BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

STEVEN VANDOR, Appellant, v. DEPARTMENT OF TRANSPORATION, Respondent.	)	PRB Case No. R-JUR-13-010 **ORDER OF DISMISSAL**

This matter came before the Personnel Resources Board, JOSEPH PINZONE, Chair, DJ MARK, 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 July 26, 2013, Steven Vandor appealed a letter of reprimand. In his appeal, Mr. Vandor indicated that the letter of reprimand was given to him on June 27, 2013.

Actions that may be appealed to the Board are contained in RCW 41.06.170. Section 2 of the statute provides, in part:

> Any employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period of service as provided by the rules of the director . . . shall have the right to appeal, either individually or through his or her authorized representative, not later than thirty days after the effective date of such action to the Washington personnel resources board. . . .

In addition, consistent with the RCW, WACs 357-52-010 and 357-52-015 set forth the actions that may be appealed to the Board and the timeline for filing appeals. In regard to disciplinary actions,

the rules provide, in part, that employees who are dismissed, suspended or demoted or whose base salary is reduced may appeal to the Board. (See WAC 357-52-010).

Because it appeared that the Board lacked jurisdiction to hear Mr. Vandor's appeal of the reprimand, by letter dated July 29, 2013, Board staff directed the parties to provided written argument addressing the Board's jurisdiction.

On August 16, 2013, Respondent filed written argument in support of dismissal. Respondent argued that dismissal was appropriate because the Board's statute and its rules provide state civil service employees the right to appeal disciplinary actions including dismissals, reductions, suspensions and demotions. Respondent argued that letters of reprimand are not disciplinary actions as anticipated by the Board's statute or rules. Therefore, Respondent asserted that this matter should be dismissed.

Mr. Vandor did not provide written argument addressing the Board jurisdiction.

On August 20, 2013, the Board served the parties with a Notice of Potential Dismissal. 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. Respondent did not file a response to the Notice of Potential Dismissal.

On September 3, 2013, Mr. Vandor filed a response to the Notice of Potential Dismissal. Mr. Vandor explained that he filed the appeal because in the letter of reprimand the agency indicated that he could appeal the action. Mr. Vandor included a copy of the letter of reprimand as an attachment to his response. The letter of reprimand stated, in part, "[u]nder the provisions of Washington Administrative Code (WAC) 357-52-010 and 357-52-015, you may appeal this action by filing an appeal to the Washington State Personnel Resources Board . . . ."

The Board lacks power to waive subject matter jurisdiction. It is unfortunate that the agency gave Mr. Vandor appeal rights in the letter of reprimand. However, erroneous information provided by an agency does not override the Board's subject matter jurisdiction provided in statute. [*See for example* Brown v. Dep't of Social & Health Services, PAB No. V93-006 (1993); Lapp v. Washington State Patrol, PAB No. V94-079 (1995); and Yialelis v. Dept. of Transportation, PRB No. R-ALLO-08-016 (2008)].

In addition, this Board and its predecessor, the Personnel Appeals Board, have consistently held that letters of reprimand are not disciplinary actions as anticipated by RCW 41.06.170. [*See* Cowden v. Dep't. of Corrections, PAB Case No. SUSP-96-0014 (1997); and Treco v. Liquor Control Board, PRB Case No. R-JUR-12-004 (2012)].Therefore, Mr. Vandor's appeal of a letter of reprimand is not within the jurisdiction of the Personnel Resources 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 Steven Vandor v. Department of Transportation, PRB Case No. R-JUR-13-010, is dismissed.

DATED AND MAILED 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