

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

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

PRB Case No. R-JUR-14-004

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:

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14 (3) An appeal is not filed on time

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16 On November 14, 2014, the Personnel Resources Board received Ms. Lynch’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 Ms. Lynch’s appeal was received thirty-two (32) days after service of the director’s determination.
20 Therefore, the appeal appeared to be untimely.

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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.

1 On December 5, 2014, Ms. Lynch submitted written argument asserting that her appeal was mailed
2 in a timely manner. Ms. Lynch provided a copy of a certified mail receipt showing that the appeal
3 was placed in the mail on November 10, 2014.

4 DSHS did not file a response to the November 17, 2014 letter from Board staff.

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

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

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

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

24 On December 17, 2014, the Board served Ms. Lynch and DSHS with a Notice of Potential
25 Dismissal. The Notice of Potential Dismissal notified the parties that the appeal would be dismissed

1 unless, within fifteen calendar days following the date of service of the notice, the Board received a
2 written request showing good cause why the appeal should not be dismissed.

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4 The notice also discussed a number of the Board's past decisions regarding the issue of timeliness.
5 For example, in Harris v. Seattle Central Community College, PRB Case No. R-ALLO-08-019
6 (2008) the director's determination was served on July 8, 2008. On August 8, 2008, appellant filed
7 an appeal of the director's determination. The appeal was filed thirty-one days after service of the
8 director's determination. Therefore, the Board determined the appeal was untimely and the appeal
9 was dismissed.

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

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

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4 In Bushey v. Washington State University, PRB No. R-RULE-10-002 (2010), Mr. Bushey mailed
5 his appeal by overnight delivery on January 28, 2010, with the understanding that it would be
6 delivered on January 29, 2010. However, the appeal was delivered on February 1, 2010. Mr. Bushey
7 argued that he exercised due diligence to pursue his appeal and the fact that Federal Express failed
8 to deliver his appeal until February 1, 2010 was beyond his control. The Board dismissed the appeal
9 as untimely and confirmed that, "[n]either the RCW nor the civil service rules allow the Board to
10 waive the jurisdictional requirements for filing appeals."

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

21 Neither party filed a response to the Notice of Potential Dismissal.

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23 As stated above, the Board has addressed the issue of timeliness on numerous occasions. The
24 director's determination clearly notified Ms. Lynch and her Washington Federation of State
25 Employees (WFSE) representative of the thirty day deadline for filing her appeal. In this case, the
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director's determination was served on October 13, 2014, by deposit in the United States mail. Ms. Lynch's appeal was received by the Board on November 14, 2014. Therefore, Ms. Lynch's appeal was filed thirty-two (32) days after service of the director's determination. The appeal is untimely and should be dismissed.

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

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Lynn Lynch vs. Department of Social and Health Services, PRB Case No. R-JUR-14-004, is dismissed.

DATED AND MAILED this _____ day of _____, 2015.

WASHINGTON PERSONNEL RESOURCES BOARD

NANCY HOLLAND YOUNG, Chair

SUSAN MILLER, Member