BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

RICCI FRISK, Appellant, v. WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS, Respondent.	PRB CASE No. R-JUR-18-015 **AMENDED ORDER OF DISMISSAL**

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

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

Appellant, Ricci Frisk, was terminated from ***his*** trial service employment effective August 17, 2018. Appellant was offered a reversion option, in accordance with WAC-357-19-115, but declined the reversion and filed an appeal with the Personnel Resources Board.

After an initial review of the appeal, the Personnel Resources Board staff notified the parties that ***Mr.*** Frisk's appeal was received thirty-four (34) days after the date of the determination. Therefore, it appeared that the appeal was 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 fifteen (15) calendar days of the date of the letter.

On October 22, 2018, ***Mr.*** Frisk submitted written argument, asserting that ***his*** appeal was postmarked on September 19, 2018, and that that date would suffice, but the appeal was not received by the Personnel Resources Board until September 24, 2018, which makes it untimely.

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 . . . ." [emphasis added] The appeal was not received until September 24, 2018. Furthermore, postmarks are not considered as a receipt of an appeal.

Because the appeal appeared untimely, on ***October 1, 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 appeal would be dismissed unless, within fifteen (15) 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.~~ ***On October 16, 2018, we received a response from the Respondent and on October 22, 2018, we received a response from the Appellant. In the Appellant's written argument, it states, "my appeal was mailed on September 19, 2018." According to the letter from the Office of Administrative Hearings dated August 10, 2018, the trial service appointment ended effective August 17, 2018. According to WAC-357-04-110, the time period excludes the effective date.***

Pursuant to WAC 357-52-015, in order for the appeal to be received timely, the appeal must be received in writing at the office of the Board within thirty (30) calendar days from the effective date. In order for the appeal to be considered timely, the office of the Board would have had to receive it by September 17, 2018, the 30th day. 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, THERFORE, IT IS HEREBY ORDERED that the appeal of Ricci Frisk was untimely filed and the appeal is dismissed.

DATED this 10 day of January, 2019.

WASHINGTON PERSONNEL RESOURCES BOARD

Nancy Holland Young

NANCY HOLLAND YOUNG, Chair

VICKY BOWDISH, Vice-Chair

Susan L. Miller

SUSAN MILLER, Member