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2 **II. FINDINGS OF FACT**

3 2.1 Appellant David Preston was a permanent employee for Respondent Department of Health.  
4 Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated  
5 thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals  
6 Board on May 2, 2005.

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8 2.2 Appellant began his employment with the Department of Health (DOH) as a clerk typist in  
9 1994. Appellant worked at the Office of Drinking Water (ODW) in the Northwest Regional Office.  
10 Appellant later promoted to a position as a Computer Analyst Programmer (CAP) 3. Although  
11 Appellant was under the Information Technology Management Systems group, which is based in  
12 the ODW Headquarters Office in Tumwater, his official workstation continued to be located in the  
13 Northwest Regional Office in Kent. In 1999, Appellant's position was reclassified to an  
14 Information Technology Application Specialist 3 as a result of a statewide job class study. As an  
15 ITAS 3, Appellant provided programming support to the Olympia, Seattle and Spokane DOH  
16 regional offices by designing, developing and maintaining database applications.

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18 2.3 In July 2000, the Office of Drinking Water issued a reported indicating its intent to undergo  
19 a major replacement of its information systems. In spring 2003, Environmental Specialist 5 David  
20 Jennings was promoted to a position as Manager of the Information Management Section of ODW.  
21 Mr. Jennings' duties include oversight of the ITM team responsible for developing and maintaining  
22 software applications for ODW's various programs, including programs located in the Northwest  
23 Regional Office, the Southwest Regional office and the Eastern Regional office. Mr. Jennings  
24 approached Denise Clifford, the Director for the ODW, about a plan to formally reorganize the IT  
25 section, and he proposed dividing his staff into three teams: Business Analysts, Programmers, and  
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1 Help Desk Support. Ms. Clifford directed Mr. Jennings to put a proposal in writing for presentation  
2 to the Executive Management Team.

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4 2.4 During the spring of 2003, Appellant began commuting between his official work station in  
5 Kent to the ODW Headquarters in Tumwater anywhere from one to three days a week. The IT  
6 section was continuing work on the development of a new computer program called SENTRY, and  
7 Appellant was involved in that process, primarily helping to resolve SENTRY problems related to  
8 the Coliform Group, one of 20 user groups within ODW that received IT assistance from ITM. The  
9 Coliform group was located in the Northwest Regional Office in Kent, and because Appellant was  
10 easily accessible to them, approximately 80 percent of Appellant's work time was devoted to the  
11 Coliform Group.

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13 2.5 In the spring of 2004, Mr. Jennings completed a draft reorganization proposal for the ODW  
14 Environmental Health Executive Management Team, which included Ms. Clifford, Office Chief  
15 Gregg Grunenfelder, and Deputy Director of ODW Headquarter Operations Peggy Johnson. Mr.  
16 Jennings proposed five specific organization changes, one of which was to refocus the  
17 programming duties of position #KC46, the position held by Appellant, to Business Analyst duties.  
18 In that capacity, the position's primary function would be as a liaison between ODW's information  
19 technology department and the various ODW programs, helping to analyze and identify their  
20 information technology business problems and proposing solutions. In the memo, Mr. Jennings  
21 also indicated the position should be relocated from Kent to ODW Headquarters in Tumwater. Mr.  
22 Jennings listed the reasons why he believed relocation of Appellant's position was necessary as  
23 follows: miscommunications resulting from limited face-to-face interactions; decreased  
24 opportunities for scheduling spontaneous meetings in response to IT problems; inability to  
25 effectively utilize whiteboards and other visual aids during discussions; increased travel costs;  
26 Appellant's unavailability to routinely conduct in-person User Acceptance Testing; limited ability

1 to provide direct supervision to Appellant; and the increasing unwillingness on Appellant's part to  
2 travel to Headquarters when requested.

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4 2.6 Mr. Jennings subsequently presented his proposal to the ODW Executive Management  
5 Team and a representative from the Human Resources Department. The team posed a number of  
6 questions to Mr. Jennings, including how the reorganization furthered ODW's business, how it  
7 aligned with ODW's priorities and current procedures, and the potential impact to those procedures.

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9 2.7 Ms. Clifford also met with Robert James, Manager of the Northwest Regional Office to  
10 discuss the potential impact of relocating the ITAS 3 position and to solicit Mr. James's input on  
11 how to manage that impact to the staff in Kent.

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13 2.8 On June 14, 2004, Mr. Jennings submitted a final draft of his reorganization proposal. This  
14 draft eliminated two of the original five proposals. However, the recommendations regarding  
15 Appellant's position remained unchanged.

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17 2.9 In August 2004, Mr. Jennings met with Appellant to discuss formal plans to refocus the  
18 ITAS 3 duties from programming to Business Analyst duties. Mr. Jennings also discussed the plan  
19 to re-locate the position from Kent to Tumwater, and Appellant indicated that he was unwilling to  
20 relocate his family from the Seattle area.

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22 2.10 Appellant had concerns regard Mr. Jennings' proposal, and he contacted Ms. Clifford, who  
23 agreed to meet with him on November 2, 2004. During that meeting, Appellant indicated to Ms  
24 Clifford that relocation seemed unnecessary because he was doing a really good job where he was  
25 working, that the proposal was not related to his work but to a series of conflicts with Mr. Jennings,  
26 and that he was unwilling to move with the position. Ms. Clifford agreed to look into the issues

1 raised by Appellant, and she held off on recommending Mr. Jennings' proposal to the appointing  
2 authority until she conducted further research and could verify the plan was for the stated business  
3 reasons and not for any other reasons.

4  
5 2.11 On December 3, 2004, Ms. Clifford, Mr. Jennings, Ms. Johnson, Appellant, and Appellant's  
6 supervisor, Brett Freier, Lead Applications developer, met to discuss the proposed Business Analyst  
7 position and the obstacles of having the position stationed in Kent and ways to mitigate those  
8 challenges. Appellant had an opportunity to air his concerns and express his desire to remain  
9 working on the information technology side of business. The group explored the possibility of  
10 Appellant working with the Help Desk and at the end of the meeting it was clear that ODW would  
11 proceed with the changes planned for the ITAS 3 position but look into other employment options  
12 for Appellant within ODW in Kent.

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14 2.12 Ms. Clifford and Appellant also had discussions about the possibility of placing Appellant in  
15 an Environmental Specialist (ES) 3 position working in the Northwest Regional Office; however,  
16 Appellant proposed taking the position on a part-time basis because it was not an information  
17 technology position. In addition, because the ES 3 was at a lower pay range than the ITAS 3, Ms.  
18 Clifford agreed to keep Appellant's salary the same (Y-rated) if he accepted the position. In  
19 response, Appellant asked Ms. Clifford to delay the Y-rating for five months to allow him to receive  
20 the cost of living adjustment that was scheduled to occur in July 2005. In January 2005, Ms.  
21 Clifford offered Appellant the ES 3 job on a fulltime basis, but she denied his request to delay the  
22 Y-rating. Appellant declined Ms. Clifford's offer.

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24 2.13 Ms. Clifford received a memo from the Coliform group months before Appellant's position  
25 was relocated. The group voiced their respect for Appellant's work, credited him for being a big  
26 part of their success, and questioned how they could continue to be successful without Appellant's

1 assistance. On the other hand, Ms. Clifford had also been receiving calls from other internal IT  
2 clients complaining that their needs were not being met. These competing needs concerned Ms.  
3 Clifford, and she wanted to ensure that the ITM addressed and prioritized its efforts so one client  
4 area did not succeed at the expense of another. As a result, Ms. Clifford held a conference call with  
5 members of the Coliform group and her staff, including Mr. Jennings, to address the concerns and  
6 so Mr. Jennings could hear first-hand all of the Coliform Group's concerns and take steps to ensure  
7 the group continued to receive timely customer service and responses to their IT problems.

8  
9 2.14 Ms. Clifford evaluated all of the pros and cons of restructuring and relocating position  
10 #KC46 to ODW Headquarters in Tumwater, including the business needs of ODW as a division, the  
11 needs of the ITM Services, and of the needs the IT clients. Ms. Clifford ultimately decided to move  
12 forward and submit the proposal to the appointing authority, Assistant Secretary Janice Adair, for  
13 final approval. Ms. Clifford credibly testified that in taking the step to endorse the proposal, she  
14 fully considered the Coliform Group's needs and concerns.

15  
16 2.15 After reviewing and discussing the proposal with Ms. Clifford, Ms. Adair agreed that 1)  
17 ODW no longer required having the ITAS 3 programmer position located in the Kent Northwest  
18 Regional Office, 2) there was a need for increased capacity of IT focused business analysts working  
19 with business leads to diagnose and correct application problems, and 3) that locating all ODW IT  
20 position to Tumwater should improve efficiency, reduce costs and enhance teamwork. On February  
21 2, 2005, Ms. Adair officially notified the Office of Human Resources that she approved the change  
22 of duties for Appellant's position from programming duties to business analyst duties and to move  
23 the official work station of the position from Kent to ODW Headquarters.

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25 2.16 By letter dated February 4, 2005, Ms. Adair notified Appellant that the position he occupied  
26 was being transferred from the Northwest Regional Office in Kent to the ODW Headquarters in

1 Tumwater. Ms. Adair asked Appellant to formally indicate whether he would transfer with the  
2 position to Tumwater. In a letter dated February 14, 2005, Appellant responded to Ms. Adair and  
3 indicated he wanted to keep his job but that he was unwilling to move with the position.

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5 2.17 In a second letter dated March 28, 2005, Ms. Adair formally notified Appellant that due to a  
6 good faith reorganization within the Office of Drinking Water, the position he occupied (#KC46) as  
7 an Information Technology Applications Specialist 3 was being relocated to the Tumwater  
8 Headquarters office at the close of business on April 30, 2005. Because Appellant declined to  
9 transfer with the position, the department conducted a review of options, but there were no other  
10 vacant ITAS 3 positions available in the King County area. Therefore, the department determined  
11 that Appellant's layoff option was to the highest job classification in which he previously held  
12 permanent status and offered Appellant a Secretary Supervisor position in the ODW, Environmental  
13 Health Division, as a bump option. Appellant declined this option.

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15 2.18 Effective at the close of business on April 30, 2005, Appellant was separated from his  
16 position as an ITAS 3.

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18 2.19 WAC 356-30-330, Reduction in force-Reasons, regulations-Procedure, states in relevant  
19 part:

20 (1) Employees may be separated in accordance with the statutes and the agencies'  
21 approved reduction in force procedures after at least fifteen calendar days' notice in  
22 writing, without prejudice, because of lack of funds or curtailment of work, or good  
23 faith reorganization for efficiency purposes . . .

24 . . . .

25 2.20 After Appellant's layoff, members of the Coliform Group felt that a valued resource had  
26 been removed from their group and they were highly disappointment; in April 2005, they still had

1 concerns related to Appellant's departure and the impact to their IT services. Derek Pell, a co-  
2 Manager of the Coliform Group, called Ms. Clifford to share these concerns and explain how the  
3 RIF had impacted morale among his staff. Ms. Clifford subsequently met with members of the  
4 Coliform Group to listen to staff concerns directly and to explain what she could regarding  
5 Appellant's reduction in force. Ms. Clifford still firmly believed the relocation of position #KC45  
6 was in the best interest of all IT clients.

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8 2.21 During the hearing of this appeal, Appellant argued that the transfer of his position to ODW  
9 Headquarters was unnecessary, was the result of Mr. Jennings' dislike for him, was not done in  
10 good faith, and did not result in any efficiency. To support his contention, Appellant provided  
11 testimony from several members of the Coliform Group. In essence, the Coliform Group liked  
12 having Appellant readily accessible and available to respond to their needs. The Coliform Group  
13 members still believe that having a dedicated IT staff person assigned to their program is the key to  
14 helping them resolve their very complex data needs, convey those to a computer programmer, and  
15 provide solutions. Mr. Pell also testified and indicated that losing the ITAS 3 position took a  
16 significant and successful tool away from the Northwest Regional Office.

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18 **III. ARGUMENTS OF THE PARTIES**

19  
20 3.1 Respondent asserts that the department took great care to determine if the relocation of  
21 Appellant's position was necessary for ODW's business needs. Respondent asserts that after much  
22 consideration of all concerns, including the concerns voiced by Appellant and the Coliform group,  
23 the appointing authority found the greater needs of the department were better served by relocating  
24 the position to Tumwater.

25 Respondent further asserts that the department recognized Appellant's skills and talents,  
26 wanted to retain him in the position, but that when it became apparent that Appellant would not



1 accept the transfer, they took extensive steps to find him alternative positions to keep him employed  
2 at the Northwest Regional Office.

3 Respondent argues that management has the authority to review its operations and to  
4 reorganize as it deems appropriate, that the evidence supports the reduction in force was the result  
5 of a good faith reorganization, and that the option offered to Appellant was appropriate in  
6 accordance with the WACs.

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8 3.2 Appellant asserts that the RIF of his position was not done in good faith and did not result in  
9 any efficiency within the department. Appellant asserts that other employees in the department  
10 conduct their work from remote locations but have not been relocated or laid off. Appellant asserts  
11 that his work was essential and recognized by his co-workers and management, but that  
12 management failed to ensure that the reduction in force would guarantee his job would continue to  
13 be done better or more cheaply.

14 Appellant asserts management also failed to make its decision based on good faith and that  
15 their decision was based on a single manager's input, who stated it would be more convenient for  
16 him if the position were in Tumwater for eight hours a day. Appellant contends Mr. Jennings failed  
17 to solicit his co-workers' opinions, failed to do any research on his own and merely typed up a few  
18 unbalanced reasons to support the re-location, and then tacked on term the "for efficiency" so that it  
19 would pass muster with the Human Resources Office.

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21 **IV. CONCLUSIONS OF LAW**

22 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
23 herein.

1 4.2 In an appeal of a layoff or reduction-in-force action, Respondent has the burden of proof.  
2 WAC 358-30-170.

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4 4.3 It is not our function to determine whether the reorganization proposal itself was right or  
5 wrong, but only to determine if the reorganization was done in good faith. George v. Dep't of  
6 Agriculture, PAB No L94-026 (1996). In Talbott and Hobson v. Dep't of Social and Health  
7 Services, PAB Case Nos. L81-2 & L81-3 (Murphy, Hrgs, Exam.)(1981), the hearings examiner  
8 found that the reorganization was effected after consideration of many factors affecting the  
9 efficiency of the overall unit, and not designed to inconvenience the two appellants whose positions  
10 were transferred as a result of the reorganization and consolidation.

11  
12 4.4 In Bagg v. Office of the Superintendent of Public Instruction, RIF-95-0007 (1996), the  
13 Board recognized that agencies are given latitude to conduct good faith reorganizations for  
14 efficiency purposes but that “agencies must still meet the burden of proving good faith  
15 reorganization if they claim this as justification for a RIF.” In Bagg, the appellant was laid off due  
16 to a curtailment of work and a good faith reorganization. The Board found that the department  
17 failed to verify information regarding the duties the employee performed prior to eliminating his  
18 position, and then five months later and without any extenuating change in circumstances, created a  
19 new position similar to the eliminated position. The Board granted the appeal, concluding there  
20 was neither a curtailment of work nor a good faith reorganization.

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22 4.5 In this case, Respondent underwent an analysis of its IT Division, and Ms. Clifford also  
23 considered input from Coliform Group staff members regarding the proposal to relocate Appellant's  
24 position. After due consideration, the proposal was sent to Ms. Adair, who had final approving  
25 authority.

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1 4.6 Respondent has met its burden of proof that the transfer of Appellant's position from the  
2 Kent Northwest Regional Office to the Tumwater Headquarters Office was due to a good faith  
3 reorganization for efficiency purposes. Furthermore, whether or not a position requires on-site  
4 supervision is clearly a management decision. In this case, as in Talbott and Hobson, we conclude  
5 that the reorganization was completed after consideration of many factors affecting the efficiency of  
6 the overall IT team, and not for any other reasons.

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8 4.7 While Appellant may disagree that any efficiencies resulted from the position's relocation,  
9 the evidence he presented primarily supported that he was an extremely efficient employee that was  
10 highly regarded and valued by the Coliform Group team members and others at ODW. Appellant  
11 failed to provide any persuasive evidence that the relocation of his former position was not done in  
12 good faith. We believe that at the time of Appellant's reduction in force, Respondent was  
13 implementing a reorganization plan that was developed in good faith, for efficiency purposes, and  
14 in keeping with the overall best interests of its clients and its employees.

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16 4.8 Respondent offered Appellant the opportunity to relocate with the position. However,  
17 Appellant declined, and as a part of his layoff options, he was offered a position as a Secretary  
18 Supervisor in the Northwest Regional Office. However, Appellant declined his option and elected,  
19 instead, to separate from state service.

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21 4.9 As a further showing of good faith, management, with Appellant's input, explored other job  
22 opportunities that would retain Appellant's employed at the Northwest Regional Office. While that  
23 endeavor was not fruitful, it shows management's good faith efforts to provide Appellant with  
24 employment alternatives at the Northwest Regional Office.

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4.10 Respondent has met its burden of proof that Appellant's layoff was the result of a good faith reorganization, and that the reduction in force was carried out in compliance with the requirements of WAC 356-30-330. Therefore, the appeal of David Preston should be denied.

**V. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of David Preston is denied.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

WASHINGTON STATE PERSONNEL APPEALS BOARD

\_\_\_\_\_  
Walter T. Hubbard, Chair

\_\_\_\_\_  
Busse Nutley, Vice Chair