

1 **BEFORE THE PERSONNEL RESOURCES BOARD**
2 **STATE OF WASHINGTON**

3 WILLIAM BOGEN,)

4 Appellant,)

5 vs.)

6 WASHINGTON STATE PATROL,)

7 Respondent.)

CASE No. R-ALLO-15-005

ORDER OF THE BOARD
FOLLOWING HEARING ON
EXCEPTIONS TO THE
DETERMINATION OF THE DIRECTOR

9 **Hearing on Exceptions.** This appeal came before the Personnel Resources Board, NANCY
10 HOLLAND YOUNG, Chair, SUSAN MILLER, Vice Chair; and VICKY BOWDISH, Member, for
11 a hearing on Appellant's exceptions to the director's determination dated March 2, 2015. The
12 hearing was held on June 3, 2015.

13
14 **Appearances.** Appellant William Bogen was present and was represented by Ed Casey, Labor
15 Advocate with the Washington Federation of State Employees. Respondent Washington State Patrol
16 (WSP) was represented by Ben Lastimado, Human Resource Director and Lt. Rob Sharpe.

17
18 **Background.** Appellant requested reallocation of his Forensic Scientist (FS) 1 position to the FS3 or
19 FS4 classification by submitting a Position Review Request to WSP's Human Resource Division on
20 November 18, 2013. By Interoffice Communication dated February 28, 2014, WSP determined that
21 Appellant's position should be reallocated to the FS2 classification.

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23 On March 20, 2014, Appellant filed a request for a director's review of WSP's determination. By
24 letter dated March 2, 2015, the director's designee determined that Appellant's position was
25 properly allocated to the FS2 classification.

1 On March 31, 2015, Appellant filed timely exceptions to the director's determination asserting that
2 his position should be reallocated to the FS3 level. Appellant's exceptions are the subject of this
3 proceeding.

4
5 Appellant works in the Impaired Driving section as a Breath Test Technician for District 8 of the
6 WSP. The primary purpose of his position is to provide the foundation for the breath test results to
7 be admitted as evidence at trial. His duties, as described in his Position Review Request (PRR)
8 form, consist of:

- 9 • 50% Instrument calibration, quality assurance, maintenance and repair
- 10 • 15% Court testimony
- 11 • 15% Technical review of other technician's work and issue certificates
- 12 • 15% BAC [Breath Alcohol Content] training
- 13 • 5% Administrative work

14
15 However, a review of his Time and Activity Reports (TARs) for the time period relevant to his
16 review request indicates that his duties were:

- 17 • 76% Technology management, installation and maintenance and technical reviews of other
18 technician's work
- 19 • 10% Court testimony
- 20 • 11% BAC training

21 **Summary of Appellant's Arguments.** Appellant argues that he performs senior-level work as
22 described in the FS3 classification. Appellant asserts that there are six specific work tasks that
23 differentiate the FS2 and FS3 classes and contends that if appropriate weight is given to the five of
24 those tasks that he performs, his position fits within the FS3 classification. For example, Appellant
25 argues that he performs the duties of a senior technician, testifies in court, conducts tests with less
26 than definitive results and makes weighted decisions, performs complex analysis of evidence, and
27 trains other staff including members of law enforcement. Appellant further asserts that he performs
28 complex work as described in the FS3 classification. Appellant contends that the complexity of his

1 work is supported by the accreditation that agency maintains. Appellant asserts that accreditation and
2 the court system have established that the measurements used in conducting breath alcohol analysis
3 are uncertain in nature and that interpreting the data is a complex process. Appellant explains that
4 interpreting data used as evidence involves reviewing and interpreting test results, extrapolating
5 results giving consideration to interfering substances, recalculating readings and drawing weighted
6 conclusions based on the results. Appellant argues that when he testifies as an expert witness
7 regarding BAC results, he performs complex analysis when presented with opposing evidence and
8 draws weighted conclusions based on that evidence and the recalculated test results. Appellant
9 contends that his analysis goes beyond routine and involves a complex process recognized by the
10 international accreditation body and the courts. Appellant asserts that the duties, responsibilities and
11 level of complexity expected of his position best fit within the FS3 classification.

12
13 **Summary of Respondent's Arguments.** Respondent explains that Appellant has been with the
14 agency for a long time and has tenure as a senior employee but that he does not perform senior level
15 work as defined in the Glossary of Classification Terms. Respondent further explains that
16 accreditation is important for all aspects of a variety of work and assures that the program meets
17 established standards. Respondent contends that accreditation does not determine the complexity of
18 work. Respondent asserts that Appellant performs journey-level work under general supervision as
19 envisioned by the FS 2 classification. Respondent argues that Appellant works under specific
20 guidelines with predefined goals, uses a single method to perform routine analysis, and performs
21 calculations using a preprogrammed Excel document. Respondent further argues that Appellant's
22 work is reviewed by his peers as well as by a supervisor. Respondent explains that Appellant's
23 responsibilities are limited to District 8 and the majority of his work involves installing, calibrating
24 and maintaining instruments within his area. Respondent contends that the overall scope of
25 Appellant's position and the level of his duties and responsibilities best fit the FS2 classification.

26
27 **Primary Issue.** Whether the director's determination that Appellant's position is properly allocated
28 to the Forensic Scientist 2 classification should be affirmed.

1
2 **Relevant Classifications.** Forensic Scientist 2, class code 505B; Forensic Scientist 3, class code
3 505C; and Forensic Scientist 4, class codes 505E.

4
5 **Decision of the Board.** The purpose of a position review is to determine which classification best
6 describes the overall duties and responsibilities of a position. A position review is neither a
7 measurement of the volume of work performed, nor an evaluation of the expertise with which that
8 work is performed. A position review is a comparison of the duties and responsibilities of a
9 particular position to the available classification specifications. This review results in a
10 determination of the class that best describes the overall duties and responsibilities of the position.
11 See *Liddle-Stamper v. Washington State University*, PAB Case No. 3722-A2 (1994).

12
13 In *Norton-Nader v. Western Washington University*, PRB Case No. R-ALLO-08-020 (2008), the
14 Personnel Resources Board (Board) stated that the following standards are the hierarchy of
15 primary considerations in allocating positions:

- 16 a) Category concept (if one exists).
17 b) Definition or basic function of the class.
18 c) Distinguishing characteristics of a class.
19 d) Class series concept, definition/basic function, and distinguishing characteristics
20 of other classes in the series in question.

21 Typical work statements do not form the basis for allocation; rather they provide guidance and
22 lend support to the work envisioned within a classification. Typical work statements are not
23 allocating criteria.

24 The definition for the FS4 class states:

25 Serves as a forensic technical lead in a specific discipline or functional area of
26 forensic science in a crime laboratory and performs complex analyses on physical
27 evidence. This involves casework where applied research, method modification, or a
28 unique approach may be necessary; or a single definite conclusion is not possible and
a weighted conclusion is warranted; or casework requiring the reconstruction of an
event or series of events based upon the interpretation of physical evidence.

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2 The distinguishing characteristics for the FS4 class state:

3 Maintains control over the technical operations of a forensic laboratory or section
4 within a specific discipline or functional areas such as chemistry, biology, DNA,
5 microanalysis, firearms and toolmarks, questioned documents, latent prints,
6 toxicology, and crime scene investigations. Technical leads focus on maintaining the
7 crime laboratory's quality processes and ensuring operational compliance with all
8 certification, accreditation, and legal standards and requirements. These positions
9 have the authority to stop casework processes if a problem occurs and the
10 accountability for quality of the casework product, compliance with all applicable
11 accreditation and audit criteria, compliance documentation, validation of new
12 technology and methods, validation of new personnel beginning the casework, and
13 investigation of casework errors and implementation of corrective measures. This
14 differs from the traditional concept of a lead worker who performs the same or
15 similar duties as other employees in his/her work group and assigns, instructs, and
16 checks the work of employees.

17 Appellant's position does not fit within the definition of the FS4 classification. His position does
18 not have lead responsibility and he does not perform complex analysis and casework as described by
19 the FS4 definition. Further, Appellant's position does not fit within the distinguishing characteristics
20 of the FS4 class. He is not a technical lead with operational responsibility for a lab, section or
21 functional area. He is not responsible for compliance with all certification, accreditation and legal
22 standards. Appellant's work is limited in scope and does not exercise the level of authority described
23 in the distinguishing characteristics.

24 The definition for the FS3 class states:

25 This is the senior, specialist, or lead worker level of the series. Positions perform
26 complex analyses on physical evidence in criminal cases submitted to the forensic
27 laboratory. Incumbents interpret analytical results, prepare written opinion reports,
28 and testify as experts in courts of law. Complex analysis involves casework where
29 applied research, method modification, or a unique approach may be necessary; or a
single definite conclusion is not possible and weighted conclusion is warranted; or
casework requiring the reconstruction of an event or series of events based on the
interpretation of physical evidence.

30 The FS3 level does not contain distinguishing characteristics.

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2 The Glossary of Classification Terms defines senior, specialist and lead as follows:

3 **Senior.** The performance of work requiring the consistent application of advanced
4 knowledge and requiring a skilled and experienced practitioner to function
5 independently. Senior-level work includes devising methods and processes to
6 resolve complex or difficult issues that have broad potential impact. These issues
7 typically involve competing interests, multiple clients, conflicting rules or
8 practices, a range of possible solutions, or other elements that contribute to
9 complexity. The senior-level has full authority to plan, prioritize, and handle all
10 duties within an assigned area of responsibility. Senior-level employees require
11 little supervision and their work is not typically checked by others.

12 **Specialist.** Duties involve intensive application of knowledge and skills in a
13 specific segment of an occupational area.

14 **Lead.** An employee who performs the same or similar duties as other employees in
15 his/her work group and has the designated responsibility to regularly assign,
16 instruct, and check the work of those employees on an ongoing basis.

17 The Glossary of Classification Terms also defines complex work as work that requires the
18 independent use of “. . . a wide variety of rules, processes, materials and equipment to complete
19 work assignments that require specialized knowledge or skills. Decisions are made independently
20 regarding which rules, processes, materials, and equipment to use in order to effectively accomplish
21 work assignments.”

22 Appellant does not perform senior level work. Rather he uses established methods and processes to
23 resolve issues with limited impact and his work is reviewed by his peers and by a supervisor.
24 Appellant does not perform specialist work. His work is limited in scope to BAC results and
25 calibrations using established methods and processes. Appellant is not assigned lead duties and
26 responsibilities. He does not regularly assign, instruct **and** check the work of others; rather he
27 performs peer reviews for other staff. In addition, the majority of Appellant’s work does not meet the
28 definition of complex. Respondent provided persuasive argument that Appellant does not perform
29 complex analyses or interpretation of BAC results or perform complex casework as described at the
30 FS3 level. Appellant’s position does not fit within the FS3 classification.

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2 The definition for the FS2 class states:

3 This is the journey level of the series. Positions at this level perform routine analysis
4 on physical evidence in criminal cases submitted to the forensic laboratory.
5 Incumbents interpret analytical results, prepare written opinion reports and may
6 testify as an expert witness in courts of law. Incumbents will have completed the
7 majority of their training in an assigned discipline and will focus on the routine
8 analysis of physical evidence. Routine analysis involves laboratory examination in
9 which the items to be tested require a single specific examination or a standard
10 battery of examinations or analyses, the results of which lead to a definitive
11 conclusion acceptable to experts in the field.

12 The FS2 level does not contain distinguishing characteristics.

13 The Glossary of Classification Terms defines journey-level work as “[f]ully competent and qualified
14 in all aspects of a body of work and given broad/general guidance. Individuals can complete work
15 assignments to standard under general supervision. Also referred to as the working or fully-qualified
16 level.”

17 Appellant is fully competent and qualified in all aspects of his work. And, he performs his work
18 under general supervision which is defined as:

- 19 • Employee performs recurring assignments without daily oversight by applying
20 established guidelines, policies, procedures, and work methods.
- 21 • Employee prioritizes day-to-day work tasks. Supervisor provides guidance and
22 must approve deviation from established guidelines, policies, procedures, and
23 work methods.
- 24 • Decision-making is limited in context to the completion of work tasks.
25 Completed work is consistent with established guidelines, policies, procedures
26 and work methods. Supervisory guidance is provided in new or unusual
27 situations.
- 28 • Work is periodically reviewed for compliance with guidelines, policies and
29 procedures.

1 The majority of Appellant's duties and responsibilities focus on the utilization and calibration of
2 BAC testing apparatus and routine analysis of results. The majority of his work leads to definitive
3 conclusions, though he occasionally interprets and recalibrates results when testifying in court.
4 While a small portion of Appellant's time involves performing senior-level breath technician work,
5 the majority of his work involves performing installation, calibration, and maintenance of breath
6 alcohol content testing and training instruments, conducting routine BAC testing and analyzing
7 results as a journey-level breath test technician, and conducting peer review for other technicians.

8
9 While not allocating criteria, the following FS2 typical work statements encompass the majority of
10 Appellant's duties:

- 11 • Documents and protects evidence according to laboratory procedures,
12 ensuring that the chain of custody is maintained
- 13 • In an assigned discipline, examines and analyzes evidence in routine-type
14 requests where interpretations are straightforward and objective, selecting
15 appropriate methods, techniques, and instruments
- 16 • Reports findings in the form of a written laboratory report based on the
17 interpretation of observations and analytical test results
- 18 • May testify as an expert witness in courts of law
- 19 • Provides peer review and participates in proficiency testing to maintain
20 expertise
- 21 • Maintains the laboratory instruments and equipment in good working order

22 We concur with the director's determination and conclude that the scope and complexity of work,
23 level of authority and majority of overall responsibilities assigned to Appellant's position best fit the
24 FS2 classification.

25 In a hearing on exceptions, the Appellant has the burden of proof. WAC 357-52-110. Appellant has
26 failed to meet his burden of proof.

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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by William Bogen is denied and the director's determination dated March 2, 2015, is affirmed.

DATED this ____ day of _____, 2015.

WASHINGTON PERSONNEL RESOURCES BOARD

NANCY HOLLAND YOUNG, Chair

SUSAN MILLER, Vice Chair

VICKY BOWDISH, Member