BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DAVID WELTON, Appellant, v. DEPARTMENT OF FISH AND WILDLIFE, Respondent.	)	Case No. RULE-99-0035 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; GERALD L. MORGEN, Vice Chair; and LEANA D. LAMB, Member. The hearing was held on October 31, 2000, in the Personnel Appeals Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant David Welton was present and was represented by Anita L. Hunter, Attorney at Law, of Parr and Younglove, P.L.L.C. Respondent Department of Fish and Wildlife was represented by Amy C. Estes, Assistant Attorney General.

1.3 **Nature of Appeal.** This is a rule violation appeal in which Appellant contends that Respondent violated WAC 356-15-030 by requiring him to work more than 40 hours in a 40 hour workweek without paying him overtime.

1.4 **Citations Discussed.** WAC 358-30-170, WAC 358-15-020, and WAC 356-15-030.

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II. FINDINGS OF FACT

2.1 Appellant David Welton is an Equipment Operator B and permanent employee for Respondent Department of Fish and Wildlife (F&W). 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 May 21, 1999.

2.2 Appellant works for the F&W Lacey shop. Appellant began employment with the Lacey shop crew in August 1988. The Lacey shop crew has worked a Friday through Thursday workweek since at least 1976. (Exh. R-2 and testimony of John Aukerman).

2.3 Appellant's two-week work schedule was comprised of eight consecutive days, four in the first workweek and four in the second workweek. Appellant worked ten hours per day for a total of 40 hours per workweek.

2.4 Appellant is responsible for completing a monthly timesheet documenting the straight-time hours he works, the overtime hours he works and the leave time he uses. Appellant's timesheets show that when Appellant worked overtime, he recorded the time on his timesheets as overtime.

2.5 Pursuant to WAC 356-15-020, the Washington State Personnel Resources Board (PRB) assigns specific work period designations to each job classification. When positions have atypical working conditions, the PRB may authorize a work period designation for a position that differs from the class-wide classification. The PRB has assigned the work period designations of "scheduled" and "non-scheduled" to the classification of Equipment Operator B. Appellant's position at F&W is assigned the non-scheduled work period designation.

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2.6 WAC 356-15-020 (2)(b) states that the non-scheduled work period designation consists of "[f]ull-time positions with conditions of employment which necessitate adjustment of hours by employees within forty working hours within the workweek. These positions may have preset schedules or task assignments which require their attendance at certain hours, but are generally responsible to adjust their hours to best accomplish their workload."

2.7 WAC 356-15-030 sets forth the conditions under which an employee is paid overtime. For a full-time employee in a position with the non-scheduled work period designation, the rule provides that overtime shall be paid when the employee works in excess of forty nonovertime hours in one workweek or eighty nonovertime hours in a scheduled fourteen consecutive day period as authorized under WAC 356-15-020 (2)(a)(ii), or when the employee works on a holiday, or when the employee works on a scheduled day off. The rule provides that overtime may be paid when an employee works in excess of the workshift within the work day.

III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues that his workweek is Sunday through Saturday and asserts that he should be paid overtime for the hours over 40 that he worked in any given week. Appellant asserts that he did not record the hours he worked over 40 per week as overtime on his timesheets because he was afraid his supervisor would not have approved the overtime. Appellant contends that he works on his days off and does not receive overtime, that his work schedule is unpredictable, and that Respondent frequently manipulates his work schedule which adversely impacts his personal time.

3.2 Respondent argues that as a non-scheduled work period employee, Appellant is assigned to a Friday through Thursday workweek, is compensated for 40 hours of work per week, and is paid overtime for work performed in excess of 40 hours per week. Respondent asserts that Appellant failed to show that he worked in excess of 40 hours per week and was not paid overtime.

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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 Appellant has failed to prove that Respondent violated WAC 356-15-030. Appellant's assertion that he was afraid to record overtime on his timesheets is not credible because his timesheets prove that he did record time worked over 40 hours per week as overtime. Appellant provided no evidence that as a non-scheduled work period employee assigned to a Friday through Thursday workweek, he worked overtime and was not compensated for it.

4.4 Under the proven facts and circumstances, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of David Welton is denied.

DATED this _____ day of _____ 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

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Leana D. Lamb, Member

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