BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

MICHAEL AUTIO, Appellant, vs. DEPARTMENT OF CORRECTIONS, Respondent.	CASE NO. R-ALLO-12-003 ORDER OF THE BOARD FOLLOWING HEARING ON EXCEPTIONS TO THE DETERMINATION OF THE DIRECTOR

Hearing on Exceptions. This appeal came before the Personnel Resources Board, DJ MARK, Chair, and JOSEPH PINZONE, Vice Chair, on Appellant's exceptions to the director's determination dated March 30, 2012. This matter was decided on written argument.

Appearances. Appellant Michael Autio represented himself. Respondent Department of Corrections (DOC) was represented by Nichole Baker, Human Resources Consultant.

Background. Appellant requested a reallocation of his position. By reallocation notification letter dated December 19, 2011, DOC responded to Appellant's request. The reallocation notification letter was provided to Appellant by email and hand-delivered on December 19, 2011.

On January 23, 2012, the Office of the State Human Resources Director received Appellant's request for a director's review of DOC's decision. The director's designee reviewed the timeliness of the Appellant's review request and by letter dated March 30, 2012, notified Appellant that his request for review was untimely and the matter was closed.

On April 19, 2012, Appellant filed timely exceptions to the director's determination. Appellant's exceptions are the subject of this proceeding.

Summary of Appellant's Arguments. Appellant argues that the collective bargaining agreement covering his review request does not address delivery of a review request and asserts that the rules

addressing the timely filing of review requests are invalid because they are superseded by the language in the collective bargaining agreement. Appellant further argues that the timeliness of his review request was adversely impacted by "a natural cause (act of god) and could not have been prevented by the exercise of prudence, diligence, and care." Appellant asserts that the director's rejection of his review request is a deviation from fundamental fairness and should be reversed.

Summary of Respondent's Arguments. Respondent provided no argument on the matter of timeliness. Instead, Respondent deferred to the decision made by the directors' designee.

Primary Issue. Whether the director's determination that Appellant's request for review was untimely should be affirmed.

Relevant Laws and Civil Service Rules.

RCW 41.06.170(4) provides, "[a]n employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the Washington personnel resources board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken."

Consistent with WAC 357-49-017, a director's review is the initial step in the appeal process for employee allocation or reallocation requests.

WAC 357-13-080(1) provides, "[a]n employee may request a director's review of the results of a position review or reallocation of the employee's position . . . . The employee must request the director's review within thirty calendar days of being provided the results of a position review or the notice of reallocation."

WAC 357-49-023 provides, in relevant part, "[p]apers that must be filed with the director for director's review requests are considered to be filed only when the papers are actually received in the director's review office in Olympia, Washington." The rule also allows filing of papers by facsimile but precludes filing by email.

Decision of the Board. In response to Appellant's argument regarding to the language of the collective bargaining agreement, when an agreement refers to a process such as requesting a director's review as provided in the civil service rules, the provisions of the rules then apply. In this case, the civil service rules addressing filing director's review requests and timeliness apply to Appellant's request.

Appellant was served with DOC's reallocation notification letter on December 19, 2011. On January 23, 2012, the director received Appellant's request for review of DOC's decision. In accordance with WAC 357-49-023, Appellant's request was considered filed on January 23, 2012. For purposes of filing a request for a director's review, the thirtieth day from December 19, 2011, was January 18, 2012.

Appellant's review request was filed thirty-five days after service of Respondent's response to his reallocation request.

Appellants have the burden to file timely appeals. (See Mishra v. University of Washington, PRB Case No. R-RULE-07-002).

We adopt the description of evenst leading to the delivery of Appellant's review request as found in the determination of the director's designee. It is unfortunate that Appellant relied on UPS to deliver his request on January 18, 2012. While we recognize that adverse weather conditions existed during the week of January 17 - January 20, 2012, the offices of the director were open

for operations until noon on January 20, 2012. Further, Appellant could have filed by facsimile to assure that his request was timely but chose instead to rely on UPS to deliver his request.

The Board has addressed the issue of timeliness on numerous occasions. For example, in Daniels v. Dept. of Corrections, PRB Case No. R-DEMO-09-007 (2009), Mr. Daniels believed he had deposited his appeal with the United States Postal Service with sufficient time for the appeal to arrive timely at the Board's office. In its order dismissing the appeal request, Board stated that "[i]t is unfortunate that Mr. Daniels was given misleading information by United States postal staff regarding the delivery time for mail from Lacey, Washington, to the Board's office in Olympia. However, there is a history of cases in which this Board and the Personnel Appeals Board (predecessor to this Board) has held that an appeal is untimely even when the affected employee had been unintentionally misled by an agency or given erroneous information about a process. See for example, Lapp v. Washington State Patrol, PAB No. V94-079 (1995) and Yialelis v. Dept. of Transportation, PRB No. R-ALLO-08-016 (2008)." In Daniels, the Board further stated that, "[w]hile the Board understands that Mr. Daniels relied on information given to him by postal staff, the Board may not waive the jurisdictional timelines found in statute."

In Heath v. Central Washington University, PRB Case No R-SUSP-08-007 (2008), Mr. Heath argued that he intended to mail his appeal on time and asked the Board to consider the extra distance required for the mail to travel be considered the mitigating factor for his appeal being one day late. In its order dismissing the appeal, the Board stated that "[n]either the RCW nor the civil service rules allow the Board to waive the jurisdictional requirements for filing appeals. The RCW and the rules require that the appeal must be received by the Board within thirty (30) days of the effective date of the disciplinary action." As stated in the WAC 357-49-017, a director's review is the initial step in the appeal process for reallocation requests.

Further, in Bushey v. Washington State University, PRB No. R-RULE-10-002 (2010), Mr. Bushey mailed his appeal by overnight delivery on January 28, 2010, with the understanding that it would be delivered on January 29, 2010. However, the appeal was delivered on February 1, 2010. Mr. Bushey

argued that he exercised due diligence to pursue his appeal and the fact that Federal Express failed to deliver his appeal until February 1, 2010 was beyond his control. The Board dismissed the appeal as untimely and confirmed that, "[n]either the RCW nor the civil service rules allow the Board to waive the jurisdictional requirements for filing appeals."

While the Board understands that Appellant relied on UPS to deliver his review request on time, the Board may not waive the jurisdictional timelines found in statute.

In a hearing on exceptions, the Appellant has the burden of proof. WAC 357-52-110. Appellant has failed to meet his burden of proof. Appellant's request for a director's review was untimely filed and the appeal on exceptions should be denied.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Michael Autio is denied and the director's determination dated March 30, 2012, is affirmed and adopted.

DATED this _____ day of _____, 2012.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Chair

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JOSEPH PINZONE, Vice Chair