BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

BARBARA BOYD, ROBERT ROBINSON, AND BRANDY HANSON, Appellants, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	PRB Case Nos. R-ALLO-11-015, R-ALLO-11-016 & R-ALL0-11-017 **ORDER OF DISMISSAL**

These matters came before the Personnel Resources Board DJ MARK, Chair; JOSEPH PINZONE, Vice Chair; and LAURA ANDERSON, 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:
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> . . .
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> (3) An appeal is not filed on time. . .

On November 21, 2011, Gary Hill, Council Representative for the Washington Federation of State Employees, filed appeals on behalf of Appellants Barbara Boyd, Robert Robinson and Brandy Hanson. The appeals took exception to the director's determination that Appellants' requests for director's reviews of their positions were untimely.

RCW 41.06.170 establishes the timeframe for filing appeals to the Personnel Resources Board. In summary and in relevant part, the RCW provides that appeals must be filed not later than thirty days after notice of the action being appealed.

In addition, WAC 357-52-015 provides, in relevant part: "[i]n order to be considered timely, an appeal must be received in writing at the office of the board within thirty calendar days after . . . [s]ervice of the director's determination. . .."

The director's determination letters were dated October 18, 2011. In his letters of appeal, Mr. Boyd states that his office received the determination letters on October 18, 2011. However, the copies of the determination letters that Mr. Hill attached to the appeals bear a Washington Federation of State Employees (WFSE) date stamp of October 19, 2011.

The appeals were received and thirty-four (34) days after service of the director's determination and the date that Mr. Hill states his office received the letters. Additionally, the appeals were received thirty-three (33) days after the date the determination letters were date stamped. Therefore, the appeals to the Personnel Resources Board appear to be untimely.

Pursuant to WAC 357-52-045, by letter dated November 22, 2011, Board staff directed the parties to submit affidavits and/or written argument addressing the timeliness of the appeals. Affidavits and/or written argument were to be submitted within twenty-one (21) calendar days of the date of the letter.

On December 12, 2011, on behalf of the Department of Social and Health Services (DSHS), Lester Dickson, Classification and Compensation Specialist, filed a timely written response addressing the issue of timeliness. Mr. Dickson argued that the director's determinations were served on October 18, 2011, by deposit in the U.S. Postal Service and therefore, the appeals were untimely.

Neither Mr. Hill nor the Appellants filed written argument regarding the timeliness of their appeals.

On December 14, 2011, Board staff served the parties with a Notice of Potential Dismissal. The notice 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 submitted a request.

The Board has addressed the issue of timeliness on numerous occasions. For example, in Bello v. Dept. of Social and Health Services, PRB Case No. R-ALLO-08-003 (2008), the employee filed exceptions to a director's determination. The employee argued that the appeal was filed consistent with Article 41.2D of the collective bargaining agreement between the State of Washington and WFSE and was timely. However, the Board determined that consistent with RCW 41.80.020(6), RCW 41.06.170 prevailed. The Board concluded that under the provisions of the statute, the appeal, which was filed thirty-four days after service of the director's determination, was untimely and dismissed the appeal.

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."

In the present cases, the director's determination letters were served on October 18, 2011, and the appeals were received on November 21, 2011. The appeals were received thirty-four (34) days after the service date of the action appealed. As a result the appeals are untimely and should be dismissed.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeals of Barbara Boyd v. DSHS, PRB No. R-ALLO-11-015; Robert Robinson v. DSHS, PRB No. R-ALLO-11-016; and Brandy Hanson v. DSHS, PRB No. R-ALLO-11-017, are dismissed.

DATED AND MAILED 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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LAURA ANDERSON, Member