BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JAMES W. TAYLOR, Appellant, v. WASHINGTON STATE UNIVERSITY, Respondent.	Case No. RULE-00-0049 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, and GERALD L. MORGEN, Vice Chair. The hearing was held at Washington State University, Compton Union Building, Pullman, Washington, on November 15, 2001. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant James Wesley Taylor appeared *pro se*. Donna J. Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal of an alleged rule violation of WAC 251-19-060 as a result of Appellant's trial service reversion.

1.4 **Citations Discussed.** WAC 251-19-060 and WAC 251-11-130.

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II. FINDINGS OF FACT

2.1 Appellant James W. Taylor was an Office Assistant II serving a trial service period for Respondent Washington State University. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on November 29, 2000.

2.2 Appellant was appointed to a position as an Office Assistant (OA) II on May 22, 2000, following a layoff from his position as a warehouse worker. Appellant's position as an OA II was located in the Center for Teaching, Learning and Technology Office. The OA II position was a newly created position and duties included general receptionist duties, distributing mail, keyboarding/data entry, filing a variety of documents, preparing temporary appointment forms, scheduling room reservations and preparing payroll documents. The position was filled for approximately three weeks by an employee who was "bumped" from the position when Appellant accepted the option in lieu of layoff. Appellant was required to complete a six-month trial service period pursuant to WAC 251-19-060.

2.3 Judy Rumph, Secretary Senior, became Appellant's supervisor. Prior to Appellant's appointment to the OA II position, Appellant called and spoke to Ms. Rumph about the position. Upon beginning his trial service appointment, Ms. Rumph provided Appellant with a position description and they discussed the responsibilities of the position. Appellant underwent a period of training and indicated that he understood the responsibilities of the position.

2.4 On July 12, 2000, Ms. Rumph provided Appellant with a list of the specific expectations regarding his responsibilities as an OA II. Ms. Rumph and Appellant discussed the expectations and Ms. Rumph's concerns with Appellant's work performance. Ms. Rumph was specifically concerned with Appellant's rate of errors and his failure to meet important deadlines related to

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payroll and temporary employee appointments. Ms. Rumph summarized her expectations in writing, specifically directing Appellant to ensure that mail was accurately distributed; that he learn to recognize work-related documents and accurately file those documents; that he accurately maintain and update the library database; that he use proper grammar in documents he typed; that he correctly process temporary appointment forms and payroll forms; and that he prioritize his tasks and ensure that all deadlines were met. Ms. Rumph also directed Appellant to follow supervisory instructions and ask her for clarification when necessary.

2.5 Ms. Rumph continued to meet with Appellant on a routine basis to discuss improvements in his performance and to provide him with further direction regarding work expectations. On October 4, 2000, Ms. Rumph completed a performance evaluation in which she rated Appellant's overall performance as "unsatisfactory." Ms. Rumph specifically noted that Appellant continued to make an unacceptable number of errors, on several occasions was not helpful to visitors, failed to complete tasks in a timely manner, failed to carefully listen to and follow instructions, and failed to communicate with her on work-related questions and concerns. Ms. Rumph set forth the following performance expectations and directed Appellant to:

- provide visitors with general resources and direct them to the correct individuals;
- learn to recognize invoices and procedures and transmit them to accounts payable;
- correctly process temporary appointment forms and recognize which forms needed to be processed immediately;
- meet payroll deadlines, and when unable to do so, advise Ms. Rumph;
- familiarize himself with where resources and forms were located;
- recognize when to take action on forms before filing them; and
- follow supervisory directives.

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2.6 Based on Appellant's performance through October 4, 2000, Ms. Rumph advised Appellant she would not recommend that he be certified to the OA II position if his performance did not improve.

2.7 Ms. Rumph and Appellant met again on October 11, 2000. Ms. Rumph addressed her continued concerns with Appellant's performance deficiencies. Ms. Rumph again outlined her expectations in writing, instructing Appellant to 1) decrease his error rate, 2) complete his tasks in a timely manner, 3) demonstrate his ability to apply new knowledge to his daily activities, and 4) to correctly and completely follow instructions and/or ask for clarification if necessary. Ms. Rumph advised Appellant that he would need to make improvements by November 11, otherwise, she would recommend that he be reverted from his position.

2.8 In November, Ms. Rumph re-assessed the quality of Appellant's work. However, Ms. Rumph determined that Appellant's error rate and quality of work was still unacceptable, and she concluded that he had not made sufficient or satisfactory improvements in his work performance to successfully remain in the position. Ms. Rumph ultimately recommended to the appointing authority that Appellant not be certified to the OA II position and that he be reverted from his trial service appointment.

2.9 The appointing authority concurred, and by letter dated November 13, 2000, Douglas D. Baker, Vice Provost for Academic Affairs, informed Appellant that he was being reverted from his trial service period as an Office Assistant II and that his last working day was November 20, 2000.

2.10 On November 29, 2000, Appellant filed an appeal alleging that Respondent violated WAC 251-19-060 by failing to detail deficiencies in his performance and failed to provide him with specific changes required.

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III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues that Respondent violated WAC 251-19-060(6)(a) by failing to provide him with written notice detailing deficiencies in his performance and outlining the specific changes required. Appellant also asserts that Respondent violated WAC 251-19-060(7)(b) because he was reverted based on performance deficiencies which he claims did not exist at the time of his reversion. Appellant asserts that he was told his performance was satisfactory by Ms. Rumph six weeks after his trial service appointment. Appellant asserts that he was subsequently surprised when he received unsatisfactory ratings on his October 5, 2000 evaluation. Appellant asserts that he sought out ways of improving his performance. Appellant asserts, however, that Ms. Rumph failed to provide him with specific changes required or with guidelines upon which to judge his improvements. Appellant argues that Ms. Rumph's expectations were vague and general and that no deficiencies existed at the time of his reversion. Appellant asserts that he was adversely affected because he was not allowed to pass his trial service period, and therefore, did not gain permanent status as an Office Assistant II. Appellant asks that he be reinstated and allowed to pass his trial service period.

3.2 Respondent argues that Appellant was given adequate written notice of deficiencies, was provided with an outline of the required changes, and was given an opportunity to improve his performance. Respondent argues that Ms. Rumph gave Appellant a fair opportunity to succeed in the position and that she provided him with appropriate direction and training. Respondent argues that Ms. Rumph and Appellant met frequently to discuss his performance and that Appellant received written documents outlining areas of concern and what he could do to improve his performance. Respondent argues that Ms. Rumph ultimately recommended that Appellant be reverted from his trial service based on Appellant's continued failure to improve his work performance. Respondent argues that WAC 251-19-060 does not specify a timeline in which to

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provide notice of deficiencies. However, Respondent asserts that under the circumstances, Appellant was given a reasonable notice and opportunity to improve. Respondent contends that the requirements of WAC 251-19-060 were met and asks that the appeal be denied.

IV. CONCLUSIONS OF LAW

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

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

4.3 The issue presented here is whether Respondent violated the conditions of WAC 251-19-060(5)(a) by failing to provide Appellant with notice of detailed work deficiencies and notice of specific changes required, and WAC 251-19-060(7)(b) by reverting him because the claimed deficiencies did not exist at the time of his reversion.

4.4 WAC 251-11-130 states that [a]n employee, prior to completing a trial service period, may be reverted by an employing official for failure to perform satisfactorily in the class. When such reversion becomes necessary, the written notice and employee rights upon reversion will be as provided in WAC 251-19-060. Trial service reversion is not appealable to the Personnel Appeals Board when the conditions of WAC 251-19-060 have been satisfied.

4.5 WAC 251-19-060 provides that "a trial service period of six months shall be required upon appointment of a permanent employee to a new class at the institution . . ." Subsection (4) indicates that the purpose of the trial service period is to provide the employer with an opportunity to observe and evaluate the new employee's work and, if the employee does not perform satisfactorily during

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the trial service period, he/she may be reverted. WAC 251-19-060(5)(a) requires that reversion be preceded by written notice detailing deficiencies in performance, which shall include the specific changes required, and (b) a reasonable opportunity to overcome identified deficiencies. WAC 251-19-060(7) indicates that an employee who is reverted may appeal to the Personnel Appeals Board regarding:

> (a) Whether the employer complied with the requirements of subsection (6) of this section; and
>
> (b) Whether the claimed deficiencies existed at the time of reversion.

4.6 Appellant's supervisor, Ms. Rumph, made concerted and repeated efforts to help Appellant improve his job performance. Ms. Rumph provided Appellant with specific and detailed written notice of his performance deficiencies and ways Appellant could improve his performance. Nonetheless, Ms. Rumph also had a responsibility to ensure that the goals of the unit and responsibilities of the job were accomplished. After a final assessment of Appellant's work performance, Ms. Rumph saw little notable improvement, and she concluded that Appellant was not performing satisfactorily. As a result, Ms. Rumph used her supervisory authority to recommend that Appellant be reverted from trial service, and the appointing authority concurred.

4.7 Therefore, we conclude that Respondent complied with the provisions of WAC 251-19-060(5)(a) by providing Appellant with written notice detailing deficiencies in his performance, outlining the specific changes required, and providing him with a reasonable opportunity to overcome the identified deficiencies. Furthermore, the credible evidence established that performance deficiencies still existed at the time of the reversion. Appellant has failed to meet his burden of proving that Respondent failed to comply with WAC 251-19-060 by reverting him during his trial service period, and the appeal should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of James Wesley Taylor is denied.

DATED this _____ day of _____, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

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