

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 CINDEE THOMAS, )  
4 Appellant, )  
5 v. )  
6 DEPARTMENT OF SOCIAL AND HELATH )  
7 SERVICES )  
8 Respondent. )

PRB Case No. R-JUR-16-005

**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 On August 16, 2016, the Personnel Resources Board received Cindee Thomas’ appeal taking  
13 exception to the director’s determination regarding the allocation of her Human Resource  
14 Consultant 1 position.

15 The appeal was received thirty-four (34) days after service of the director’s determination and  
16 appeared to be untimely.

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

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

19 . . . .

20 (3) An appeal is not filed on time . . . .

21  
22 In accordance with WAC 357-52-045, by letter dated August 23, 2016, Board staff directed the  
23 parties to provide affidavits and/or written argument addressing the issue of timeliness.  
24  
25  
26

1 Ms. Thomas submitted a response on September 13, 2016 stating, “I was mistakenly of the  
2 understanding that if the appeal/package was date-stamped before the due date it would be  
3 accepted...” DSHS did not submit a response.

4 By letter dated September 20, 2016, the Board served Ms. Thomas and DSHS with a Notice of  
5 Potential Dismissal. The Notice of Potential Dismissal notified the parties the appeal would be  
6 dismissed unless, within fifteen (15) calendar days following the date of service of the notice, the  
7 Board received a written request showing good cause why the appeal should not be dismissed.  
8 Neither Ms. Thomas nor DSHS submitted a response to the Notice of Potential Dismissal.

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

even when the affected employee had been unintentionally misled by an agency or given erroneous 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).

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

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 CINDEE THOMAS v DEPARTMENT OF SOCIAL AND HEALTH SERVICES, PRB Case No. R-JUR-16-005, is dismissed.

DATED AND MAILED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

WASHINGTON PERSONNEL RESOURCES BOARD

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

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

\_\_\_\_\_  
VICKY BOWDISH, Member