

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

3 JEROLD BILLINGS )

4 Appellant, )

5 vs. )

6 DEPARTMENT OF LABOR AND )  
7 INDUSTRIES )

8 Respondent. )

CASE NO. R-ALLO-15-050

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.  
11 The hearing was held on April 21, 2016, at Capitol Court, Olympia, WA.

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13 **Appearances.** Appellant Jerold Billings was present and represented by Sherri Ann Burke, WFSE  
14 Representative. Respondent Labor and Industries (L&I) was present and represented by Vicki  
15 Kamin, Classification and Compensation Manager.

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17 **Background.** Appellant is a L&I Auditor 5 and submitted a Position Review Request (PRR) to L&I  
18 HR on July 8, 2015, requesting reallocation to Financial Examiner 4 (FE 4).

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20 By letter dated September 8, 2015, L&I notified Appellant that his position was not reallocated to a  
21 FE 4 and remained a L&I Auditor 5. On October 9, 2015, Appellant submitted a request to OFM  
22 State HR for a director's review of L&I's determination.

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24 By letter dated November 4, 2015, the director's designee determined Respondent's position  
25 should remain allocated to a L&I Auditor 5.

1 On December 2, 2015, Appellant filed timely exceptions to the director's determination. In his  
2 exceptions, Appellant indicated the scope of his work best fits the duties of the FE 4 job class.  
3 Appellant's exceptions are the subject of this proceeding.

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5 As summarized in the director's review, Appellant is responsible for conducting reconsiderations of  
6 industrial insurance assessments based on estimated premiums, claim cost penalty assessments and  
7 other assessments of a high dollar value. This entails auditing the work of lower level L&I Auditors.  
8 Appellant assists the Assistant Attorney General (AAG) in defending the department on appeal  
9 orders to the Board of Industrial Insurance Appeals, Superior Court, the Court of Appeals and the  
10 Supreme Court.

#### 11 12 **Summary of Appellant's Arguments.**

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14 Appellant takes exception to the director's determination, arguing the scope and responsibility of his  
15 position best fits the definition of Financial Examiner 4 (FE 4). Appellant asserts the director did not  
16 acknowledge he was lead over lower level L&I Auditors, nor acknowledge his expertise and status  
17 as a technical expert in the field. Appellant further asserts he applies state and federal regulations  
18 comparable in complexity to that of a FE 4. Appellant contends that management gives him the  
19 politically sensitive, high profile cases.

#### 20 21 **Summary of Respondent's Arguments.**

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23 Respondent contends Appellant conducts audits and reconsiderations of audits, but not within the  
24 scope of the FE 4 job class. Respondent further contends Appellant is not a lead worker, rather is  
25 the go-to person for questions and insight due to his length of time in the position and acquired  
26 knowledge. Respondent argues Appellant is not auditing to ensure agencies are meeting regulatory  
27 standards or complying with federal and state law, as the class series concept for the Financial  
28 Examiner indicates. Rather, Appellant audits companies appealing for reconsideration of their  
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1 industrial insurance premiums. These reconsideration audits entail reviewing audits originally  
2 conducted by lower level L&I Auditors. Respondent maintains that politically sensitive work is  
3 routed to Appellant's work station at headquarters in Olympia so that management may confer with  
4 Appellant and follow the more complex cases.

5  
6 **Primary Issue.** Whether the director's determination should be affirmed in that Respondent's  
7 position should remain at the L&I Auditor 5 job class.

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9 **Relevant Classifications.** L&I Auditor 5; Financial Examiner 4

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

18  
19 Most positions within the civil service system occasionally perform duties that appear in more  
20 than one classification. However, when determining the appropriate classification for a specific  
21 position, the duties and responsibilities of that position must be considered in their entirety and  
22 the position must be allocated to the classification that provides the best fit overall for the majority  
23 of the position's duties and responsibilities. *Dudley v. Dept. of Labor and Industries*, PRB Case  
24 No. R-ALLO-07-007 (2007).

25  
26 We have carefully reviewed the documentation submitted during the director's review and  
27 considered the arguments presented by the parties at the hearing before the Board. Allocating  
28 criteria consists of the class specification's class series concept (if one exists), the definition and  
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1 the distinguishing characteristics. Typical work is not an allocating criterion, but may be used to  
2 better understand the definition or distinguishing characteristics.

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4 The class series concept for the FE series, found in the FE 1 class specification states:

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6 The Financial Examiner is a professional series that performs examination and analysis of  
7 regulated entities in accordance with regulatory standards including safety and soundness  
8 of compliance with federal or state laws. Positions in this series may specialize in one or  
9 more of the following areas:

10  
11 **Applications/Registrations or Analysis:** Incumbents analyze financial statements and  
12 materials from regulated entities or associated persons for charters, registrations, licenses,  
13 or exemptions from registration or amendments to existing charters, registrations, licenses  
14 or exemptions and compliance with regulatory standards.

15  
16 **Examinations:** Generally incumbents perform site visits to regulated entities to evaluate  
17 adequacy of operational or management methods and conduct a risk analysis to determine  
18 compliance with regulatory standards.

19  
20 **Enforcement:** Incumbents analyze, investigate, and prepare to take action against  
21 regulated entities for non-compliance with regulatory standards.

22 The term “regulated entities” includes:

- 23  
24 1. Financial institutions, financial services companies or issuers;  
25  
26 2. Insurance companies, health service contractors, health maintenance organizations,  
27 MEWAs, holding company systems, agents, brokers, CGAs, MGAs, reinsurance  
28 companies, guarantee associations, and any other organization regulated pursuant to the  
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1 Washington Insurance Code.

2 “Financial institution or financial services company or issuer” includes commercial banks,  
3 alien banks, trust companies and departments, savings banks, saving and loan associations,  
4 credit unions, credit union service organizations, consumer loan companies, mortgage  
5 brokers, escrow agents, check cashers, check sellers, securities, franchises, business  
6 opportunities, commodity investments, or other persons or entities regulated by the  
7 Department of Financial Institutions and the holding companies, subsidiaries, and other  
8 affiliates of those entities.

9  
10 The term “regulatory standards” encompasses safety and soundness; NAIC Accreditation  
11 Standards; standards adopted by the federal regulatory bodies or self-regulatory  
12 organizations; policies or guidelines adopted by organizations of state regulators of  
13 regulated entities or other state or federal law applicable to regulated entities.

14  
15 Federal regulatory bodies means federal agencies adopting rules or standards application to  
16 regulated entities, including the Federal Deposit Insurance Corporation (FDIC), Federal  
17 Reserve Board, Comptroller of the Currency, Office of Thrift Supervision, National Credit  
18 Union Administration, United States Treasury Department, and Securities and Exchange  
19 Commission.

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21 Self-Regulatory Institutions include the National Association of Securities Dealers and the  
22 New York Stock Exchange.

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1 The definition for the FE 4 states:

2 Positions plan, conduct, and lead the most complex examinations and/or financial analysis  
3 of regulated entities and/or independently conduct advanced comprehensive analysis or  
4 portions of an analysis of a regulated entity of any size or complexity.

5 The distinguishing characteristics for the FE 4 states:

6 Assignments that are the “most complex” include leading examinations/analysis of  
7 “nationally significant” regulated entities, as defined by the National Association of  
8 Insurance Commissioners (NAIC). Positions at the fourth level perform duties requiring  
9 expert knowledge of regulated entities with significant problems or troubles. Duties may  
10 involve financial and business activities that cross industry or regulatory frameworks, are  
11 politically sensitive, or involve issues not adequately covered by existing written  
12 procedures or manuals and require the development of new techniques and/or work  
13 methods.

14  
15 The definition of L&I Auditor 5 states:

16 This is the supervisory or expert level of the series. Supervises Labor and Industries  
17 Auditors encompassing one or multiple work groups whose responsibilities are to identify  
18 non-compliance employers and perform professional audits and educational services to  
19 increase compliance with the Industrial Insurance laws, rules, and regulations.

20 OR

21 Serves as a statewide technical expert providing technical advice to audit supervisors and  
22 audit staff.

23 OR

24 Serves as a statewide audit trainer responsible for developing and conducting statewide  
25 training for the audit program and the statewide audit conference.

26 OR

27 Serves as a statewide audit consultation expert providing predetermination letters to  
28 employer, workers and employer associations.

OR

Serves as a litigation specialist conducting Industrial Insurance protest reconsiderations covering classification, rates, collections, and audit determinations, and assists the Attorney General's Office in appeals before the Board of Industrial Insurance Appeals. The Litigation Specialist has settlement authority in cases reconsidered or appealed.

Appellant conducts reconsideration requests on industrial insurance premiums and is authorized to settle cases up to \$25,000, consistent with other L&I Auditors. His work entails reviewing the audits previously conducted by lower level L&I Auditors. Respondent testified the more difficult and sensitive cases were kept in Tumwater so management could receive updates from Appellant and keep an eye on these cases.

Appellant does not serve as a lead for lower level auditors, rather he is a resource for other L&I Auditors because of his length of service in the position and acquired knowledge. He does not regularly assign, instruct, and check the work of employees on an ongoing basis and therefore does not fit the definition of "lead" from the Glossary of Classification Terms, which states:

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

A Financial Examiner's scope of work differs from that of a L&I Auditor and goes beyond auditing businesses for industrial insurance premium payments. The class series concept for the FE series states "...incumbents analyze, investigate, and prepare to take action against regulated entities for non-compliance with regulatory standards..." The class series concept depicts "regulated entities" as financial institutions, insurance companies, health service contractors, health maintenance organizations, holding company systems, agents, brokers and other organizations regulated pursuant to the Washington Insurance Code. The class series concept depicts "regulated standards" as encompassing safety and soundness; NAIC Accreditation

1 Standards; standards adopted by the federal regulatory bodies or self-regulatory organizations, etc.  
2 As an example, L&I employs FE 4s for the purpose of ensuring their own compliance with federal  
3 and state laws. The duties and responsibilities assigned to FE 4s goes beyond the scope and  
4 complexity of work required of L&I Auditor 5s.

5 Appellant’s duties and responsibilities fit the definition of the L&I Auditor 5 class specification in  
6 that he “serves as a litigation specialist conducting industrial insurance protest reconsiderations  
7 covering classification, rates, collections, and audit determinations, and assists the Attorney  
8 General’s Office in appeals before the Board of Industrial Insurance Appeals.”

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10 In a hearing on exceptions, the Appellant has the burden of proof (WAC 357-52-110). Appellant  
11 has not met their burden of proof.  
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**ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Jerold Billings is denied, the director's determination dated November 4, 2015, is upheld, and Appellant's position remains allocated to L&I Auditor 5.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016.

WASHINGTON PERSONNEL RESOURCES BOARD

\_\_\_\_\_  
NANCY HOLLAND YOUNG, Chair

\_\_\_\_\_  
SUSAN MILLER, Vice Chair

\_\_\_\_\_  
VICKY BOWDISH, Member