BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MAREK DANILOWICZ, Appellant, v. DEPARTMENT OF FISH AND WILDLIFE, Respondent.	))))))))))	Case No. RULE-00-0030 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 May 15, 2001, in the Personnel Appeals Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Marek Danilowicz was present and represented himself *pro se*. Respondent Department of Fish and Wildlife was represented by Sandra Turner, Senior Personnel Officer.

1.3 **Nature of Appeal.** This is a rule violation appeal in which Appellant contends that Respondent violated WACs 356-10-030, 356-10-050 and 356-10-060 by failing to act on his reallocation request.

1.4 **Citations Discussed.** WAC 358-30-170, WAC 356-10-030, WAC 356-10-050 and WAC 356-10-060.

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II. FINDINGS OF FACT

2.1 Appellant Marek Danilowicz was an Engineering Aide (EA) 3 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 16, 2000.

2.2 In his appeal, Appellant alleged that Respondent violated WACs 356-10-030, 356-10-050 and 356-10-060. Appellant stated that the agency failed to act on his July 25, 1995 request to reallocate his position to the Civil Engineer (CE) 2 classification.

July 25, 1995 Classification Questionnaire:

2.3 On July 25, 1995, Appellant submitted a Classification Questionnaire (CQ) to the Department of Personnel (DOP) for reallocation of his EA 3 position to CE 2. Because Respondent has been delegated allocation authority, DOP returned the CQ to the agency without acting on Appellant's request.

2.4 Respondent asserts that Appellant met with personnel staff on September 12, 1995, and that staff explained the status of his allocation review request and the reallocation process. Respondent also asserts that at that meeting, Appellant withdrew his reallocation request. Appellant denies that he withdrew his request. Appellant's Time and Activity Report for September 1995 indicates that Appellant was out of the office at the Lewis Game Farm on September 12 and therefore, we find that he could not have met with personnel staff on that day.

2.5 Effective October 10, 1995, Appellant was appointed to a project position. The project position concluded on June 30, 1997.

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2.6 In an April 27, 2000, e-mail, Sandra Turner responded to Appellant's July 25, 1995 request. Ms. Turner stated, in part, that "[t]he Department cannot act (sic) the July 25, 1995 CQ because you were not the incumbent in position 2180. . . . At the time you requested the reallocation of 2180, in July 1995, you were appointed to a project CE 2 position in Habitat Program."

2.7 On September 15, 1999, Appellant appealed the allocation of his position to DOP. In his appeal, Appellant stated that "[s]ince July 25, 1999, the allocation decision was not issued, or any action taken by the Division."

2.8 DOP held an allocation review hearing on March 14, 2000 and concluded that DOP did not have jurisdiction because the agency had not officially acted on Appellant's request for review.

2.9 By memo dated May 23, 2000, Sandra Turner returned Appellant's July 25, 1995 CQ to him for a number of reasons. In part, Ms. Turner stated that the CQ contained inaccurate information, was not signed by his supervisor and did not include the internal personnel forms that the agency required.

2.10 Respondent did not take formal action on Appellant's July 25, 1995 reallocation request.

August 12, 1998 Classification Questionnaire:

2.11 Appellant submitted another CQ on July 8, 1998. Appellant stated that he withdrew this CQ because his supervisor did not agree with the duties included in the CQ. We do not find this statement credible. The documents in the record show that on April 30, 1998, Appellant signed a CQ indicating he was submitting the CQ for reallocation. The CQ was forwarded to Appellant's supervisor who signed it on August 12, 1998. The CQ was then submitted to the agency's personnel office.

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2.11 Respondent decided that the allocation review based on the August 12, 1998, CQ should be conducted by an independent source. Therefore, on August 14, 1998, the CQ was forwarded to Richard Shea at DOP. The record does not show whether a formal decision has been made on Appellant's July 18, 1998, reallocation request.

2.12 WAC 356-10-030 addresses position allocations and reallocations and provides, in relevant part:

> Agencies shall establish procedures for processing and reporting new positions, changes in position duties, and requests for position review to provide proper maintenance of the classification plan. The procedure shall provide for individual employee requests for position review, based on duties and responsibilities, through the agency personnel office to the director of personnel. This procedure will not cause undue delay in the director of personnel or designee reviewing the requested reclassification. Such procedures shall be reviewed and approved by the director of personnel or designee. Notice of changes in this procedure initiated by agencies, will be provided to exclusive bargaining representatives and a copy to the director of personnel.

2.13 Effective July 1, 1998, Respondent established Procedure 202.1 entitled Position Action (Decentralized Allocation Authority Procedures). The procedure states, in part:

> If the employee initiates a reallocation request, the supervisor must review the request (revised CQ) for its appropriateness, accuracy and potential affect upon the organization. Employee-initiated reallocation requests must be processed through all channels in a timely manner.
>
> In addition to the CQ, a "Request for Position Action" form is to be completed by the <u>supervisor</u>. (Emphasis added.) An organizational chart showing the current and proposed structure must also be included. All completed documents are to be forwarded to the appropriate Manager(s)/Assistant Director for review and signature.
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> . . . .
>
> . . . the [F&W] Personnel Manager or designee determines if reallocation is appropriate. The employee and/or supervisor is notified of approval/disapproval of position action, and related employee appeal rights.

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2.14 WAC 356-10-050 addresses an employee's status when the employee's position is reallocated upward.

2.15 WAC 356-10-060 addresses the DOP allocation review process and states that "[w]herever possible, agencies shall continue employee's duties unchanged, pending an allocation decision."

III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues that Respondent never responded to this July 25, 1995 request for reallocation and that the agency did not have valid procedures for processing employee requests for position review. Appellant contends that he withdrew the August 12, 1998 CQ and asserts that his position should be reallocated to the Civil Engineer 2 classification based on his July 25, 1995 CQ.

3.2 Respondent argues that Appellant withdrew his July 25, 1995 CQ before it was formalized and properly submitted. Respondent asserts that, nevertheless, at the direction of DOP they reviewed the July 25, 1995 CQ and determined that Appellant's position was properly allocated. Respondent further asserts that because the agency has an established position action procedure and because the agency appropriately acted on Appellant's July 25, 1995 CQ, it did not violate the cited WACs. Respondent contends that each time Appellant raised an issue, the agency responded to his concerns.

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).

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4.3 Appellant failed to prove that Respondent violated WAC 356-10-050. Appellant's position was not reallocated upward, therefore, the provisions of this rule are not relevant to the facts before the Board.

4.4 Appellant failed to prove that Respondent violated WAC 356-10-060. Respondent cannot violate a rule that sets forth the actions to be taken by DOP. Furthermore, Appellant provided no evidence that his duties were changed pending an allocation decision by DOP.

4.5 Appellant failed to prove that Respondent did not have a valid procedure for processing allocation review requests. However, Appellant met his burden of proof that in this case, Respondent failed to follow the procedure and utilized a process that caused undue delay in reviewing his reallocation request. Respondent's personnel staff was aware of the request but returned the CQ to Appellant for processing. Based on Respondent's procedure, we find that once an employee submits a CQ to an agency's personnel office for reallocation, personnel staff is responsible to ensure that an employee's supervisor follows through on his/her responsibility to review and sign the CQ and to forward the CQ and accompanying documentation to personnel staff. Furthermore, Respondent failed to formally notify Appellant of the approval/disapproval of his July 25, 1995 reallocation request and of his appeal rights.

4.6 Appellant's August 12, 1998, reallocation request superseded his July 25, 1995 request. Therefore, the appropriate remedy in this case would be to direct Respondent to conduct a position review based on Appellant's August 12, 1998 CQ and to notify Appellant in writing of the approval/disapproval of his reallocation request and of his related appeal rights.

4.7 Under the proven facts and circumstances, the appeal should be granted, in part.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Marek Danilowicz is granted, in part, and within thirty (30) days of the date of this order, Respondent is directed to:

- conduct a position review based on Appellant's August 12, 1998, CQ;
- notify Appellant in writing of the approval/disapproval of his reallocation request; and
- notify Appellant in writing of his related appeal rights.

DATED this _____ day of _____ 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

_____
Leana D. Lamb, Member

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