BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

KEN HUA, Appellant, v. WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Respondent.	Case No. ALLO-02-0026 ORDER OF THE BOARD FOLLOWING HEARING ON EXCEPTIONS TO THE DETERMINATION OF THE DIRECTOR

Hearing on Exceptions. This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and BUSSE NUTLEY, Member, on Appellant's exceptions to the Director's determination dated August 7, 2002. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on April 24, 2003. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision.

Appearances. Appellant Ken Hua was present and was represented by Kevin Johnson, Attorney at Law. Kara Larsen, Assistant Attorney General, represented Respondent Washington Utilities and Transportation Commission (WUTC).

Background. As a result of a class study, the Personnel Resources Board adopted the new Regulatory Analyst classification series effective November 9, 2001 to replace several other classifications. As part of the implementation process for the new class series, the WUTC directed all incumbents of affected positions to submit updated classification questionnaires (CQ).

Appellant, who was appointed to an affected position (number 215-0262), submitted an updated CQ, dated October 11, 2001, to his supervisor.

Mary DeYoung, Personnel Manager for the WUTC, conducted a review of Appellant's position. By letter dated November 21, 2001, Ms. DeYoung informed Appellant that his position was being reallocated from Revenue Requirements Specialist 5 to the new Regulatory Analyst 2 (RA2) classification effective December 21, 2001. Ms. DeYoung also informed Appellant that his salary was being Y-rated pursuant to WAC 356-10-040(5), because the action resulted in a downward reallocation of his position.

By letter dated December 20, 2001, Appellant filed a request for review to the Director of the Department of Personnel. In his letter of appeal, Appellant requested that his position be reallocated to the Regulatory Analyst (RA) 3 classification.

On April 25, 2002, Paul Peterson, the designee for the director of the Department of Personnel, conducted an allocation review of Appellant's position. During the review, Mr. Peterson was unable to differentiate between the RA levels. As a result, Mr. Peterson asked the agency to 1) provide clarifying information to help him distinguish the allocating differences between the RA2 and RA3 classes; 2) define the terms "broad potential impact" and "unprecedented"; and 3) describe how the agency applied the terms to make allocation decisions.

On May 24, 2002, Kathy Taftezon provided the information to Mr. Peterson and to Appellant. On June 14, 2002, Appellant provided a rebuttal to Ms. Taftezon's information.

By letter dated August 7, 2002, the Director's Designee determined that Appellant's position was properly allocated to the Regulatory Analyst 2 classification.

On August 21, 2002, Appellant filed exceptions to the Department of Personnel's determination with the Personnel Appeals Board.

Appellant filed a motion for a *de novo* hearing, and on April 7, 2003, the Board heard oral argument from the parties. Appellant based his motion on the assertions that 1) the Director's Designee erred when he requested additional information from the WUTC and 2) his acquisition of new information, which he believed supported his claim the WUTC management made his allocation decision prior to reviewing his CQ.

On April 21, 2003, the Board issued an order denying Appellant's motion, concluding that the Director's Designee acted within his discretion to request or consider additional information that would assist him in his review process, as permitted under WAC 356-10-060(4). The ruling further stated that information acquired by Appellant after the director's designee issued his determination was not properly before the Board and was not a basis for granting a *de novo* hearing.

Summary of Appellant's Argument. Appellant argues that all other employees previously allocated to the Revenue Requirements Specialist (RRS) 5, with the exception of himself, were reallocated to the Regulatory Analyst (RA) 3 classification. Appellant argues that the agency made numerous errors in calculating the hours he spent working on duties at the RA 3 level. Appellant argues that the director's designee erred when he allowed the department to "create" the criteria to support denying his reallocation request to the RA 3 level one month after the DOP level review and more than five months after the initial reallocation determination. Appellant argues that the department also failed to include his name on their response and failed to adequately define "broad impact" and "unprecedented issues." Appellant argues that the director's designee also erred when he allowed the agency to use volume of work as an allocating criteria. Appellant asserts that he has

reviewed his time records, which support that he performed higher level duties a majority of the time and that he should be allocated to the RA 3 level.

Summary of Respondent's Argument. Respondent argues that the Appellant's CQ overstated his responsibilities and assignments. Respondent acknowledges that Appellant performed some high-level complex analysis work, but asserts that the bulk of the work he performed was under the direction of a more senior employee. Respondent argues that the determination was not made based on the volume of work completed, but rather on what duties Appellant performed 50 percent of his time. Respondent argues that after Mr. Peterson requested additional information, the agency reviewed the official timekeeping records and calculated how much time each employee in the unit, including Appellant, spent performing work at the higher level. Respondent argues that Appellant performed only 327 hours of higher-level duties, which was well below the 800 hours necessary for reclassification to the RA 3 level. Respondent argues that Appellant's name was inadvertently omitted from the department's response, but that his information, nonetheless, was provided to the director's designee. Respondent further argues that the time records Appellant uses to support his contention that he works more than the necessary 800 hours at the higher level are not official agency records.

Primary Issue. Whether the director's determination that Appellant's position is properly allocated to the Regulatory Analyst 2 classification should be affirmed.

Relevant Classifications. Regulatory Analyst 2, class code 42640; Regulatory Analyst 3, class code 42650.

Decision of the Board. The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a

measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. Also, a position review is not a comparison of work performed by employees in similar positions. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

Appellant asserts that others in his work unit who performed similar duties were reallocated to the RA 3 level while he was the only employee allocated to the RA 2 level. While a comparison of one position to another similar position may be useful in gaining a better understanding of the duties performed by and the level of responsibility assigned to an incumbent, allocation of a position must be based on the overall duties and responsibilities assigned to an individual position compared to the existing classifications. The allocation or misallocation of a similar position is not a determining factor in the appropriate allocation of a position. Flahaut v. Dept's of Personnel and Labor and Industries, PAB No. ALLO 96-0009 (1996).

The definition for the Regulatory Analyst 3 states:

> Provides senior/expert technical and/or theoretical advice and research in the areas of regulatory or policy analysis in the field of public utility and transportation regulation for the WUTC. Responsible for resolving complex or difficult regulatory issues having broad potential impact. Issues may involve competing interests, multiple clients, conflicting rules or practices, a range of possible solutions or other elements that contribute to complexity. Research, analyzes, and makes recommendations regarding unprecedented utility and transportation issues. Directs the work of professional staff on a project basis.

Because a current and accurate description of a position's duties and responsibilities is documented in an approved classification questionnaire, the classification questionnaire becomes the basis for

allocation of a position. An allocation determination must be based on the overall duties and responsibilities, as documented in the CQ. Jacobson v. Dept of Ecology, PAB No. ALLO 99-0004 (2000). In his CQ, Appellant states, in relevant part, that he serves as an

> ... independent senior level professional providing expert technical and/or theoretical advice and research in the areas of regulatory analysis relating to energy regulation for the WUTC. I have been assigned to serve as a team leader for filings and analytical procedures. ... I am responsible for resolving complex or difficult regulatory issues having broad potential impact. Issues may involve competing interests, multiple clients, conflicting rules or practices, a range of possible solutions or other elements that contribute to complexity. I research and analyze and make recommendations regarding unprecedented utility and transportation issues...

Appellant's supervisor, Lisa Steel, Assistant Director, disagreed with the description of the duties described in Appellant's CQs, stating that:

> This position works under the general guidance of higher-level specialists rather than independently. This position is not responsible for resolving regulatory issues with broad potential impact (footnote: Handling the most significant portion of a complex general rate case is an example of a regulatory issue with broad potential impact. Devising an innovative incentive mechanism is an example of regulatory analyst work of an unprecedented nature. Negotiation of a creative settlement out of contested, complex and important issues is an example of an unprecedented solution with broad potential impact. This position has neither been assigned nor assumed a lead role in any filing of these complexities). While, on occasion, this position is assigned a project involving complexities, such as conflicting rules and practices, the research, analysis and recommendations this position independently produces fall within the scope of the routine. This position is not assigned to analyze or research unprecedented utility transportation issues.

Dixie Linnenbrink, the Director, concurred with Ms. Steel's statement that Appellant did not routinely perform "complex or broad in nature" work.

In determining the proper allocation of Appellant's position, we have given considerable weight to Ms. Steel's description of Appellant's duties and responsibilities.

Appellant continues to take exception to the designee's request and review of additional information from the WUTC. However, we stand by our earlier ruling on Appellant's motion for *de novo* hearing that the designee acted within his discretion to request or consider additional information as allowed under WAC 356-10-060(4).

There is no dispute that Appellant performed work on higher level, complex cases that had "broad potential impact" and "unprecedented utility and transportation issues." However, the issue here is whether Appellant performs work on "complex or difficult regulatory issues having broad potential impact" a <u>majority</u> of his work time.

For Appellant to be reallocated to the RA 3 level, he must perform more than 844 hours (during a one-year period) of duties at the RA 3 level. Although Appellant asserts that he spent over 900 hours performing work at the higher level, the evidence before the director's designee does not support this contention. Moreover, official agency timesheets, which were signed and submitted by Appellant as an accurate account of how he spent his work time, support that Appellant did not spend the majority of his time performing work on cases with "broad impact" or "unprecedented issues."

The definition of the Regulatory Analyst 2 states:

> Under the general guidance of a higher level analyst, independently performs regulatory or policy analysis in the field of public utility or transportation regulations for the WUTC. Work performed is complex rather than routine, but impact of decisions is generally limited. Assignments normally involve making decisions and judgments within established precedents. May direct the work of other staff on a project basis.

The Distinguishing Characteristics further indicate that:

> This is the journey level analyst performing professional analysis within already established policy; little, if any supervision is provided; expected to possess the knowledge, skills and abilities of journey level analyst.

The evidence supports that Appellant spent a majority of his time working under the direction and supervision of a more senior analyst performing work of a complex nature. Appellant's level of professional analysis was performed within already established policies and the impact of his decisions was generally limited. Therefore, Appellant's duties were best described by the RA 2 classification.

The director's designee properly concluded that although Appellant was performing duties that fit within the RA 3 classification, he did not perform at this higher level a majority of his time. Therefore, the director's designee's determination that Appellant's assignments are more appropriately allocated to the Regulatory Analyst 2 classification should be affirmed.

Conclusion. The appeal on exceptions by Appellant should be denied and the Director's determination dated August 7, 2002, should be affirmed and adopted.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Kevin Hua is denied and the attached Director's determination, dated August 7, 2002, is affirmed and adopted.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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