BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

NOLAN LATTYAK, Appellant, vs. DEPARTMENT OF ECOLOGY, Respondent.	CASE NO. R-ALLO-10-010 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, Vice Chair, and JOSEPH PINZONE, Member, for a hearing on Appellant's exceptions to the director's determination dated March 31, 2010. The hearing was held at the office of the Personnel Resources Board in Olympia, Washington, on July 8, 2010.

Appearances. Appellant Nolan Lattyak was present and represented himself. Respondent Department of Ecology (ECY) was represented by Pam Durham, Human Resource Consultant.

Background. Appellant's position was allocated to the Environmental Specialist 2 (ES2) classification. On January 23, 2009, he submitted a position review request asking that his position be reallocated to the Environmental Specialist 3 (ES3) classification. By letter dated May 13, 2009, Respondent determined that Appellant's position was properly allocated to the ES2 classification.

On May 15, 2009, Appellant filed a request for a director's review of ECY's allocation determination. By letter dated March 31, 2010, the director's designee determined that Appellant's position was properly allocated to the ES2 classification. On April 23, 2010, Appellant filed exceptions to the director's determination. Appellant's exceptions are the subject of this proceeding.

At the time of his request for a position review, Appellant's position was in the Southwest Region where he performed the duties and responsibilities of a compliance inspector/compliance assistance specialist for the Hazardous Waste and Toxic Reduction Program. Appellant reported to the Section Manager. In his position review request, Appellant described the purpose of his position as:

> Under the direction and supervision of the Hazardous Waste and Toxic Reduction Section Manager this position conducts field investigations of businesses, industries and public agencies that generate, transport and manage hazardous wastes. This position recommends appropriate actions to ensure compliance with State and Federal hazardous waste requirements. This position provides assistance to persons subject to hazardous waste regulations with the goal of improving understanding and achieving voluntary compliance.

Appellant's supervisor agreed with Appellant's description of his work.

Summary of Appellant's Arguments. In summary, Appellant argues that he performed the typical work described at the ES3 level and that he met the desirable qualifications for the class. Appellant contends that his duties went beyond those described at the ES2 level for example, he responded to complaints, was assigned responsibility for an entire county for the full spectrum of stakeholders, performed follow-up inspections, regularly planned and conducted sampling events, and regularly reviewed reports produced by senior inspectors allocated to the ES3 and ES4 classifications. Appellant alleges that he was assigned inspections that should have been assigned to higher level inspectors, that he performed a larger number of inspections than other ES3 positions, and that two inspectors participated in every inspections, not just those he performed. Appellant explains that he was the only ES2 in the unit which is why he was accompanied by a senior inspector. Appellant asserts that he was not working in a training capacity and was not receiving direction from senior inspectors. Appellant argues that the director's designee failed to reference his documents, made no mention of his exhibits and omitted facts which established that the designee was biased and that her determination was not justified.

Summary of Respondent's Arguments. Respondent argues that Appellant performed his work under the direction of the unit supervisor and that he received direct supervision with close review when conducting inspections. Respondent acknowledges that Appellant responded to requests for technical assistance but contends that he did so under the watchful eye of more experienced staff. Respondent asserts that the multiple inspection reports submitted by Appellant show that he was not working alone but that he was working with various senior inspectors and his supervisor in completing the reports. As a result, Respondent contends that Appellant was not working independently as required for allocation to the ES3 classification. Respondent argues that Appellant's supervisor provided him direction and gave him opportunities for training and job growth but that while participating in job growth opportunities, Appellant functioned with the level of independence found within the ES2 classification. Respondent recognizes that Appellant was the backup for more senior level inspectors on various inspections but asserts that Appellant's role as a backup was for safety purposes and was to assist the senior level inspector. Respondent explains that these assignments provided further learning opportunities for Appellant. Respondent argues that Appellant performed junior-level work which was appropriately allocated to the ES2 classification.

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

Relevant Classifications. Environmental Specialist 2, class code 523F; Environmental Specialist 3, class code 523G.

Decision of the Board. Appellant raises a number of concerns that are outside of the scope of a position review and are not a part of our decision in this matter. 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. 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. See Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

Most positions within the civil service system occasionally perform duties that appear in more than one classification. However, when determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. See Dudley v. Dept. of Labor and Industries, PRB Case No. R-ALLO-07-007 (2007).

This Board and its predecessor, the Personnel Appeals Board, have addressed the relevance of the allocation of similar positions in numerous decisions. For example, in Byrnes v. Dept's of Personnel and Corrections, PRB No. R-ALLO-06-005 (2006), the Personnel Resources Board held that "[w]hile 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." Citing to Flahaut v. Dept's of Personnel and Labor and Industries, PAB No. ALLO 96-0009 (1996). We recently confirmed this holding in Sauer v. Dept. of Corrections, PRB Case No. R-ALLO-09-044 (2010). In the present case, we once again confirm our holding in Byrnes and Sauer. Therefore, the allocation or misallocation of other Environmental Specialist positions is not a determining factor in the appropriate allocation of Appellant's position.

Appellant argues that he performs the work described in the typical work statements and meets the desirable qualifications of the EP3 classification. However, typical work statements and desirable qualifications are not allocating criteria. The following standards, in descending order, are the primary considerations in allocating positions:

- Class series concept (if one exists).
- Definition or basic function of the class.
- Distinguishing characteristics of a class.
- Class series concept, definition/basic function, and distinguishing characteristics of other classes in the series in question.

There is no dispute that Appellant's position fits within the Environment Specialist class series. Therefore, to determine the appropriate allocation of his position within the series, we must compare the duties and responsibilities of his position to the definition of the ES2 and the ES3 classifications.

The definition of the Environmental Specialist 3 classification states, in relevant part:

> Serves as a staff environmental specialist performing one or more of the following functions independently with little direction and supervision: compliance and enforcement; development of draft legislation; develops, performs, coordinates, implements and evaluates scientific analyses, plans or services involving office or field projects; conducts surveys, analyses and records field conditions; project administration and environmental technical assistance for grants/contracts/loans; gathers and analyzes information to develop recommendations and make decisions; permit development, review and/or oversight. May lead assigned staff.

The definition of the Environmental Specialist 2 classification states:

> Serves as an environmental specialist performing one or more of the following functions under direction and supervision: compliance and enforcement; performs and evaluates scientific analysis and technical services on assigned office or field projects; assists in the development of draft legislation; conducts surveys, analyses and records field conditions; project administration and environmental technical assistance for grants/contract/loans; gathers and analyzes information to develop recommendations and make decisions, and/or permit development.

Both the ES3 and ES2 levels investigate complaints and conduct inspections. Both conduct compliance and enforcement activities. The primary difference between the two classifications is the level of independence exercised and the level of supervision and direction recieved. Appellant's position performed inspections and recommended actions to ensure compliance. But

the preponderance of the documentary evidence shows that he performed his duties and responsibilities under the guidance and direction of his supervisor and other senior-level inspectors. Appellant acted as a backup inspector, assisted more senior employees, and led inspections. As explained by Appellant, when he was the lead inspector, he was backed-up by a more senior inspector. The senior inspector was available to provide direction and supervision during the inspection. Appellant further explained that after the inspections in which he was the lead, he prepared a draft report which was reviewed by the senior inspector. The senior inspector provided Appellant with input and suggested revisions to the report. The revised report was then reviewed by Appellant's supervisor who also provided input and made revisions as needed. The level of review and direction provided to Appellant is consistent with definition of the ES2 classification. Appellant did not perform the duties of his position with the level of independence required for allocation to the ES3 classification.

In reaching this decision, the Board has carefully and thoroughly reviewed all of the documents in the file, considered the totality of the arguments presented, and weighed all the documentary evidence, including the voluminous documentary evidence provided by Appellant. The documentary evidence and the arguments of the parties establish that Appellant performed the duties and responsibilities of his position under the direction and supervision of senior-level Environmental Specialists and his supervisor and that his position is properly allocated to the ES2 level.

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.

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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Nolan Lattyak is denied and the director's determination dated March 31, 2010, is affirmed.

DATED this _____ day of _____, 2010.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Vice Chair

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JOSEPH PINZONE, Member