BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

RICHARD ANDERSON, LUCAS GERE, Appellants, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	)	PRB Case No. R-JUR-17-012, R-JUR-17-013 **ORDER OF DISMISSAL**

This matter came before the Personnel Resources Board, NANCY HOLLAND YOUNG, Chair; VICKY BOWDISH, Vice Chair; for dismissal pursuant to WAC 357-52-215 and WAC 357-51-220.

WAC 357-52-215 provides, "[t]he Board may dismiss an appeal on its own motion when . . . An appeal is not filed on time. . . ."

Mr. Anderson and Mr. Gere requested a director's review of the allocation of their positions. On November 2, 2017, the director's designee served the parties with a copy of the director's determination. The determination notified Mr. Anderson and Mr. Gere of the results of their allocation review request. Mr. Anderson filed exceptions to the director's determination on December 4, 2017. Mr. Gere filed his exceptions on December 5, 2017.

After an initial review of the appeal, on December 5, 2017, Personnel Resources Board staff notified the parties that Mr. Anderson's appeal was received thirty-two (32) days after the date of the determination. Mr. Gere's appeal was received thirty-three (33) days after the date of the determination. Therefore, it appeared that the appeals were untimely. Pursuant to WAC 357-52-045,

Board staff directed the parties to submit affidavits and/or written argument addressing the timeliness of the appeal within twenty-one (21) calendar days of the date of the letter.

On December 15, 2017, Mr. Anderson submitted written argument for himself and Mr. Gere, asserting that they were under the assumption that having it postmarked before the date received by the Personnel Resources Board would suffice. Mr. Anderson also submitted an email dated September 8, 2017, from Karen Wilcox, Director's Review Coordinator. Ms. Wilcox's reply was "Our process is fairly informal, so when issues arise, we try to mitigate circumstances so that we can get your case reviewed." The response from the director's review coordinator was in direct response to the director's review process.

Respondent did not provide a response to the issue of timeliness.

RCW 41.06.170(4) provides, in relevant part, "[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 personnel resources board . . . Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken."

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 . . . Service of the director's determination . . . ."

WAC 357-04-105 provides, in relevant part, that service upon parties "will be regarded as completed . . . upon deposit in the United States mail . . . ."

Because the appeals appeared untimely, on January 3, 2018, the parties were given notice of potential dismissal. Appellants and Respondent were served with a copy of the notice by mail.

The notice stated that the appeals would be dismissed unless, within fifteen days following the date of service of the notice, the Board received a written request showing good cause why the appeal should be continued. Neither party submitted a response to the notice. Therefore, the appeal should be dismissed.

The Board having reviewed the file and records herein, being fully advised in the premises, now enters the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeals of Richard Anderson and Lucas Gere were untimely filed and the appeals are dismissed.

DATED AND MAILED this _____ day of _____, 2018.

WASHINGTON PERSONNEL RESOURCES BOARD

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NANCY HOLLAND YOUNG, Chair

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VICKY BOWDISH, Vice Chair