BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

JULIE HEDIN, Appellant, vs. DEPARTMENT OF CORRECTIONS, Respondent.	CASE NO. R-ALLO-12-006 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; JOSEPH PINZONE, Vice Chair; and NANCY HOLLAND YOUNG, Member, on Appellant's exceptions to the director's determination dated May 2, 2012. This matter was decided on written argument.

Appearances. Appellant Julie Hedin represented herself. Respondent Department of Corrections (DOC) was represented by Tina Cooley, Human Resources Consultant.

Background. Appellant requested a reallocation of her position. By reallocation notification letter dated and placed in the outgoing mail on January 27, 2012, DOC responded to Appellant's request.

On February 28, 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 May 2, 2012, notified Appellant that her request for review was untimely and the matter was closed.

On May 31, 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 she did not realize she was close to the filing deadline for her review request due in part to the amount of work generated by transport necessities. She also argues that she was advised by Human Resources at the Washington Correction Center that it would be sufficient to send her appeal by mail provided it was postmarked by February 27, 2012. Appellant asserts that she did not receive DOC's January 27, 2012, reallocation letter until January 31, 2012, and that she understood her review request must be filed within thirty days of receipt of the letter. Appellant further asserts that her request for appeal was postmarked on February 27, 2012 which was thirty days from the date of the letter.

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. However, Respondent asserts that DOC's reallocation decision letter was dated, signed, and placed in the outgoing mail on January 27, 2012.

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."

Prior to the commencement of the appeal process, an incumbent may request a position review by the employing agency. Agencies must have a procedure that ". . . allow[s] an employee to request the employer to review his/her position at least every six months." WAC 357-13-065.

WAC 357-04-105 establishes to how notices, such as the notice of a position review decision, are to be provided or served on employees. The rule provides, in relevant part, that service "will be regarded as completed when personal delivery has been accomplished; or upon deposit in the United States mail, properly stamped and addressed; or upon production by telephone facsimile transmission of confirmation of transmission. . . ."

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."

A director's review is the initial step in the appeal process for employee allocation or reallocation requests. *See* WAC 357-49-017.

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. As provided in WAC 357-04-105, Appellant was served with DOC's reallocation notification letter on January 27, 2012. We note that DOC's letter includes the notation "US Postal Service." Lacking any evidence to the contrary, we find that the DOC's letter was properly served. If Appellant had provided evidence to the contrary, such as the postmarked envelope in which the January 27, 2012, letter was mailed, we may have concluded otherwise.

On February 28, 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 February 28,

2012. For purposes of filing a timely request for a director's review, the thirtieth day from January 27, 2012, was February 27, 2012.

Appellants have the burden to file timely appeals. *See* Mishra v. University of Washington, PRB Case No. R-RULE-07-002 (2007). Appellant's review request was filed thirty-one days after service of Respondent's response to her reallocation request. Appellant's review request was untimely.

The Board has addressed the issue of timeliness as it relates to director's review requests in numerous past decisions. *See for example*, Yialelis v. Dept. of Transportation, Case No. R-ALLO-08-016 (2008); Holman v Dept. of Transportation, Case No. R-ALLO-08-010 (2008); Faddon v. Dept. of Corrections, Case No. R-ALLO-08-005 (2008); Cho v. Dept. of Social and Health Services, Case No. R-ALLO-10-020 (2010); Autio v. Dept of Corrections, Case No. R-ALLO-12-003 (2012).

The Board has also addressed the issue of timeliness when the appellant relied on information provided by others. 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."

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 once again confirmed that, "[n]either the RCW nor the civil service rules allow the Board to waive the jurisdictional requirements for filing appeals."

Unlike the cases discussed above, in this case, Appellant relied on erroneous information provided by human resources staff at the Washington Corrections Center rather than on information provided by mail services staff. We and our predecessor, the Personnel Appeals Board, have held that an appeal is untimely even when the affected employee has been given erroneous information by agency staff. *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). Nonetheless, we are very concerned about employees receiving erroneous information from human resources staff. Employees must be able to rely with confidence on the information provided to them by their human resources staff. Therefore, we direct the Department of Corrections to take steps to assure that its human resources staff provides correct information to employees about the service of reallocation letters and about the timelines for filing appeals. This information must be consistent with the language and requirements of the merit system rules

In a hearing on exceptions, the Appellant has the burden of proof. WAC 357-52-110. Appellant has failed to meet her burden of proof.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Julie Hedin is denied and the director's determination dated May 2, 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

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NANCY HOLLAND YOUNG, Member