BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

BERTRAND CHO, Appellant, vs. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	CASE NO. R-ALLO-10-020 ORDER OF THE BOARD FOLLOWING CONSIDERATION OF APPELLANT'S EXCEPTIONS TO THE DETERMINATION OF THE DIRECTOR

Consideration of Exceptions. This appeal came before the Personnel Resources Board, LAURA ANDERSON, Chair; DJ MARK Vice Chair; and JOSEPH PINZONE, Member, on Appellant's exceptions to the director's determination dated September 9, 2010. This matter was considered based on the record and the written submissions of the parties.

Appearances. Appellant Bertrand Cho represented himself. Department of Social and Health Services (DSHS) was represented by Robert Swanson, Classification and Compensation Specialist.

Background. Appellant requested a reallocation of his Information Technology Specialist 3 position at DSHS. By letter dated May 4, 2010, DSHS provided a response to Appellant's request and denied the reallocation of his position. Appellant acknowledges that on May 25, 2010, he received an email from DSHS with the denial letter attached.

On June 28, 2010, Appellant filed a review request with the director of the Department of Personnel. The director's designee reviewed the timeliness of the request and by letter dated September 9, 2010, determined that the review request was untimely.

On September 20, 2010, Appellant filed timely exceptions to the director's determination. Appellant's exceptions are the subject of this proceeding.

Summary of Appellant's Arguments. Appellant admits that he received DSHS's letter as an email attachment on May 25, 2010. However, he argues that he did not open the email until sometime

after that date. Appellant contends that he did not receive the actual written letter until May 28, 2010. Appellant asserts that an electronic receipt date is too imprecise and that May 28, 2010 should be considered that date on which he received DSHS's response to his reallocation request.

Appellant further argues that he filed his request for a director's review by placing it in an inter-office mailbox on June 22, 2010. Appellant explains that during business hours, inter-office mail is stamped and deposited with the U.S. Postal Service daily. Therefore, he believes that under the provisions of WAC 357-04-105(2) his request for a director's review should be considered filed on June 22, 2010.

Summary of Respondent's Arguments. Respondent argues that consistent with WAC 357-04-105(2), service delivery of DSHS's response to Appellant's reallocation request was completed on May 25, 2010. Respondent asserts that the agency complied with each of the pertinent rules regarding timely notification of an incumbent of a reallocation decision. Respondent contends that based on Appellant's statements and the pertinent WACs, Appellant's review request was untimely.

Primary Issue. Whether the director's determination that Appellant's request for review was untimely should be affirmed.

Relevant Laws and Civil Service Rules. The first step in a reallocation initiated by an incumbent is a position review by the employing agency. Agencies must have a procedure that " . . . allow[s] an employee to request the employer to review his/her position at least every six months." WAC 357-13-065.

WAC 357-13-070 provides, in relevant part, that "written notice of reallocation . . . may be provided using alternative methods such as e-mail, campus mail, the state mail service, or commercial parcel delivery in accordance with WAC 357-04-105."

WAC 357-04-105 establishes to how notices are to be provided or served on job applicants, job candidates, employees or employers. The rule provides, in relevant part, that service upon parties

"will be regarded as completed when personal delivery has been accomplished; or upon deposit in the United States mail, properly stamped and addressed; or upon production by telephone facsimile transmission of confirmation of transmission. When a specific rule allows alternative methods of service, service upon parties will be regarded as completed when it is actually received by the party to which notice is being provided." Emphasis added.

WAC 357-13-080(1) provides, "[a]n employee may request a director's review of the results of a position review or reallocation of the employee's position . . . The employee must request the director's review within thirty calendar days of being provided the results of a position review or the notice of reallocation."

WAC 357-49-023 provides, in relevant part, "[p]apers that must be filed with the director for director's review requests are considered to be filed only when the papers are actually received in the director's review office in Olympia, Washington."

Decision of the Board. The Board has addressed the issue of timeliness as it relates to director's review requests in several past decisions. See for example, Yialelis v. Dept. of Transportation, Case No. R-ALLO-08-016 (2008); Holman v Dept. of Transportation, Case No. R-ALLO-08-010 (2008); Faddon v. Dept. of Corrections, Case No. R-ALLO-08-005 (2008).

In this case, Respondent provided its letter denying Appellant's reallocation request to Appellant by e-mail. As provided in WAC 357-04-105, Appellant was served with DSHS's denial of his reallocation request on May 25, 2010, the date that he received the email with the letter attached. The rule does not require that the recipient actually open the email in order for service to be completed.

The thirtieth day following May 25, 2010 was June 24, 2010.

On June 28, 2010, the director received Appellant's request for review of DSHS's reallocation decision. Therefore, in accordance with WAC 357-49-023, Appellant's request was considered filed on June 28, 2010.

Appellant's review request was filed thirty-four days after service of Respondent's response to his reallocation request.

In an appeal on exceptions, the Appellant has the burden of proof. WAC 357-52-110. Appellant has failed to meet his burden of proof. As provided in the applicable rules, and consistent with prior Board decisions, Appellant's request for a director's review was untimely filed and the appeal should be denied.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Bertrand Cho is denied and the director's determination dated September 9, 2010, is affirmed and adopted.

DATED this _____ day of _____, 2010.

WASHINGTON PERSONNEL RESOURCES BOARD

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LAURA ANDERSON, Chair

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DJ MARK, Vice Chair

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JOSEPH PINZONE, Member