BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

JODI TUFTS, Appellant, vs. WASHINGTON STATE PATROL, Respondent.	CASE NO. R-ALLO-12-007 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 22, 2012. This matter was decided on written argument.

Appearances. Appellant Jodi Tufts was represented by Sheri-Ann Burke, Labor Advocate with the Washington Federation of State Employees. Respondent Washington State Patrol (WSP) was represented by Debb Chavira, with the WSP Human Resource Division.

Background. Appellant requested a reallocation of her position. She received WSP's allocation determination on March 27, 2012.

On April 27, 2012, the Office of the State Human Resources Director received Appellant's request for a director's review of WSP's decision. The director's designee reviewed the timeliness of Appellant's review request and by letter dated May 22, 2012, notified Appellant that her request for review was untimely and the matter was closed.

On June 14, 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 mailed her review request in a timely manner on April 24, 2012, at Mail Plus Copies in Puyallup, Washington. Appellant further argues that the USPS Track and Confirm screen print shows that the package was received on April 26, 2012. Appellant contends that the screen print confirms that her appeal was delivered on time on April 26, 2012. Appellant also asks the Board to consider that when she filed her review request, the Department of Personnel was in the midst of a breakup and that many people were a bit confused about how to route mail. Appellant asserts that she should not be impacted by this period of confusion when she tried her best to meet the intent of the filing requirements.

Summary of Respondent's Arguments. Respondent argues that Appellant received WSP's allocation decision on March 27, 2012, and that she had an opportunity to appeal within thirty days of being provided the decision. Respondent acknowledges that the Office of the State Human Resources Director received Appellant's review request but asserts that the request was untimely.

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. The Board may not waive the jurisdictional timelines found in statute. Appellant was served with WSP's reallocation notification letter on March 27, 2012. On April 27, 2012, the director received Appellant's request for review of WSP's decision. In accordance with WAC 357-49-023, Appellant's request was considered filed on April 27, 2012. For purposes of filing a request for a director's review, the thirtieth day from March 27, 2012, was April 26, 2012. Appellant's review request was filed thirty-one days after service of Respondent's response to her reallocation request.

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

Appellant asserts that the USPS Track and Confirm screen print shows that her appeal was delivered on April 26, 2012. We have carefully reviewed the documents provided by Appellant and find that the print screen shows that the appeal arrived in the Olympia, Washington, post office on April 26, 2012, at 5:40 a.m. and was then delivered at 5:41 a.m. However, the director's office is not open at 5:41 a.m. The print screen further indicates that delivery was expected by April 26,

2012. (Emphasis added.) The print screen does not indicate that the delivery was actually made to the Office of the State Human Resources Director on April 26, 2012.

Appellant also asserts that during the timeframe relevant to her appeal, the Department of Personnel was in the midst of a breakup and that there was confusion about how to route mail. The Department of Personnel began its reorganization transition in July 2011. The Board's staff and director's review staff relocated at that time. Many messages and notices were provided to the Board's and the director's stakeholders about the reorganization and movement of staff. The reorganization was fully implemented by October 1, 2011. While the physical location of staff changed, the mailing address for the Board's staff and for the director's review staff did not change. Appellant's argument regarding the routing of mail is unfounded.

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."

Most recently, in Audio v. Department of Corrections, PRB No. R-ALLO-12-002 (2012), Mr. Audio argued 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." While noting that at the time relevant to Mr. Audio's appeal adverse weather conditions existed, the Board dismissed his appeal as untimely. The Board commented that it was unfortunate that Mr. Audio relied on UPS to deliver his request on time and noted that Mr. Audio could have filed by facsimile to assure that his request was timely.

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. Appellant's request for a director's review was untimely filed and the appeal on exceptions should be denied.

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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Jodi Tufts is denied and the director's determination dated May 22, 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