

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 JOHN WRASPIR,)
4 Appellant,)
5 v.)
6 DEPARTMENT OF AGRICULTURE)
7 Respondent.)
8)

PRB Case No. R-JUR-15-006

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 357-
11 52-215 and WAC 357-52-220.

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

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

14

15 (3) An appeal is not filed on time

16 On August 18, 2015, the Personnel Resources Board received Mr. Wraspir's appeal taking
17 exception to the director's determination regarding the allocation of his Pest Biologist 3 position.

18 The director's determination was dated July 15, 2015.

19 The appeal was received thirty-four (34) days after service of the director's determination.

20 Therefore, the appeal appeared to be untimely.

21
22
23 In accordance with WAC 357-52-045, by letter dated August 19, 2015, Board staff directed the
24 parties to provide affidavits and/or written argument addressing the issue of timeliness.

1 On August 25, 2015, Jennifer Wagner, Classification and Compensation Consultant for Department
2 of Agriculture, submitted written argument asserting the appeal was not received in a timely fashion
3 and therefore should be dismissed.

4 Mr. Wraspir did not file a response to the August 19, 2015, letter from Board staff.

6 By letter dated September 14, 2015, the Board served Mr. Wraspir and Department of Agriculture
7 with a Notice of Potential Dismissal. The Notice of Potential Dismissal notified the parties that the
8 appeal would be dismissed unless, within fifteen calendar days following the date of service of the
9 notice, the Board received a written request showing good cause why the appeal should not be
10 dismissed.

11 On September 21, 2015, Board staff received a written argument from Mr. Wraspir asserting that
12 the appeal was mailed in plenty of time to be received by the Board, as he routinely mails
13 correspondence to and from Olympia and receives next day delivery. Mr. Wraspir stated that the
14 fact the appeal was received four days after the due date was an extreme anomaly outside of his
15 personal control.

17 The Department of Agriculture did not respond to the September 14, 2015, letter from the Board.

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

24 In addition, WAC 357-52-015 provides, in relevant part: “[i]n order to be considered timely, an
25 appeal must be received in writing at the office of the board within thirty calendar days after: . . . (2)

1 Service of the director's determination unless the rules specifically state that the director's
2 determination is final”

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

7
8 Neither the RCW nor the civil service rules allow the Board to waive the jurisdictional requirements
9 for filing appeals. The rules require that allocation appeals must be received by the Board within
10 thirty days after service of the director’s determination.

11
12 For example, in *Harris v. Seattle Central Community College*, PRB Case No. R-ALLO-08-019
13 (2008) the director’s determination was served on July 8, 2008. On August 8, 2008, appellant filed
14 an appeal of the director’s determination. The appeal was filed thirty-one days after service of the
15 director’s determination. Therefore, the Board determined the appeal was untimely and the appeal
16 was dismissed.

17 In *Yialelis v. Department of Transportation*, PRB Case No. R-ALLO-08-016 (2008), the director
18 determined that the employee’s request for a director’s review was untimely. The employee filed
19 exceptions to the Board. The employee argued that his thirty-day filing period to request a director’s
20 review should start from the date that he received the letter, not from the date that DOT allegedly
21 placed the letter in the mail. The employee further argued that the Board should apply the same
22 standard of service for both employers and employees and that the Board should hold that service of
23 his request for review was completed when he placed his request for review in the mail rather than
24 when it was received by the director. However, the Board determined that RCW 41.06.170 and the
25 civil service rules prevailed. The Board concluded that under the provisions of the statute and the
26

1 rules, the request for review, which was filed thirty-one days after service of the agency's
2 determination, was untimely and denied the appeal.

3
4 In *Bushey v. Washington State University*, PRB No. R-RULE-10-002 (2010), Mr. Bushey mailed his
5 appeal by overnight delivery on January 28, 2010, with the understanding that it would be delivered
6 on January 29, 2010. However, the appeal was delivered on February 1, 2010. Mr. Bushey argued
7 that he exercised due diligence to pursue his appeal and the fact that Federal Express failed to
8 deliver his appeal until February 1, 2010 was beyond his control. The Board dismissed the appeal as
9 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 As stated above, the Board has addressed the issue of timeliness on numerous occasions. The
22 director’s determination clearly notified Mr. Wraspir of the thirty day deadline for filing his appeal.
23 In this case, the director’s determination was dated July 15, 2015, however, Mr. Wraspir’s appeal
24 was received by the Board on August 18, 2015. Therefore, Mr. Wraspir’s appeal was filed thirty-
25

1 four (34) days after service of the director's determination. The appeal is untimely and should be
2 dismissed.

3
4 The Board having reviewed the file and records herein and being fully advised in the premises, now
5 enters the following:

6 **ORDER**

7 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of JOHN WRASPIR V
8 DEPARTMENT OF AGRICULTURE, PRB Case No. R-JUR-15-006, is dismissed.

9 DATED AND MAILED this _____ day of _____, 2015.
10

11 WASHINGTON PERSONNEL RESOURCES BOARD

12
13 _____
14 NANCY HOLLAND YOUNG, Chair

15
16 _____
17 SUSAN MILLER, Vice-Chair

18
19 _____
20 VICKY BOWDISH, Member
21
22
23
24
25
26