BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ROBERT PEARSON, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. RULE-99-0022 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, GERALD L. MORGEN, Vice Chair, and LEANA D. LAMB, Member. The hearing was held in the Personnel Appeals Board hearing room in Olympia, Washington, on May 11, 2000. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Robert Pearson was present and appeared *pro se*. Respondent Department of Social and Health Services was represented by Ilene Le Vee, Labor Relations Specialist.

1.3 **Nature of Appeal.** This is an appeal alleging violations of WACs 356-26-030, 356-26-060 and 356-26-070 regarding Respondent's failure to appoint Appellant to a vacant Support Enforcement Officer 2 position from the dual-agency reversion register.

1.4 **Citations Discussed.** WAC 358-30-170; WAC 356-26-030; WAC 356-26-060; WAC 356-26-070; and WAC 356-30-190.

II. FINDINGS OF FACT

2.1 Appellant Robert Pearson was a permanent employee of Respondent Department of Social and Health Services (DSHS) in the Division of Child Support. 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 on July 9, 1999.

2.2 In November 1998, Appellant voluntarily demoted from a Support Enforcement Officer 2 position with DSHS to a position with the Department of Labor and Industries (L&I). Prior to completing his trial service period, Appellant left his position with L&I and his name was placed on the dual-agency reversion register for the SEO 2 classification.

2.3 At the time that Appellant's name was placed on the dual-agency reversion register, his former position with DSHS in Olympia was vacant. However, Appellant was not offered the position. In June 1999, Appellant learned that two employees from the Tacoma DSHS office had transferred into two vacant SEO 2 positions in the Olympia office. Appellant was not offered either of the vacant SEO 2 positions.

2.4 Respondent utilized the provisions of WAC 356-30-190 to transfer the two employees from the Tacoma office to the Olympia office

2.5 WAC 356-30-190 provides a process for permanent employees to transfer into vacant positions within the same agency and states:

> A transfer of a permanent employee to another position in the same class within the same agency may be made at any time by the appointing authority provided such transfers are offered first to employees on the reduction in force registers and employees in the layoff unit who have been notified they are scheduled for reduction in force. However, transfers within the employee's own layoff unit may be made without consulting the reduction in force registers. Transfers made in accordance with this rule shall be reported to the director.

2.6 WAC 356-26-030 sets forth the composition and method of ranking for the various employment registers.

2.7 WAC 356-26-060 describes the process for certification of names for vacancies and states, in part:

> Upon receipt of a request for certification, the director of personnel shall normally certify to the appointing authority a list of names equal in number to six more than there are vacancies to be filled from the ranked registers except:
>
> (1) One name will constitute a complete certification when referrals are made from the agency reduction in force register, the service-wide reduction in force register, or the dual agency reversion register. . . .

2.8 WAC 356-26-070 sets forth the order in which the director of the Department of Personnel will certify names from the employment registers. The rule states, in part, that the director will normally certify names from the registers in the following order:

> (1) Agency reduction in force register.
> (2) Service-wide reduction in force register.
> (3) Dual-agency reversion register.
> . . . .

III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues that he was told by persons at both DSHS and L&I that if his employment at L&I did not work out, he had the right to revert back to his former position at DSHS. Therefore, when Appellant's employment at L&I ended, he believed that the next vacant SEO 2 position in the DSHS Olympia office would be offered to him. Appellant argues that the rules are confusing and that the people he relied upon did not explain to him that an exception to appointment from a register existed for employees wishing to transfer within the same agency. Appellant contends that WAC 356-26-070 should be followed when vacant positions are filled and that if there were no names on the reduction-in-force registers, he should have been offered one of the vacant SEO 2 positions.

3.2 Respondent argues that when employees wish to administratively transfer into a different position, WAC 356-30-190 allows agencies to fill vacant positions without calling for a register. Respondent contends that because the agency did not call for a register when the SEO 2 positions were vacant, the agency was not obligated to offer either of the positions to Appellant.

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 Appellant has failed to meet his burden of proof. Respondent complied with the provisions of WAC 356-30-190 when filling the vacant SEO 2 positions in the Olympia office. Respondent is not required to call for a register when utilizing the administrative transfer process to fill positions.

4.4 The appeal of Robert Pearson should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Robert Pearson is denied.

DATED this _____ day of _____ 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Gerald L. Morgen, Vice Chair

_____

Leana D. Lamb, Member

Personnel Appeals Board
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Olympia, Washington 98504