

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 TONY AITKEN, )  
4 Appellant, )  
5 v. )  
6 DEPARTMENT OF ENTERPRISE SERVICES )  
7 Respondent. )  
8 )

PRB Case No. R-JUR-15-008

**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.

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  
17 On August 31, 2015, the Personnel Resources Board received Mr. Aitken’s request to appeal the  
18 decision that he is not entitled to accrue eight (8) hours sick leave per month in each full-time  
19 position (double sick leave accrual). Mr. Aitken is employed with the Department of Enterprise  
20 Services (DES) as a Tour and Information Services Manager (WMS) and with South Puget Sound  
21 Community College (SPSCC) as an Adjunct Faculty Member.

22 In accordance with WAC 357-52-045, by letter dated September 1, 2015, Board staff directed the  
23 parties to provide affidavits and/or written argument addressing the issue of timeliness.

24 Mr. Aitken submitted a response on September 9, 2015. In his response, Mr. Aitken stated that  
25 DES and OFM State Human Resources (HR) have not formally answered his question or formally  
26 denied double sick leave accrual and, therefore, his appeal cannot be untimely. Mr. Aitken referred

1 to WAC 357-04-105(1) that states: . . . “Except as provided in chapter 357-40 and 357-52 WAC,  
2 when the civil service rules require an applicant, candidate, employee, or employer to receive notice,  
3 the notice must be provided by personal delivery, United States mail, or by telephone facsimile  
4 transmission with same-day mailing of copies unless the specific rule requiring notice allows for  
5 alternative methods of providing notice such as electronic mail (“e-mail”), state mail service,  
6 commercial parcel delivery or campus mail service.”

7 DES also submitted a response addressing the timeliness of Mr. Aitken’s appeal. DES stated Mr.  
8 Aitken received notice from OFM State HR on June 26, 2015, that they did not agree with his  
9 position concerning double sick leave accrual. DES asserted that on July 6, 2015, OFM State HR  
10 reiterated their same position to Mr. Aitken that he was not entitled to accrue double sick leave.  
11 Whether June 26 or July 6, DES argues the appeal received on August 31, 2015, was well over  
12 thirty (30) days past the date Mr. Aitken became aware of the action.

13 By letter dated September 23, 2015, the Board served Mr. Aitken and DES with a Notice of  
14 Potential Dismissal. The Notice of Potential Dismissal notified the parties that the appeal would be  
15 dismissed unless, within fifteen (15) calendar days following the date of service of the notice, the  
16 Board received a written request showing good cause why the appeal should not be dismissed. The  
17 notice also addressed Mr. Aitken’s assertion that OFM State HR and DES failed to provide proper  
18 notice per WAC 357-04-105(1). The notice stated that Mr. Aitken’s reference to WAC 357-04-  
19 105(1) was not relevant since agency questions about leave are answered by individual HR offices  
20 on an informal basis and therefore, official written notice is not required.

21 Neither Mr. Aitken nor DES submitted a response to the Notice of Potential Dismissal.

22 WAC 357-52-015 provides, in relevant part: “[i]n order to be considered timely, an appeal must be  
23 received in writing at the office of the board within thirty calendar days after: . . . (2) The date the  
24 employee could reasonably be expected to have knowledge of the action giving rise to a law or rule  
25 violation claim or the stated effective date, whichever is later. The rule provides, in relevant part,  
26

1 “[e]xcept as provided in chapters 357-40 and 357-52 WAC, service . . . upon parties will be  
2 regarded as completed when personal delivery has been accomplished; or upon deposit in the United  
3 States mail, properly stamped and addressed . . . .”

4 In *Harris v. Seattle Central Community College*, PRB Case No. R-ALLO-08-019 (2008) the  
5 director’s determination was served on July 8, 2008. On August 8, 2008, appellant filed an appeal of  
6 the director’s determination. The appeal was filed thirty-one days after service of the director’s  
7 determination. Therefore, the Board determined the appeal was untimely and the appeal was  
8 dismissed.

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

17 In *Daniels v. Department of Corrections*, PRB Case No. R-DEMO-09-007 (2009), Mr. Daniels  
18 argued that when he mailed his appeal on September 18, 2009, he was told by the US Postal staff  
19 that the letter should reach the Board by Monday, September 21, 2009. However, the Board did not  
20 receive the appeal until September 22, 2009, thirty-two (32) days after the effective date of Mr.  
21 Daniels’ demotion. The Board found that it was unfortunate that Mr. Daniels was given misleading  
22 information by United States postal staff regarding the delivery time for mail from Lacey,  
23 Washington, to the Board’s office in Olympia. The Board referenced a history of cases in which the  
24 Board and the Personnel Appeals Board (predecessor to the Board) held that an appeal is untimely  
25 even when the affected employee had been unintentionally misled by an agency or given erroneous  
26 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).

1  
2 DES referred Mr. Aitken to OFM State HR for additional information on sick leave accrual and, as  
3 such, an email chain was started between Brandy Chinn, HR Consultant, and Mr. Aitken. On June  
4 24, 2015, Connie Goff, Rules and Appeals Manager, was included in the email chain. On June 26,  
5 2015, Ms. Goff replied to Mr. Aitken's question about double leave accrual and, the same day, Mr.  
6 Aitken replied to Ms. Goff's email by asking additional questions, including his options for appeal.  
7 On July 6, 2015, continuing the email chain, Ms. Goff replied to Mr. Aitken's questions, informing  
8 him of his appeal rights, citing WAC 357-52-010(2) (b). On August 31, 2015, the Board received  
9 Mr. Aitken's request to appeal the decision on the denial of double sick leave accrual, which was 66  
10 days after Mr. Aitken had knowledge of the decision regarding double sick leave accrual.  
11 Therefore, the appeal is untimely.

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

14 **ORDER**

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Tony Aitken v. Department of  
16 Enterprise Services, PRB Case No. R-JUR-15-008, is dismissed.

17 DATED AND MAILED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

18  
19 WASHINGTON PERSONNEL RESOURCES BOARD

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22 \_\_\_\_\_  
23 SUSAN MILLER, Vice-Chair

24  
25 \_\_\_\_\_  
26 VICKY BOWDISH, Member