

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 CARL HARRIS,)
4 Appellant,)
5 v.)
6 DEPARTMENT OF AGRICULTURE,)
7 Respondent.)
8 _____)

PRB Case No. R-JUR-15-004

ORDER OF DISMISSAL

9 This matter came before the Personnel Resources Board, NANCY HOLLAND YOUNG, Chair;
10 SUSAN MILLER, Vice Chair; and VICKY BOWDISH, Member, for dismissal pursuant to WAC
11 357-52-215 and WAC 357-52-220.

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

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

15 (2) An appeal is not filed on time;

16 . . .

17 On May 15, 2015, the Personnel Resources Board received Mr. Harris’ appeal alleging rule
18 violations arising from his layoff. Mr. Harris’ layoff was effective December 31, 2014. In his
19 appeal, Mr. Harris stated that he had “suspicion all along” that his layoff was not due to
20 organizational change and lack of work. He further stated that he became aware of the alleged
21 violations on May 13, 2015 as a result of communication with Bill Castillo. In a May 14, 2015
22 email to Mr. Harris, Mr. Castillo indicated that he was told that another employee was going to be
23 promoted into Mr. Harris’ position and that Mr. Harris was let go because he wasn’t right for the
24 job.

1 Mr. Harris' layoff was effective December 31, 2014 but his appeal was not received until May 15,
2 2015. The appeal was received more than thirty days after the effective date of the layoff. Therefore,
3 the appeal appeared to be untimely.

4 Pursuant to WAC 357-52-045, by letter dated May 19, 2015, Board staff directed the parties to
5 submit affidavits and/or written argument addressing the timeliness of the appeal. Affidavits and/or
6 written argument were to be submitted within twenty-one (21) calendar days of the date of the letter.
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8 Mr. Harris submitted a response on May 22, 2015. Mr. Harris argued that his appeal was timely
9 because it was filed within thirty days of his knowledge of the alleged violations. Mr. Harris
10 explained that he became aware of the alleged violation on May 13, 2015 based on his
11 communication with Bill Castillo. Mr. Harris contended that as provided in WAC 357-52-015(2) his
12 appeal was filed within thirty days of knowledge of the alleged violation and therefore, the appeal
13 was timely.

14 On June 8, 2015, the Department of Agriculture (Department) filed a response to the Board's May
15 19, 2015 letter. The Department argued that the appeal was untimely. The Department asserted that
16 on October 3, 2014, Mr. Harris was told that his position was being eliminated due to
17 reorganizational needs. Mr. Harris received his formal notice of layoff on or about December 12,
18 2014 notifying him that he would laid off from his position effective December 31, 2014. The
19 Department argued that Mr. Harris' reliance on WAC 357-52-015(2) was misplaced and asserted
20 that the plain reading of statute [RCW 41.06.170(2)] established that the appeal was untimely. The
21 Department contended that the action giving rise to the appeal was the layoff which took effect on
22 December 31, 2014, and therefore, the appeal was untimely.

23 RCW 41.06.170(2) establishes the timeframe for filing appeals to the Personnel Resources Board.
24 The RCW states, in relevant part: "[a]ny employee who is reduced, dismissed, suspended, or
25 demoted, after completing his or her probationary period of service as provided by the rules of the
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1 director, or any employee who is adversely affected by a violation of the state civil service law,
2 chapter 41.06 RCW, or rules adopted under it, shall have the right to appeal, either individually or
3 through his or her authorized representative, not later than thirty days after the effective date of such
4 action to the Washington personnel resources board. . . .”

5 In addition, WAC 357-52-015 provides, in relevant part:

6 In order to be considered timely, an appeal must be received in writing at the office
7 of the board within thirty calendar days after:

8 (1) The effective date of the . . . layoff, . . .;

9 (2) The date the employee could reasonably be expected to have knowledge of the
10 action giving rise to a law or rule violation claim or the stated effective date,
11 whichever is later;

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13 On June 11, 2015, the Board served the parties with a Notice of Potential Dismissal. The Notice of
14 Potential Dismissal notified the parties that the appeal would be dismissed unless, within fifteen
15 calendar days following the date of service of the notice, the Board received a written request
16 showing good cause why the appeal should not be dismissed.

17 Mr. Harris filed a response to the Notice of Potential Dismissal on June 25, 2015. Mr. Harris
18 confirmed that he had knowledge of his potential layoff on October 3, 2014 and that he was laid off
19 effective December 31, 2014. Mr. Harris continued to argue that while he had suspicion that the
20 reason for his layoff was not truthful, he did not have material proof of until the May 13, 2015
21 statement of Mr. Castillo. Mr. Harris contends that it would be unreasonable to file an appeal based
22 on suspicion. Therefore, Mr. Harris argues that May 13, 2015 is the earliest date that he could have
23 had reasonable factual knowledge of the actions that are the basis of his appeal. Mr. Harris asserts
24 that his appeal was timely filed.
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1 On July 1, 2015, the Department filed a response to Mr. Harris's June 25, 2015 letter. The
2 Department argues that while Mr. Harris had suspicion regarding the reasons for this layoff in
3 October 2014, he took no action and provided no explanation to the Board for why he allowed time
4 to lapse before filing his appeal. The Department agrees with the Board that while Mr. Castillo's
5 statement may have support Mr. Harris's previous suspicion, it did not constitute new evidence. The
6 Department contends that Mr. Harris failed to show good cause for why his appeal should be
7 considered timely and asks that the appeal be dismissed.

8 The issue of reasonable knowledge was established in *Barrington, et al, v. Eastern Washington*
9 *University*, 41 Wn. App. 259 (1985). However, the facts in this case differ significantly from the
10 facts in *Barrington*. In *Barrington*, the employees received new documentary information which
11 gave rise to their appeal of a previous action. Here, it does not appear that Mr. Harris received new
12 information after the effective date of his layoff. To the contrary, in his appeal Mr. Harris states that
13 "[m]y suspicion all along was that Chief of Staff Morgan needed me out of the way so that Director
14 Hover could promote one of his favorites into my position." While Mr. Harris' communication with
15 Mr. Castillo may support his previous suspicion, based on Mr. Harris' statement in his appeal, he
16 had reasonable knowledge at that the time of his layoff and therefore, the communication with Mr.
17 Castillo does not appear to be new information.

18 Mr. Harris filed his appeal more than 30 days after the effective date of his layoff and more than 30
19 days after he had reasonable knowledge of the action giving rise to the appeal. Therefore, the Board
20 appeal is untimely and should be dismissed.

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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 *Carl Harris v. Department of Agriculture*, PRB Case No. R-JUR-15-004, is dismissed.

DATED AND MAILED this _____ day of _____, 2015.

WASHINGTON PERSONNEL RESOURCES BOARD

NANCY HOLLAND YOUNG, Chair

SUSAN MILLER, Vice Chair

VICKY BOWDISH, Member