BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

JOSEPH DOWNING, Appellant, v. DEPARTMENT OF FINANCIAL INSTITUTIONS, Respondent.	))))))))))	Case No. R-JUR-12-003 ORDER GRANTING RESPONDENT'S MOTION FOR DISMISSAL DUE TO LACK OF JURISDICTION

I. INTRODUCTION

1.1 **Consideration of Motion.** This matter came before the Personnel Resources Board, DJ MARK, Chair; JOSEPH PINZONE, Vice Chair; and NANCY HOLLAND YOUNG, Member, for dismissal of the appeal. This matter was considered on written documents without oral argument.

1.2 **Representation.** Appellant Joseph Downing represented himself. Stewart Johnston, Assistant Attorney General, represented Respondent Department of Financial Institutions (DFI).

1.3 **Documents Considered.** The Board considered the files and documents in this matter including Respondent's Motion for Dismissal Due to Lack of Jurisdiction, filed June 21, 2012, with Appendix A, and the Declaration of Gerri Davis, with attached exhibits.

II. BACKGROUND

2.1 On May 29, 2012, the Personnel Resources Board received Mr. Downing's request to appeal his removal from an exempt Program Manager position at the Department of Financial Institutions. Mr. Downing alleged that he was demoted from an exempt Program Manager position to a Financial Examiner 3 position. In addition, he requested to appeal the exemption of his Program Manager position.

2.2 On May 31, 2012, Board staff acknowledged receipt of Mr. Downing's request and explained that in regard to his request to appeal the exemption of the Program Manager position, the statute requires appeals of such matters to be filed within thirty days of the exemption of the position. Based on the information Mr. Downing included with his appeal, it appeared that the appeal was filed more than thirty days after the position was exempted and that the Board lacked jurisdiction.

2.3 In the May 31, 2012, letter, staff also explained that the Board has jurisdiction to hear disciplinary appeals, such as demotions, from employees who are covered by the civil service law and that employees in exempt positions are specifically excluded from coverage by the civil service law. Because Mr. Downing's position was exempt, it appeared that his appeal of his demotion from an exempt position was not within the Board's jurisdiction.

2.4 Before closing the file on Mr. Downing's appeal request, Board staff directed the parties to provide written argument addressing the Board's jurisdiction. Written arguments were due within twenty-one days of staff's May 31, 2012, letter. Mr. Downing did not file written argument addressing the Board jurisdiction. On June 21, 2012, Respondent filed a Motion for Dismissal Due to Lack of Jurisdiction.

2.5 On June 22, 2012, the Board issued a notice of scheduling Respondent's motion. The motion was scheduled for consideration of written arguments. The notice stated that Mr. Downing's response to the motion was due no later than Thursday, July 5, 2012. The notice was mailed by regular and certified mail. Mr. Downing did not file a response to the motion.

III. DISCUSSION

3.1 The Board may decide an appeal by motion if the documents on file, depositions and affidavits show there is no genuine issue as to any material fact and the appeal should be dismissed as a matter of law. WAC 357-52-140. All facts and reasonable inferences therefrom are to be

determined in favor of the nonmoving party. *See*, Hall v. University of Washington, PAB No. 3863-V2 (1995).

3.2 The issue here is whether Mr. Downing's appeal should be dismissed for lack of jurisdiction.

3.3 The Program Manager position at issue in this appeal was exempted on September 9, 1993. An employee whose position has been exempted may appeal the exemption but the appeal must be filed not later than thirty days after the exemption of the position. *See* RCW 41.06.170(3). Mr. Downing filed his appeal on May 29, 2012, more than thirty days after the position was exempted. Mr. Downing's appeal of the exemption of the Program Manager position is untimely.

3.4 Further, the Board does not have jurisdiction to hear appeals concerning the termination of exempt appointments unless an employee has been denied reversion rights. *See* RCW 41.06.070. Mr. Downing does not allege that his reversion rights were denied.

3.5 Respondent's Motion for Dismissal Due to Lack of Jurisdiction should be granted and the appeal should be dismissed.

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion for Dismissal Due to Lack of Jurisdiction is granted and the appeal of ~~Randall Unruh~~ Joseph Downing is dismissed.

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