

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

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

PRB Case No. R-JUR-15-011

**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 . . . .

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

22  
23 In addition, WAC 357-52-015 provides, in relevant part: “[i]n order to be considered timely, an  
24 appeal must be received in writing at the office of the board within thirty calendar days after: . . . (2)  
25 Service of the director's determination unless the rules specifically state that the director's  
26 determination is final . . . .”

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

6 On September 30, 2015, the Personnel Resources Board received Ms. Rollins’ appeal taking  
7 exception to the director’s determination regarding the allocation of her Social Services Specialist 3  
8 position. The director’s determination was dated August 26, 2015.

9  
10 Ms. Rollins appeal was received thirty-five (35) days after service of the director’s determination.  
11 Therefore, the appeal appeared to be untimely.

12  
13 In accordance with WAC 357-52-045, by letter dated October 1, 2015, Board staff directed the  
14 parties to provide affidavits and/or written argument addressing the issue of timeliness. Affidavits  
15 and/or written argument were to be submitted within twenty-one (21) calendar days of the date of  
16 the letter. Neither party submitted affidavits or written argument.

17 In accordance with WAC 357-52-220, on October 27, 2015, Board staff served Ms. Rollins with a  
18 Notice of Potential Dismissal. The Notice of Potential Dismissal notified the parties that the appeal  
19 would be dismissed unless, within fifteen (15) calendar days following the date of service of the  
20 notice, the Board received a written request showing good cause why the appeal should not be  
21 dismissed.

22 On November 9, 2015, Ms. Rollins submitted a letter requesting the Board accept her appeal since  
23 she had mailed it in a timely fashion but USPS processing and turnaround times were not in her  
24 control.

1 Neither the RCW nor the civil service rules allow the Board to waive the jurisdictional requirements  
2 for filing appeals. The rules require that allocation appeals must be received by the Board within  
3 thirty (30) days after service of the director's determination.

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

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

22 In Bello v. Dept. of Social and Health Services, PRB Case No. R-ALLO-08-003 (2008), the  
23 employee filed exceptions to a director's determination. The employee argued that the appeal was  
24 filed consistent with Article 41.2D of the collective bargaining agreement between the State of  
25 Washington and the Washington Federation of State Employees and was timely. However, the  
26 Board determined that consistent with RCW 41.80.020(6), RCW 41.06.170 prevailed. The Board

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.

3  
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 As stated above, the Board has addressed the issue of timeliness on numerous occasions. The  
22 director's determination clearly notified Ms. Rollins of the thirty (30) day deadline for filing her  
23 appeal. In this case, the director's determination was served on August 26, 2015, by deposit in the  
24 United States mail. Mr. Rollins' appeal was received by the Board on September 30, 2015.  
25 Therefore, Ms. Rollins' appeal was filed thirty-five (35) days after service of the director's  
26 determination. The 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 Janet Rollins v DSHS, PRB Case No. R-JUR-15-011, is dismissed.

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

WASHINGTON PERSONNEL RESOURCES BOARD

\_\_\_\_\_  
NANCY HOLLAND YOUNG, Chair

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

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VICKY BOWDISH, Member