BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

CHRYSTAL RAU, Appellant, v. DEPARTMENT OF ECOLOGY, Respondent.	)	PRB Case No. R-JUR-14-001 **ORDER OF DISMISSAL**

This matter came before the Personnel Resources Board, DJ MARK, Vice Chair, and SUSAN MILLER, 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 June 18, 2014, the Personnel Resources Board received Ms. Rau's appeal taking exception to the director's determination regarding the allocation of her Environmental Specialist 4 position. The director's determination was dated and mailed May 16, 2014. Ms. Rau indicated that she received the director's determination on May 20, 2014 or later.

Ms. Rau's appeal was received thirty-three (33) days after service of the director's determination. Therefore, the appeal appeared to be untimely.

In accordance with WAC 357-52-045, by letter dated June 19, 2014, Board staff directed the parties to provided affidavits and/or written argument addressing the issue of timeliness.

On July 18, 2014, Ms. Rau filed a response arguing that she did not receive service of the director's determination until May 20, 2014, after she contacted the director's review program and requested a copy of the determination. Ms. Rau asserts that if the determination had been mailed on May 16, she would have received it prior to May 20. Ms. Rau contends that because she did not receive the mailed copy of the determination until sometime between May 20 and 22, she believes the determination was deposited in the United States mail May 19 or later.

On July 18, 2014, the Department of Ecology filed a response addressing the issue of timeliness. In summary, Ecology argues that the appeal is untimely because it was not received by the Board within thirty days of service of the director's determination. Ecology asserts that the director's determination was placed in the United States mail on May 16, 2014 and mailed to the address Ms. Rau provided. Therefore, Ecology argues that pursuant to WAC 357-04-105(2), service of the determination was effectuated on May 16, 2014. Ecology argues that jurisdictional requirements for filing appeals cannot be waived and that consistent with the Board's statute, rules and rulings in other cases with similar facts, the appeal is untimely and should be dismissed.

RCW 41.06.170(4) establishes the timeframe for filing allocation appeals to the Personnel Resources Board. The RCW states, "[a]n employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the Washington personnel resources board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken."

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: . . . (2) Service of the director's determination unless the rules specifically state that the director's determination is final . . . ."

WAC 357-04-105 discusses how service is accomplished. The rule provides, in relevant part, "[e]xcept as provided in chapters 357-40 and 357-52 WAC, 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 . . . ."

Neither the RCW nor the civil service rules allow the Board to waive the jurisdictional requirements for filing appeals. The rules require that allocation appeals must be received by the Board within thirty days after service of the director's determination.

On July 22, 2014, the Board served the parties with a Notice of Potential Dismissal. The Notice of Potential Dismissal notified that parties 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.

The notice also discussed a number of the Board's past decisions regarding the issue of timeliness. For example, in Harris v. Seattle Central Community College, PRB Case No. R-ALLO-08-019 (2008) the director's determination was served on July 8, 2008. On August 8, 2008, appellant filed an appeal of the director's determination. The appeal was filed thirty-one days after service of the director's determination. Therefore, the Board determined the appeal was untimely and the appeal was dismissed.

In Yialelis v. Dept. of Transportation, PRB Case No. R-ALLO-08-016 (2008), the director determined that the employee's request for a director's review was untimely. The employee filed exceptions to the Board. The employee argued that his thirty-day filing period to request a director's review should start from the date that he received the letter, not from the date that DOT allegedly placed the letter in the mail. The employee further argued that the Board should apply the same standard of service for both employers and employees and that the Board should hold that service of his request for review was completed when he placed his request for review in the mail rather than

when it was received by the director. However, the Board determined that RCW 41.06.170 and the civil service rules prevailed. The Board concluded that under the provisions of the statute and the rules, the request for review, which was filed thirty-one days after service of the agency's determination, was untimely and denied the appeal.

And, 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 the Washington Federation of State Employees 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.

Ms. Rau filed a response to the Notice of Potential Dismissal on August 5, 2014. Ms. Rau again questioned whether the Directors' determination was actually placed in the mail on May 16, 2014. Ms. Rau asserted that because she received the determination until sometime between May 20 and 22, 2014, it was most likely deposited in the mail on May 19, 2014 or later.

The Department of Ecology did not respond to the Notice of Potential Dismissal.

As stared above, the Board has addressed the issue of timeliness on numerous occasions. The sworn declaration of Director's Review Program staff confirms that determination was placed in the mail on May 16, 2014. The appeal was filed thirty-three (33) days after service of the director's determination. Therefore, the appeal is untimely and should be dismissed.

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 Chrystal Rau vs. Department of Ecology, PRB Case No. R-JUR-14-001, is dismissed.

DATED AND MAILED this _____ day of _____, 2014.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Vice Chair

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SUSAN MILLER, Member