

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 HOLLY YBARRA,)
4 Appellant,)
5 v.)
6 DEPARTMENT OF SOCIAL AND HEALTH)
7 SERVICES,)
8 Respondent.)

PRB Case No. R-JUR-14-003

ORDER OF DISMISSAL

9 This matter came before the Personnel Resources Board, NANCY HOLLAND YOUNG, Chair, and
10 SUSAN MILLER, Member, for dismissal pursuant to WAC 357-52-215 and WAC 357-52-220.

11 WAC 357-52-215 provides, in relevant part:

12 The board may dismiss an appeal on its own motion when:

13

14 (3) An appeal is not filed on time

15
16 On November 14, 2014, the Personnel Resources Board received Ms. Ybarra’s appeal taking
17 exception to the director’s determination regarding the allocation of her Financial Services
18 Specialist 4 position. The director’s determination was dated October 13, 2014.

19
20 Ms. Ybarra’s appeal was received thirty-two (32) days after service of the director’s determination.
21 Therefore, the appeal appeared to be untimely.

22 In accordance with WAC 357-52-045, by letter dated November 17, 2014, Board staff directed the
23 parties to provided affidavits and/or written argument addressing the issue of timeliness. Neither
24 party submitted a response.
25

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

6 In addition, WAC 357-52-015 provides, in relevant part: “[i]n order to be considered timely, an
7 appeal must be received in writing at the office of the board within thirty calendar days after: . . . (2)
8 Service of the director's determination unless the rules specifically state that the director's
9 determination is final”

10
11 WAC 357-04-105 discusses how service is accomplished. The rule provides, in relevant part,
12 “[e]xcept as provided in chapters 357-40 and 357-52 WAC, service . . . upon parties will be
13 regarded as completed when personal delivery has been accomplished; or upon deposit in the United
14 States mail, properly stamped and addressed”

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

18
19 On December 17, 2014, the Board served Ms. Ybarra and DSHS with a Notice of Potential
20 Dismissal. The Notice of Potential Dismissal notified the parties that the appeal would be dismissed
21 unless, within fifteen calendar days following the date of service of the notice, the Board received a
22 written request showing good cause why the appeal should not be dismissed.

23 The notice also discussed a number of the Board’s past decisions regarding the issue of timeliness.
24 For example, in Harris v. Seattle Central Community College, PRB Case No. R-ALLO-08-019
25 (2008) the director’s determination was served on July 8, 2008. On August 8, 2008, appellant filed
26

1 an appeal of the director's determination. The appeal was filed thirty-one days after service of the
2 director's determination. Therefore, the Board determined the appeal was untimely and the appeal
3 was dismissed.

4 In Yialelis v. Dept. of Transportation, PRB Case No. R-ALLO-08-016 (2008), the director
5 determined that the employee's request for a director's review was untimely. The employee filed
6 exceptions to the Board. The employee argued that his thirty-day filing period to request a director's
7 review should start from the date that he received the letter, not from the date that DOT allegedly
8 placed the letter in the mail. The employee further argued that the Board should apply the same
9 standard of service for both employers and employees and that the Board should hold that service of
10 his request for review was completed when he placed his request for review in the mail rather than
11 when it was received by the director. However, the Board determined that RCW 41.06.170 and the
12 civil service rules prevailed. The Board concluded that under the provisions of the statute and the
13 rules, the request for review, which was filed thirty-one days after service of the agency's
14 determination, was untimely and denied the appeal.

15 In Bello v. Dept. of Social and Health Services, PRB Case No. R-ALLO-08-003 (2008), the
16 employee filed exceptions to a director's determination. The employee argued that the appeal was
17 filed consistent with Article 41.2D of the collective bargaining agreement between the State of
18 Washington and the Washington Federation of State Employees and was timely. However, the
19 Board determined that consistent with RCW 41.80.020(6), RCW 41.06.170 prevailed. The Board
20 concluded that under the provisions of the statute, the appeal, which was filed thirty-four days after
21 service of the director's determination, was untimely and dismissed the appeal.

22 In Bushey v. Washington State University, PRB No. R-RULE-10-002 (2010), Mr. Bushey mailed
23 his appeal by overnight delivery on January 28, 2010, with the understanding that it would be
24 delivered on January 29, 2010. However, the appeal was delivered on February 1, 2010. Mr. Bushey
25 argued that he exercised due diligence to pursue his appeal and the fact that Federal Express failed
26

1 to deliver his appeal until February 1, 2010 was beyond his control. The Board dismissed the appeal
2 as untimely and confirmed that, “[n]either the RCW nor the civil service rules allow the Board to
3 waive the jurisdictional requirements for filing appeals.”

4 In Daniels v. Department of Corrections, PRB Case No. R-DEMO-09-007 (2009), Mr. Daniels
5 argued that when he mailed his appeal on September 18, 2009, he was told by the US Postal staff
6 that the letter should reach the Board by Monday, September 21, 2009. However, the Board did not
7 receive the appeal until September 22, 2009, thirty-two (32) days after the effective date of Mr.
8 Daniels’ demotion. The Board found that it was unfortunate that Mr. Daniels was given misleading
9 information by United States postal staff regarding the delivery time for mail from Lacey,
10 Washington, to the Board’s office in Olympia. The Board referenced a history of cases in which the
11 Board and the Personnel Appeals Board (predecessor to the Board) held that an appeal is untimely
12 even when the affected employee had been unintentionally misled by an agency or given erroneous
13 information about a process. See for example, Lapp v. Washington State Patrol, PAB No. V94-079
14 (1995) and Yialelis v. Dept. of Transportation, PRB No. R-ALLO-08-016 (2008).

15 Ms. Ybarra filed a response to the Notice of Potential Dismissal on December 29, 2014. Ms. Ybarra
16 argued that she mailed her appeal on December 12, 2014 which she realized was the due date for the
17 appeal. She explained that both she and her daughter had been ill and that due to her illness, her
18 appeal was not mailed with the group of agency employees who appealed the same issue. Ms.
19 Ybarra asserted that it had been her intention to file her appeal with the group and indicated that she
20 has met all the other process deadlines.

21 The Department Social and Health Services did not respond to the Notice of Potential Dismissal.
22

23 As stated above, the Board has addressed the issue of timeliness on numerous occasions. We have
24 carefully reviewed the file in this matter and find that in spite of her illness, Ms. Ybarra was not
25 precluded from filing a timely appeal. The director’s determination clearly notified Ms. Ybarra and
26

1 her Washington Federation of State Employees (WFSE) representative of the thirty day deadline for
2 filing her appeal. The determination also provided Ms. Ybarra and her representative with the
3 mailing address and fax number for filing her appeal. Yet, rather than submitting her appeal by fax
4 on the due date, she admittedly placed it in the mail on that date. Consequently, the appeal was not
5 filed within thirty days of service of the director's determination.

6 The appeal was filed thirty-two (32) days after service of the director's determination. Therefore, the
7 appeal is untimely and should be dismissed.

8
9 The Board having reviewed the file and records herein and being fully advised in the premises, now
10 enters the following:

11
12 **ORDER**

13 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Holly Ybarra vs. Department of
14 Social and Health Services, PRB Case No. R-JUR-14-003, is dismissed.

15 DATED AND MAILED this _____ day of _____, 2015.

16 WASHINGTON PERSONNEL RESOURCES BOARD

17
18 _____
NANCY HOLLAND YOUNG, Chair

19
20 _____
SUSAN MILLER, Member