BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ROBERT LIGHTFOOT, Appellant, v. HORSE RACING COMMISSION, Respondent.	Case No. ALLO-04-0017 ORDER OF THE BOARD FOLLOWING HEARING ON EXCEPTIONS TO THE DETERMINATION OF THE DIRECTOR

Hearing on Exceptions. This appeal came on for hearing before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member, on Appellant's exceptions to the Director's determination dated September 14, 2004. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on January 12, 2005.

Appearances. Appellant Robert Lightfoot was present and represented by Kirk Hanson of the Washington Federation of State Employees. Respondent Horse Racing Commission was represented by Patty McGuire, Human Resource Consultant from the Department of Personnel.

Background. Prior to 2002, Appellant worked as a non-civil service employee as racing steward. Appellant's work time was split between two geographic locations: 1) Emerald Downs, in Auburn, Washington, where he worked as an assistant steward to the Board of Stewards, and 2) Sun Downs Race Track, in Kennewick, Washington, where he worked as a racing steward for Class C meets. Emerald Downs employed three racing stewards and, in the absence of one of them, Appellant stepped in and worked as a racing steward.

On March 14, 2002, the Personnel Resources Board adopted rules and new job classes for the Washington Horse Racing Commission, including the Racing Official 1 and 2 and Racing Steward Classifications. By letter dated July 15, 2003, Patty McGuire, Human Resources Consultant, informed Appellant that a "dual position" allocation decision was rendered to address the circumstances under which he was employed. Based on the Classification Questionnaire (CQ) signed by Appellant on June 30, 2002, position 0053 located in Auburn was allocated to the Racing Official 2 level. Additionally, based on the CQ submitted by the WHRC on April 4, 2003, position 0024, working out of Kennewick, was allocated to the Racing Steward level.

Appellant appealed Ms. McGuire's letter dated July 15, 2003, to the Department of Personnel. On January 20, 2004, and August 18, 2004, Paul L. Peterson, Personnel Hearings Officer at the Department of Personnel conducted allocation reviews and by letter dated September 14, 2004, Mr. Peterson informed Appellant he was properly allocated into two separate positions. On October 13, 2004, Appellant filed exceptions with the Personnel Appeals Board.

Summary of Appellant's Argument. Appellant argues that the allocation of his position should have been based on the majority of the work assigned, not on the location where the work was performed and that he should have been allocated to one position rather than two. Appellant argues that he should be classified into one position at the Racing Steward level because his combined hours at Emerald Downs and in Eastern Washington performing Racing Steward duties equal more than 51 percent of his duties. Appellant further asserts that time sheets from previous years support that he spent more time working as a Racing Steward than as a Racing Official 2.

Summary of Respondent's Argument. Respondent argues that a "dual allocation" was necessary because Appellant's duties and work location fluctuated between Emerald Downs, where he performed duties as a Racing Official 2 and in Eastern Washington, where he performed duties as a Racing Steward. Respondent agrees that when Appellant performs Racing Steward duties at class C meets in Eastern Washington, he spends 100% of his time performing the higher level duties. However, Respondent asserts Appellant spends just 10% of his overall work time in Eastern Washington and asserts that he spends the majority of his total work time performing Racing Official 2 duties at Emerald Downs. Respondent further asserts that Appellant has been compensated at the higher level as a Racing Steward when he performs duties backing up other Racing Stewards at Emerald Downs. Respondent argues Appellant has not been harmed by being placed in two positions because he now holds permanent status in each position.

Relevant Classifications. Racing Official 2, class code 98008, is defined as follows:

> At a licensed racetrack, performed skilled regulatory tasks needed to ensure that horse racing is conducted in accordance with state law and the regulations adopted by the Washington Horse Racing Commission.
>
> Distinguishing Characteristics: At a racetrack, performs skilled regulatory functions associated with the pari-mutuel horse racing industry. Typically receives instructions regarding the work to be done but works with relative independence. Employees at this level are expected to exercise initiative and judgment in independently carrying out assignments according to established policies and procedures. May supervise other employees.

Racing Steward, class code 98012, is defined as follows:

> At a licensed racetrack, is responsible for regulating racing and licensees to ensure that racing is conducted in accordance with Washington Horse Racing Commission's "Rule of Racing."

Decision of the Board. The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a

measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. Also, a position review is not a comparison of work performed by employees in similar positions. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class which best describes the overall duties and responsibilities of the position. Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

WAC 356-10-030 requires that position allocation or reallocations be based upon an investigation of duties and responsibilities assigned and/or performed and other information and recommendations. The rule further states that every position be allocated to an established class. Prior to the adoption of the establishment of the new classes, the HRC employed Appellant in two separate part-time positions. Each positions clearly performs different duties based on the requirements of the horse race meets. The Personnel Resources Board approved and adopted the following class specifications:

The Racing Official 2 and Racing Steward positions clearly perform different duties and have different levels of responsibility.

The assigned duties, tasks and responsibilities of position #0024 (working the class C meets in Eastern Washington) include viewing and judging horse races to determine the order of finish and ensuring races are conducted within the HRC's Rules of Racing, which requires a high level of responsibility. This position is properly allocated to the Racing Steward classification. The question here is whether Position #0053 (working at Emerald Downs) should also be allocated to the Racing Steward classification. The primary responsibilities assigned to Position #0053 include assisting the Board of Stewards by performing various administrative and regulatory duties,

including documenting the order in which horses finish a race, reviewing and advising stewards on objections and claims of foul, and assisting the Board of Stewards in conducting hearings. In the absence of a Racing Steward at Emerald Downs, Appellant may step in and act at the Racing Steward level. Appellant is compensated at a higher rate of pay when he works at the higher level. Appellant contends these hours justify allocation of position #0053 to the Racing Steward level. However, that infrequent substitution is insufficient to warrant reallocation to the Racing Steward class. Appellant has not met his burden of proving that position #0053 should be allocated to the Racing Steward level. While we agree that the two positions should remain allocated separately, we disagree with the designated term "dual position" allocation because merit system rules do not define or address such a term.

The appeal on exceptions by Appellant should be denied and the Director's determination dated September 14, 2004, should be affirmed and adopted.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Robert Lightfoot is denied and the Director's determination dated September 14, 2004, is affirmed and adopted.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504