BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

VIRGIL SWEENEY, Appellant, v. OFFICE OF ADMINISTRATIVE HEARINGS, Respondent.	PRB Case No. R-JUR-12-006 **ORDER OF DISMISSAL**

This matter came before the Personnel Resources Board, DJ MARK, Chair; JOSEPH PINZONE, Vice Chair; and NANCY HOLLAND YOUNG, Member, for dismissal pursuant to WAC 357-52-215 and WAC 357-52-220.

WAC 357-52-215 provides, in relevant part:

> The board may dismiss an appeal on its own motion when:
> . . .
> (4) The board lacks jurisdiction over the subject matter or parties to the appeal. . . .

On October 15, 2012, the Personnel Resources Board received Virgil Sweeney's request to appeal his dismissal from an exempt position at the Office of Administrative Hearings (OAH). Based on the information Mr. Sweeney provided, he was dismissed from his exempt appointment effective September 15, 2012 for gross misconduct.

The civil service laws for employees of the State of Washington are found in Chapter 41.06 RCW. RCW 41.06.070 provides for the exemption of certain positions from coverage of the civil service laws. Mr. Sweeney's OAH Finance Director position was exempted under the provisions of RCW 41.06.070(3). RCW 41.06.070(3) provides, in relevant part:

> In addition to the exemptions specifically provided by this chapter, the director may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the office of

> financial management stating the reasons for requesting such exemptions. The director shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the director determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, or is a senior expert in enterprise information technology infrastructure, engineering, or systems, the director shall grant the request. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor.

RCW 41.06.170 provides appeal rights for classified employees covered by the civil service laws. Mr. Sweeney was in a position that was exempt, therefore, it appeared that his position that was not covered by the civil service laws and that the Board lacked jurisdiction over his dismissal.

By letter dated October 16, 2012, Board staff directed the parties to provide written argument addressing the Board's jurisdiction in this matter. Written arguments were due within twenty-one days of the date of the letter. By letter dated October 24, 2012, the due date for written arguments was extended to November 9, 2012. The parties were informed that if the information provided failed to show that Mr. Sweeney's appeal fell within the jurisdiction of the Board, the matter may be presented to the Board for dismissal under the provisions of WAC 357-52-215.

On November 8, 2012, OAH submitted written argument supporting dismissal for lack of jurisdiction and confirming that Mr. Sweeney's position was exempted under the provisions of RCW 41.06.070(3). Mr. Sweeney did not provide a response to the question of the Board's jurisdiction in this matter.

On November 13, 2012, the Board served the parties with a Notice of Potential Dismissal. The notice stated that it appeared that Mr. Sweeney's OAH Finance Director position was not within the

jurisdiction of the Board. The notice also stated that the appeal would be dismissed unless, within fifteen calendar days following the date of service of the notice, the Board received a written request showing good cause why the appeal should not be dismissed. Neither party filed a written response to the Notice of Potential Dismissal.

RCW 41.06.170 provides appeal rights for employees who are subject to the jurisdiction of the Board. However, Mr. Sweeney's position was not covered by the civil service laws. Therefore, the Mr. Sweeney's dismissal is not subject to the jurisdiction of the Board.

The Board having reviewed the file and records herein and being fully advised in the premises, now enters the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Virgil Sweeney vs. Office of Administrative Hearings, PRB Case No. R-JUR-12-006, is dismissed.

DATED AND MAILED this _____ day of _____, 2012.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Chair

_____
JOSEPH PINZONE, Vice Chair

_____
NANCY HOLLAND YOUNG, Member