BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

REBECCA L. RAYMOND, Appellant, v. EMPLOYMENT SECURITY DEPARTMENT, Respondent.	Case No. RULE-98-0049 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; NATHAN S. FORD JR., Vice Chair; and GERALD L. MORGEN, Member. The hearing was held in the Personnel Appeals Board hearing room in Olympia, Washington, on June 17, 1999.

1.2 **Appearances.** Appellant Rebecca L. Raymond was present and appeared *pro se*. Respondent Employment Security Department was represented by Evelyn Rodriguez, Human Resource Manager.

1.3 **Nature of Appeal.** This is an appeal of an alleged violation of WAC 356-05-470. Appellant alleges that Respondent violated the rule when it determined that she was no longer eligible to receive veteran's preference as the spouse of a deceased veteran and as a result, adjusted her seniority date.

1.4 **Citations Discussed.** WAC 358-30-170; WAC 356-05-470.

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II. FINDINGS OF FACT

2.1 Appellant Rebecca L. Raymond is a permanent employee of Respondent Employment Security Department (ESD). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on November 20, 1998.

2.2 David Lynn Raymond served in the United States Army from April 4, 1966 until April 3, 1969. (Ex. R-8). Appellant was married to David Lynn Raymond on October 11, 1969. (Ex. R-5). David Lynn Raymond died on April 6, 1971 (Ex. R-6) and Appellant became the spouse of a deceased veteran.

2.3 As the spouse of a deceased veteran, Appellant was given seniority credit for the time her deceased husband served in the Army.

2.4 Appellant remarried. Her new spouse's last name was also Raymond. This was a brief marriage. Appellant and her new spouse initiated divorce proceedings before November 1, 1990 and their marriage was subsequently terminated.

2.5 In 1998, Respondent was undergoing a reorganization and employees were allowed to bid on positions based on their seniority. During the reorganization process, Respondent reviewed the seniority of its employees. Respondent received a telephone call from an unidentified employee asking about reinstatement of veteran's preference for unremarried spouses of deceased veterans. The caller indicated that veteran's preference had been restored for some employees who had remarried and subsequently divorced. After receiving this information, Respondent reviewed the seniority of all employees receiving veteran's preference as spouses of deceased veterans. During

this review, Respondent discovered that following the death of David Lynn Raymond, Appellant had remarried, divorced and had her veteran's preference restored.

2.6 By letter dated November 5, 1998, Respondent informed Appellant that she had been "incorrectly receiving 3 years and 1 day of seniority credit as the unremarried spouse of a deceased veteran." As a result, Respondent adjusted Appellant's seniority date from August 1, 1986 to August 2, 1989. (Exs. A-1 and R-1).

2.7 WAC 356-05-470 defines a veteran's spouse for purposes of layoffs and subsequent reemployment, as "the unremarried spouse of a deceased veteran as defined in WAC 356-05-465. . . ." The merit system rules do not define the term "unremarried."

III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues that she is recognized by the U.S. Department of Veterans Affairs as a surviving spouse and that she receives a monthly compensation as a surviving spouse. She asserts that because the Department of Veterans Affairs recognizes her as a surviving spouse, the State of Washington should also recognize her as such.

3.2 Respondent contends that Appellant is not eligible to receive veteran's preference because she remarried. Respondent acknowledges that Appellant is currently the unmarried spouse of a deceased veteran, but asserts that the rule does not apply because she remarried. Respondent argues that the term "unremarried" refers to a surviving spouse who has not remarried, not to a surviving spouse who has remarried and then divorced.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal of an alleged rule violation, Appellant has the burden of proof. WAC 358-30-170.

4.3 WAC 356-05-470 is open to interpretation because it contains ambiguous or vague language. The merit system rules do not define the term "unremarried." Therefore, we must consider the intent of the rule. We believe that the intent of the rule was to allow the termination of veteran's preference when the spouse of a deceased veteran remarried. However, we are left with the question of once the remarriage is terminated, does the employee return to the status held prior to the remarriage?

4.4 Merit system rules are silent on this issue. In order to interpret the intent of the rules in light of the facts presented here, we look to the federal law regarding surviving spouses of deceased veterans. Public Law 102-568 allows "reinstatement of benefits to formerly remarried surviving spouses where a legal proceeding to terminate an existing marital relationship was commenced before November 1, 1990, as long as that proceeding directly resulted in the termination of such marriage." (Ex. A-3).

4.5 In this case, because Appellant is not currently married and her previous "remarriage" was terminated by dissolution proceedings initiated before November 1, 1990, she qualifies for reinstatement of her seniority as the spouse of a deceased veteran. The appeal should be granted.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal Rebecca L. Raymond is granted.

DATED this _____ day of _____, 1999.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Nathan S. Ford Jr., Vice Chair

_____
Gerald L. Morgen, Member

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