

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

October 30, 2014

Stacie Leanos, Counsel Representative
WFSE
900 Columbia St SW Suite 500
Olympia, WA 98501-2443

RE: Mark Novak v. Department of Enterprise Services (DES)
Allocation Review Request ALLO-14-096

Dear Ms. Leanos:

On September 30, 2014, we received Mark Novak's Request for Director's Review form asking for a review of DES's denial of his request for reallocation of his Mail Carrier Driver position. In the form, Mr. Novak indicated that you were representing him.

DES denied reallocation of Mr. Novak's position by letter dated August 25, 2014. The determination letter stated, in part, that: "[y]ou may request a Director's review . . . within thirty (30) calendar days of being provided the results of the position review. . . ." The determination letter further stated: ". . . your request for review must be received (not postmarked) in the Director's Review Office within 30 days of service of the position review results"

Because it appeared that the request for review was untimely, on October 1, 2014, Karen Wilcox, Director's Review Coordinator, sent a letter to both you and Kristin Kaphan, DES HR, addressing the timeliness of the Mr. Novak's request.

Ms. Kaphan responded by letter dated October 6, 2014. She indicated that on August 25, 2014, the allocation determination letter, also dated August 25, 2014, was mailed to Mr. Novak's home address. She also indicated that a copy of the determination letter was emailed to you on August 25, 2014.

On October 22, 2014, you filed a response on Mr. Novak's behalf. You indicated that you were unclear "on how to calculate the dates in question" and that you "calculated the response time incorrectly."

WAC 357-04-105(1) provides, in part:

. . . 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:

. . . 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.

The Personnel Resources Board (PRB) has addressed the issue of timeliness on numerous occasions. In addition, the PRB has consistently held that appellants have the burden to file timely appeals. (See Mishra v. University of Washington, PRB Case No. R-RULE-07-002)(2007).

Further, there is a history of cases in which the PRB and the Personnel Appeals Board (predecessor to the PRB) have held that an appeal is untimely even when the affected employee had been unintentionally misled by an agency or given erroneous information about a process. See for example, *Lapp v. Washington State Patrol*, PAB No. V94-079 (1995) and Yialelis v. Dept. of Transportation, PRB No. R-ALLO-08-016 (2008).

DES's allocation determination was dated and deposited in the mail on August 25, 2014. Therefore, the deadline for requesting a review was September 24, 2015. Consistent with previous Board decisions, your lack of clarity about calculating the dates in question does not waive the jurisdictional timelines for filing Mr. Novak's request. Because the request was not received until September 30, 2014, it is untimely and the matter is closed.

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.

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The mailing address for the Personnel Resources Board is P.O. 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.

Sincerely,

Holly Platz, SPHR
Director's Review Investigator

c: Mark Novak
Kristin Kaphan, DES HR