Assurance, maintenance and repair.

**Tasks**

Calibrate Infra-Red and Fuel-Cell breath testing instruments. On IR instruments run Quality Assurance Procedure to allow use of results as evidence, provide routine maintenance, make repairs as needed and testing of evidential simulator solutions. On Fuel-cell instruments test regularly to ensure accuracy and allow use for Probable Cause in court cases. Repair instruments as necessary and fill out documentation detailing all work done.

15% **Duty**

Court Testimony

**Tasks**

Log and track court subpoenas, prepare for testimony and testify in Criminal trials and Motion hearings at all courts/levels. (Administrative, Municipal, District, Superior, Federal and Tribal courts.) Confer with attorneys about testimony, discovery materials, legal challenges, admission of Breadth Test evidence and any related issues.

15% **Duty**

Technical Review of other technician's work and issue certificates.

**Tasks**

Issue certificate after reviewing Quality Assurance Procedure (certification) paperwork to ensure that all testing results have been correctly entered, that reference materials values are correct, that all equipment used was certified and that all calculations were done correctly. Have done approximately 55 per year with current year over 60 already. Average time per review is 30-45 minutes depending on information provided.

15% **Duty**

BAC Training

**Tasks**

Schedule and teach Basic and Refresher BAC Operator classes, PBT Technician classes, and Solution Changer classes. Teach during BAC Technician classes as/when needed.

5% **Duty**

Administrative work.

**Tasks**

Answer questions from the public, fill out general paperwork and other administrative duties.

Supervisor's Comments

During the review period Mr. Bogen reported to Sergeant Joann Buettner. Sergeant Buettner completed the Supervisor Portion of the PRR. Sergeant Buettner indicated in her comments that she disagrees with portions of Mr. Bogen's description duties stated in the Work Activities section of the form. Sergeant Buettner indicates that the time Mr. Bogen spent providing training, performing technical reviews, and testifying in court is less than the percentages indicated. In addition, Sergeant Buettner indicates that although Mr. Bogen performs technical reviews of other technician's Quality Assurance Procedure (QAP) work on BAC instruments, he does not have lead responsibility within the context of the definition of a Lead. She states that he does not regularly assign, instruct and check the work of others.

In her comments, Sergeant Buettner states that Mr. Bogen is authorized to independently make decisions regarding the following:

- Scheduling and re-scheduling of BAC classes for instruction and certification.
- General repair and maintenance work on breath test instruments in accordance to the BTP Technical Manual.
- Scheduling annual QAPs.
- Resolution of technical differences between BAC Technician and Technical Reviewer on QAPs. If differences are unresolved the Quality Assurance Manager acts as a mediator.

**Summary of Employee's Perspective**

Mr. Bogen asserts that his position should be reallocated at least to the FS 3 class because he works without direct supervision and minimal oversight. In addition, Mr. Bogen contends the FS 4 class more accurately reflects the level of overall responsibility he has in position for conducting higher level training to other technicians and other agency personnel, and for the level of technical testimony he provides in court regarding the admission of Breath Test evidence and related issues. Mr. Bogen asserts his position has lead level responsibility based on his responsibility for conducting technical reviews of other technician's work related to QAP certification paperwork.

In total, Mr. Bogen argues his position should be reallocated to the FS 4 class.

### **Summary of WSP's reasoning**

WSP asserts Mr. Bogen's position does not reach the requirements of the FS 3 class of working in a senior, specialist, or lead capacity and he performs routine rather than complex analysis as required. In addition, WSP contends Mr. Bogen's position does not meet any of the requirements of the FS 4 class.

WSP argues the focus of Mr. Bogen's position duties, including calibrating IR and Fuel-Cell breath testing instruments, providing routine maintenance and repairs, is consistent with the requirements of performing routine analysis on physical evidence as stated in FS 2 class definition.

In total, WSP contends Mr. Bogen's position is correctly allocated to the FS 2 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 that class.

### **Comparison of Duties to Forensic Scientist series**

The Class Series Concept for the Forensic Scientist series states:

This category reflects the requirements and standards for conducting work in a forensic discipline such as DNA, controlled substances, chemistry, trace evidence, fire debris, explosives, questioned documents, latent prints, firearms and toolmarks, toxicology and crime scene investigation.

Because the most responsible activity of a forensic scientist is to help prove or disprove the elements of a crime that may lead to the identification of the person(s) responsible, the primary functions include: examination and/or collection of evidence; analysis of the physical evidence using accepted and validated methods and analytical instrumentation; preserving evidence according to laboratory procedures; maintaining chain of custody, i.e., documentation establishing the receipt, handling, and disposition of evidence; interpreting observations and test results; preparing written opinion reports; testifying as an expert witness in courts of law; participating in proficiency testing; and receiving on-going training and professional development.

### **Comparison of Duties to Forensic Scientist 4**

The Definition for this class states:

Serves as a forensic technical lead in a specific discipline or functional area of forensic science in a crime laboratory and performs complex analyses on physical evidence. This involves casework where applied research, method modification, or a unique approach may be necessary; or a single definite conclusion is not possible and a weighted conclusion is warranted; or casework requiring the reconstruction of an event or series of events based upon the interpretation of physical evidence.

The Distinguishing Characteristics for this class state:

Maintains control over the technical operations of a forensic laboratory or section within a specific discipline or functional areas such as chemistry, biology, DNA, microanalysis, firearms and toolmarks, questioned documents, latent prints, toxicology, and crime scene investigations. Technical leads focus on maintaining the crime laboratory's quality processes and ensuring operational compliance with all certification, accreditation, and legal standards and requirements. These positions have the authority to stop casework processes if a problem occurs and the accountability for quality of the casework product, compliance with all applicable accreditation and audit criteria, compliance documentation, validation of new technology and methods, validation of new personnel beginning the casework, and investigation of casework errors and implementation of corrective measures. This differs from the traditional concept of a lead worker who performs the same or similar duties as other employees in his/her work group and assigns, instructs, and checks the work of employees.

Mr. Bogen's position does not meet the primary allocating factors of this class of serving as a forensic technical lead in a specific forensic discipline or functional area and performing an equivalent level of complex analysis on physical evidence as required.

First, Mr. Bogen's position does not serve as the forensic technical lead with responsibility for maintaining control over the statewide technical operations of the IDS. Mr. Bogen's position does not perform these functions for the IDS as this level of responsibility rests with higher level management staff, including his first- and second-level supervisors. Mr. Bogen's position is located in the Impaired Driving section of the WSP. The IDS has statewide responsibility and Mr. Bogen's position is assigned to support District 8. His position therefore has district-wide responsibility for installing, calibrating, and maintaining breath alcohol content testing and training instruments located within his assigned area of responsibility.

In addition, this class indicates that technical leads focus on maintaining quality processes and ensuring operational compliance with all certification, accreditation, and legal standards and requirements. These positions have the authority to stop casework processes if a problem occurs. They have accountability for ensuring the quality of the work products, compliance with all applicable accreditation and audit criteria, compliance documentation, validation of new technology and methods, validation of new personnel beginning the casework, and investigation of casework errors and implementation of corrective measures. Mr. Bogen's position does not have this scope of responsibility.

Second, Mr. Bogen's position does not perform complex analyses on physical evidence as required. For example, incumbents at this level perform casework where applied research, method modification, or a unique approach may be necessary, and where a single definite conclusion is not possible and a weighted conclusion is warranted. Similarly, incumbents at this level may perform work requiring the reconstruction of an event or series of events based upon the interpretation of physical evidence. Mr. Bogen's position does not perform this equivalent level of analysis. The thrust of Mr. Bogen's position involves the calibration and certification of evidential breath test instruments. These instruments are used to obtain evidence to be used in the prosecution of impaired drivers. Mr. Bogen provides expert testimony in court on breath alcohol testing and instrumentation. The scope and level of analysis to perform his work is more routine in nature, involving the single specific examination of evidence relating to the specific determination of alcohol impairment.

For the reasons stated above, Mr. Bogen's position should not be reallocated to the FS 4 class.

### Comparison of Duties to Forensic Scientist 3

The Definition for the FS 3 class states:

This is the senior, specialist, or lead worker level of the series. Positions perform complex analyses on physical evidence in criminal cases submitted to the forensic laboratory. Incumbents interpret analytical results, prepare written opinion reports, and testify as experts in courts of law. Complex analysis involves casework where applied research, method modification, or a unique approach may be necessary; or a single definite conclusion is not possible and weighted conclusion is warranted; or casework requiring the reconstruction of an event or series of events based on the interpretation of physical evidence.

Incumbents at the FS 3 level work in a senior, specialist, or lead worker capacity. Similar to the FS 4 level, they perform complex analyses on physical evidence involving casework where applied research, method modification, or a unique approach may be necessary; or a single definite conclusion is not possible and weighted conclusion is warranted. As stated above, Mr. Bogen's position does not have responsibility for performing complex analysis at the level anticipated by this class.

Lead

The "Glossary of Terms" defines "lead" as follows:

**Lead.** An employee who performs the same or similar duties as other employees in his/her work group and has the designated responsibility to regularly assign, instruct, and check the work of those employees on an ongoing basis.

Mr. Bogen conducts Technical Reviews of other technician's QAP certification paperwork to ensure that all testing results have been correctly entered, that reference materials values are correct, that all equipment used was certified and that all calculations were done correctly. In the PRR, Mr. Bogen indicates that he conducts approximately 55 per year. He indicated that on average, a review takes approximately 30-45 minutes to complete depending on information provided. In addition, he maintains a working relationship with other Breath Test Technicians to exchange information and coordinate overlapping instrument responsibilities.

However, while Mr. Bogen performs a peer review function which is addressed in the typical work statements of this class, his position does not have designated responsibility to lead other employees in a work group. His position does not have responsibility to regularly assign, instruct, or check the work of other employees on an ongoing basis. In total, his position does not meet the allocating criteria of this class of serving in a lead capacity over other staff.

Senior/Specialist

The Glossary of Classification Terms defines "senior" as:

**Senior** - The performance of work requiring the consistent application of advanced knowledge and requiring a skilled and experienced practitioner to function independently. Senior-level work includes devising methods and processes to resolve complex or difficult issues that have broad potential impact. These issues typically involve competing interests, multiple clients, conflicting rules or practices, a range of possible solutions, or other elements that contribute

to complexity. The senior-level has full authority to plan, prioritize, and handle all duties within an assigned area of responsibility. Senior-level employees require little supervision and their work is not typically checked by others.

While a portion of Mr. Bogen's duties involve performing senior-level work, the majority of his assigned duties and responsibilities do not reach senior-level responsibility as required.

For example, a portion of Mr. Bogen's duties reaches senior-level work. This includes issuing certificates after reviewing other breath test technician's Quality Assurance Procedure (certification) paperwork to ensure that all of their testing results have been correctly entered, that reference materials values are correct, that all equipment used was certified and that all calculations were done correctly. This also includes his responsibility for providing Basic and Refresher BAC Operator and related classes to law enforcement officers, and also teaching during BAC Technician classes as needed.

However, the overall scope and complexity of Mr. Bogen's decision making authority does not reach senior level responsibility. It is uncontested that Mr. Bogen is a skilled breath test technician. He follows prescribed procedures to complete his work and he independently devises methods and processes to issues or situations that are of a generally standard and recurring nature. His skills do allow him to develop solutions to resolve problems while working alone. However, the majority of work Mr. Bogen performs does not fall within the scope of responsibility for devising methods and processes to resolve complex or difficult issues that had broad potential impact. His supervisor retains responsibility regarding the outcomes of making decisions that carry high consequences of error relative to his assigned District or to the Impaired Driving Section as a whole.

#### Complex Analysis

Additionally, as stated in the Distinguishing Characteristics, positions at the FS 3 level perform complex analyses on physical evidence. As noted earlier, Mr. Bogen's position does not have responsibility for performing complex analysis at the level anticipated by this class.

#### Summary

Mr. Bogen's position does not have designated responsibility to lead other employees in his work group. In addition, the scope of the work performed for the majority of his work assignments during the review period and the level of his decision making authority did not fully reach senior level responsibility. Further, Mr. Bogen works under general supervision and the majority of his work involves performing assignments within established technical procedures consistent with journey level work. This limits the degree to which he has responsibility for planning, prioritizing, and handling all duties within his assigned area of responsibility.

For each of these reasons Mr. Bogen's position does not reach the requirements of the FS 3 level class.

#### Comparison of Duties to Forensic Scientist 2

The Definition for the FS 2 class states:

This is the journey level of the series. Positions at this level perform routine analysis on physical evidence in criminal cases submitted to the forensic laboratory. Incumbents interpret analytical results, prepare written opinion reports and may testify as an expert

witness in courts of law. Incumbents will have completed the majority of their training in an assigned discipline and will focus on the routine analysis of physical evidence. Routine analysis involves laboratory examination in which the items to be tested require a single specific examination or a standard battery of examinations or analyses, the results of which lead to a definitive conclusion acceptable to experts in the field.

The Department of Personnel's Glossary of Classification Terms defines "journey-level" as:

...Fully competent and qualified in all aspects of a body of work and given broad/general guidance, can complete work assignments to standard under minimal supervision. Also referred to as the working or fully qualified occupational level.

When comparing the totality of Mr. Bogen's assigned duties and responsibilities to the relevant job classifications, the FS 2 class provides a better fit. While a portion of Mr. Bogen's time involved performing senior-level breath technician work, the majority of his work involves performing installing, calibrating, and maintaining of breath alcohol content (BrAC/BAC testing and training instruments as a journey-level breath test technician.

For example, the definition for this class states that incumbents perform routine analysis where the items to be tested require a single specific examination, or a standard battery of examinations or analyses, the results of which lead to a definitive conclusion acceptable to experts in the field. The installation, calibration, maintenance and repair work Mr. Bogen performs is equivalent to this definition.

For example, Mr. Bogen performs skilled work calibrating Infra-Red and Fuel-Cell breath testing instruments. The PRR for his position states that he runs Quality Assurance Procedures to allow the use of the results given by those instruments as evidence in court or other proceedings. He also provides routine maintenance and makes repairs as needed. This includes testing evidential simulator solutions.

The majority of Mr. Bogen's time over the course of the review period involved performing journey level work under general supervision. He completes his assignments within established guidelines and without specific instruction consistent with the journey level definition. In addition, any major deviation from normal policies, procedures and work methods requires his supervisor's approval.

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. As a whole, Mr. Bogen's duties align with the level of work described by the typical work statements of this class such as the following:

- Documents and protects evidence according to laboratory procedures, ensuring that the chain of custody is maintained;
- In an assigned discipline, examines and analyzes evidence in routine-type requests where interpretations are straightforward and objective, selecting appropriate methods, techniques, and instruments;
- Reports findings in the form of a written laboratory report based on the interpretation of observations and analytical test results;
- May testify as an expert witness in courts of law;
- Provides peer review and participates in proficiency testing to maintain expertise;

The majority of Mr. Bogen's duties are consistent with these statements. Mr. Bogen is fully competent and qualified in all aspects of his work. His assignments require him to employ a variety of skills working as a breath test technician for the IDS. The scope of Mr. Bogen's work is fully consistent with the statement, "In an assigned discipline, examines and analyzes evidence in routine-type requests where interpretations are straightforward and objective, selecting appropriate methods, techniques, and instruments. He performs other duties consistent with this class including testifying as an expert witness in courts of law and conducting peer reviews for the QAP process.

Therefore, the majority of Mr. Bogen's duties and level of responsibility for his assigned work meets the definition of journey-level work which falls within the scope of the FS 2 level class.

#### Comparison of Duties to Forensic Scientist 1

The Definition for the FS 1 class states:

This is the entry level of the series. In a training capacity and under close supervision, positions perform beginning level analyses of physical evidence in criminal cases submitted to the forensic laboratory. Interprets analytical results, prepares written opinion reports, and may testify as an expert witness in courts of law. With on-the-job training, the incumbent learns entry-level casework in a limited area in order to become proficient in a discipline of forensic science.

Mr. Bogen's duties extend beyond the entry level requirements of this class. The FS 1 class does not address the level and scope of work Mr. Bogen performs in his position nor does it address the level of supervision he receives in performing his duties. Mr. Bogen no longer works in a training capacity under close supervision. Mr. Bogen works under general supervision and exercises independent judgment to calibrate, maintain, and repair, and perform quality assurance functions for breath testing instruments.

#### Conclusion

In Salsberry v. Washington State Parks and Recreation Commission, PRB Case No. R-ALLO-06-013 (2007), the Personnel Resources Board addressed the concept of *best fit*. The Board referenced Allegrini v. Washington State University, PAB Case No. ALLO-96-0026 (1998), in which the Personnel Appeals Board noted that while the appellant's duties and responsibilities did not encompass the full breadth of the duties and responsibilities described by the classification to which his position was allocated, on a best fit basis, the classification best described the level, scope and diversity of the overall duties and responsibilities of his position.

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).

The thrust of Mr. Bogen's position and the specific technical nature of the duties he performs consist of performing fully qualified testing of breath testing instruments.

While this class may not fully reflect the level of responsibility he has in his position for reviewing other technician's QAP certification paperwork to ensure that testing results have been correctly entered and for providing training to law enforcement personnel and internal staff. As a whole, this class more

accurately describes the overall focus, scope, and level of responsibility Mr. Bogen has in performing his duties.

Mr. Bogen's position duties closely align with the scope and level of responsibility stated at the FS 2 level. For each of the reasons stated above, his 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:

The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, WA 98504-0911. 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: William Bogen  
Amy Murphy, WFSE  
Ben Lastimado, WSP

Enclosure: List of Exhibits

**WILLIAM BOGEN v WSP**

**ALLO-14-030**

List of Exhibits

A. William Bogen Exhibits

1. Request for Director's Review (2 pages)
2. Position Description Form dated June 30, 2006 (4 pages)
3. E-Mail from Kaelyn Eisenmann dated July 29, 2013
4. Various certificates for William Bogen (3 pages)
5. William Bogen's Breath Test Program Permit Card/Certification
6. Interoffice Communication from Dr. Fiona J. Couper dated May 8, 2009
7. Authorization to Perform Breath Alcohol Calibration Work dated September 10, 2008
8. WSP Class Roster for various trainings provided by William Bogen (10 pages)
9. APPENDIX B- Location of BTP Satellite Laboratories
10. WSP Breath Test Program Calibration- Technical Manual (10 pages)
11. Performance and Development Plan (PDP) Evaluation dated 3/28/13 (2 pages)
12. Performance and Development Plan (PDP) Expectations dated 3/28/13 (3 pages)
13. Calculating the combined standard uncertainty of the Quality Assurance Procedure Solution (2 pages)
14. Definition of Complex analysis

B. WSP Exhibits

1. Reallocation IOC dated 02/28/2014 to Mr. William Bogen
2. Email to Lt. Rob Sharpe & Sgt. JoAnn Buettner advising of the conclusion of the reallocation.
3. Reallocation Request – Write up and signed by committee (8 pages)
4. Employee Portion of Position Review Request received in HRD 11/18/13 (4 pages)
5. Organizational Chart dated 09/16/2013.
6. State HR Class specification for Forensic Scientist 1
7. State HR Class specification for Forensic Scientist 2
8. State HR Class specification for Forensic Scientist 3
9. State HR Class specification for Forensic Scientist 4 (3 pages)

10. Supervisor's Portion of Position Review Request. (4 pages)
11. Position Description Form dated 12/30/2013 (6 pages).
12. Desk Audit notes from employee (conducted by: Yvette Fabregas) 11 pages.
13. Desk Audit notes from supervisors (telephone conference conducted by Yvette Fabregas) 5 pages
14. Desk Audit notes from employee (conducted by: Melissa Rasmussen) 12 pages
15. Desk Audit notes from supervisors (telephone conference conducted by Melissa Rasmussen) 5 pages
16. Sample work – Quality Assurance Procedure Review Form
17. Sample work – Datamaster Calibration Certificate form
18. Sample work – Quality Assurance Procedure worksheet
19. Sample work – BAC Datamaster CDM – (11 pages)
20. Sample work – ICL Calibration Laboratories, Inc. (2 pages)
21. Sample work – FLUKE – Certificate of Calibration (2 pages)
22. Comparison chart for FS 1-4