BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

KENNETH MALLERY, Appellant, vs. DEPARTMENT OF ECOLOGY, Respondent.	CASE NO. R-ALLO-13-005 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, JOSEPH PINZONE, Chair; DJ MARK, Vice Chair; and NANCY HOLLAND YOUNG, Member, for a hearing on Appellant's exceptions to the director's determination dated January 25, 2013. The hearing was held on May 30, 2013.

Appearances. Appellant Kenneth Mallery was present and was represented by Debbie Brookman, Labor Advocate with the Washington Federation of State Employees. Wendy Holton, Senior Human Resource Consultant, represented Respondent Department of Ecology (ECY).

Background. Appellant's position was allocated to the Environmental Engineer 3 (EE 3) classification. On February 11, 2011, he submitted a Position Review Request to ECY's Human Resources Office asking that his position be reallocated to the Environmental Engineer 5 (EE 5) classification. On January 6, 2012, ECY notified Appellant that his position was properly allocated to the EE 3 classification.

On February 3, 2012, the Office of the State Human Resources Director (OSHRD) received Appellant's request for a director's review of ECY's decision. By letter dated January 25, 2013, the director's designee determined that Appellant's position was properly allocated.

February 19, 2013, Appellant filed exceptions to the director's determination. Appellant's exceptions are the subject of this proceeding.

Appellant is a registered professional engineer. His position is located within ECY's Eastern Region's Permit Management Unit. Appellant performs specialized engineering functions for the Water Quality Program in regard to the pretreatment of wastewater discharge for publically owned treatment works and treatment works treating domestic sewage.

Summary of Appellant's Arguments. Appellant argues that he is recognized as the section authority for engineering issues related to wastewater pretreatment and implementation of the federal water quality program within the region. Appellant asserts that the breadth and depth of his knowledge, responsibilities and authority fit within the EE 5 classification. Appellant acknowledges that his position has not been given written designation as an expert on the ECY written designation form, but he contends that his work is described in the ECY operating manuals for wastewater treatment design and permitting and that the manuals refer to his position as the section expert. Appellant further argues that his supervisor recognizes him as "the section authority for pretreatment." Appellant argues that he has in-depth, specialized knowledge and skills in wastewater pretreatment and implementation of the federal program for water quality and that he is expected to perform work as the section expert but he is not being fairly compensated for this specialized, expert-level work. Therefore, Appellant asks for equity and for allocation of his position to the EE 5 classification.

Summary of Respondent's Arguments. Respondent agrees that Appellant is an authority on wastewater pretreatment but argues that as a professional, licensed engineer working independently on complex issues, his position fits within the EE 3 classification. Respondent explains that within the engineering ranks, there are various types of specialization and engineers with specialized knowledge who are expected function at the expert level. However, Respondent contends that determining when an area of expertise rises to the level of being a specialty is a judgment call by the program manager. Respondent recognizes that Appellant's former

supervisor requested written designation for Appellant's position as an authority for a specialty area but argues that the request was reviewed by management and was not approved. Respondent contends that written designation cannot be given through reference in a working manual or by email. Respondent argues that Appellant has not been given the written designation required for allocation to the EE 5 level. Respondent contends that the EE 3 classification encompasses Appellant's level of expertise and authority and that his position is properly allocated.

Primary Issue. Whether the director's determination that Appellant's position is properly allocated to the Environmental Engineer 3 classification should be affirmed.

Relevant Classifications. Environmental Engineer 3, class code 536G, and Environmental Engineer 5, class code 536I.

Decision of the Board. 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).

The Environmental Engineer 5 definition states, in relevant part:

> As a senior environmental engineering specialist, plans, and conducts investigations of, and proposes solutions to environmental engineering problems that require the research and application of environmental engineering techniques and principles within a specialty field. Positions are recognized and designated in writing by a program manager . . . as a section's authority in an environmental engineering technical specialty, type of facility, or equipment. Position represents the department as a registered Professional Engineer.
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> (Emphasis added.)

EE 5 classification requires written designation as a section authority in a technical specialty area, type of facility or equipment. Appellant has shown that he independently performs professional level, complex engineering tasks and that he is recognized as the section's go-to person for complex pretreatment programs for cities and counties, including review and approval of engineering reports from facilities in those municipalities and implementation of the Federal water quality program. However, Appellant provided no evidence to establish that he has been given written designation as the section authority.

The issue of written designation has been addressed in many decisions by the Personnel Appeals Board (predecessor to this Board.) The Personnel Appeals Board consistently held that when a classification specification requires written designation, there must be a document that confers such a designation upon the position in question. This written documentation can be a formal agency designation form, an approved CQ [or Position Description form] or other written documentation. Rapozo v. Parks and Recreation Commission, PRB Case No. R-ALLO-08-021 (2009).

Further, consistent with past Board decisions, written designation must be documented. The Board most recently addressed this issue in Tossini v Dep't. of Social and Health Services, PRB Case No. R-ALLO-11-013 (2012). In Tossini the appellant argued that her performance development plan (PDP) provided such designation. The Board determined that a PDP does not serve as a formal designation or description of the duties and responsibilities assigned to a position. Consistent with the Board's decision in Tossini, in this case, a comment made in an email for other purposes and references to specific positions in working manual do not constitute written designation as a section authority. Appellant's program manager has not provided written designation as a section authority to Appellant's position as required for allocation to the EE 5 level.

The definition of the Environmental Engineer 3 class states, in part:

> As a registered Professional Engineer, performs professional environmental engineering duties in an assigned program involving the protection of public

> health and/or the protection or restoration of the environment. May supervise or lead assigned engineers and/or other staff.

The distinguishing characteristics for the EE 3 class state: "[i]ncumbents represent the agency as a registered Professional Engineer and provide/approve final engineering designs and decisions."

In addition, the typical work statements for the EE 3 class describe positions that work independently in specific programs, ensure compliance with federal laws and policies, serve as environmental engineering experts, and provide engineering expertise and assistance to others.

The EE 3 classification encompasses the level of independence and expertise of Appellant's position. The EE 3 level also encompasses the breadth of program authority assigned to Appellant's position, including his responsibility for implementation of the federal water quality program.

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.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions is denied and the director's determination dated January 25, 2013, is affirmed.

DATED this _____ day of _____, 2013.

WASHINGTON PERSONNEL RESOURCES BOARD

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JOSEPH PINZONE, Chair

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DJ MARK, Vice Chair

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NANCY HOLLAND YOUNG, Member