BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

VIOLA DE OCHOA, Appellant, v. EMPLOYMENT SECURITY DEPARTMENT, Respondent.	Case No. RIF-05-0014 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the Department of Social and Health Services, Region 2 in Yakima, Washington, on April 19, 2006.

1.2 **Appearances.** Appellant Viola De Ochoa was present and represented herself *pro se*. Cathleen Carpenter, Assistant Attorney General, represented Respondent Employment Security Department.

1.3 **Nature of Appeal.** This is an appeal from a reduction in force due to lack of funds and good faith reorganization.

II. FINDINGS OF FACT

2.1 Appellant is a permanent employee for Respondent Employment Security Department. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated

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thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on June 30, 2005.

2.2 Appellant began her employment with the Employment Security Department (ESD) in a Job Service Specialist 1-2 intermittent position in August 1984. Appellant became a permanent employee in 1989 and was a WorkSource Specialist 5 at the time she was notified of her reduction in force.

2.3 On April 19, 2005, the ESD "Morning News" alerted employees that an upcoming reduction in force was expected to involve approximately 180 positions as a result of a reduction in WorkFirst job search funding. The WorkFirst program incurred a ten million dollar program cut that affected WorkSource Specialist positions statewide.

2.4 By letter dated June 1, 2005, ESD Commissioner Karen Lee notified Appellant that due to a lack of funds and good faith reorganization for efficiency purposes, her WorkSource Specialist 5 position was going to be affected by a reduction in force, effective June, 30, 2005. Commissioner Lee also enclosed a list of bump options available to Appellant, based on seniority.

2.5 WAC 356-30-330(3) provides, in part, that agency reduction-in-force procedures be consistent with the following:

> (c) Options in lieu of separation by reduction in force shall be offered by an agency only when such options are in accordance with the agency's reduction in force procedure which has been approved by the director of personnel.
>
> (d) Agency reduction in force procedures shall specify the rights and obligations for employees to accept or reject options offered in lieu of separation due to reduction in force.

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2.6 Appellant was provided with a reduction-in-force option form and selected two items in Part A, denoting positions held by permanent employees with less seniority, and one non-permanent option listed in Part B. Appellant's first option, an ES Program Coordinator 2 position, required the following selective certification: "2 years of experience issuing formal and informal written decisions to allow or deny unemployment insurance claims that involve non-monetary issues . . ."

2.7 The reduction-in-force option form instructions provided to Appellant specifically stated, "you must meet the minimum qualifications and selective criteria, as determined by the Department of Personnel, for any option you wish to exercise." The instructions further indicated that when selecting an option in a different class, an application must be completed and that the application was used to determine whether an employee met the minimum qualifications. The department also explained specific instructions on reduction-in-force options during an orientation for employees affected by the reduction in force.

2.8 WAC 356-30-330(7) allows an employee to exercise a bump option to a position requiring selective criteria only when the employee "possesses the required specialized qualifications" when:

> (a) The criteria were approved when the position was established, reallocated or last filled;
>
> . . .
>
> (e) In the case of (a) . . . the director of personnel or designee must have determined that the specialized qualifications are still essential for the successful job performance and the qualifications could not be learned within a reasonable length of time.

2.9 In this case, both management and the Department of Personnel agreed that non-monetary adjudications required the highest level of expertise, including an understanding of complex points of law, to review previously made decisions regarding unemployment and to possibly overturn a

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previous decision. Therefore, the selective certification required two years of experience issuing decisions on unemployment claims involving non-monetary issues.

2.10 While Appellant's application reflected years of experience working in job service and work source roles, the only portion of her application that specifically indicated she handled "unemployment insurance claims involving non-monetary issues" was under the employment history for a Job Service Specialist 2 & 3 from February to September 1989, the first seven months she became a permanent employee.

2.11 Human resources staff determined that Appellant did not meet the selective certification because her application did not reflect the necessary two years of experience specifically issuing decisions on unemployment claims involving non-monetary issues. As an added measure, human resources staff asked the Department of Personnel to review Appellant's application. The Department of Personnel also concluded that Appellant did not meet the selective certification. Therefore, Appellant was offered and accepted her second bump option, a WorkSource Specialist 4 position.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts Appellant was offered bump options based on an initial assessment of her work history but contends the ES Program Coordinator 2 position was conditional, provided she met the position's selective certification requirement. Respondent argues the department provided Appellant with instructions regarding the selection and special requirements of her bump options, which included submitting an application detailing how she met the minimum qualifications. Respondent asserts that Appellant was responsible for accurately describing how she met the minimum qualifications and selective criteria and contends the department relied on that information to determine whether she qualified and would be successful in the position.

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Respondent further contends the department carefully considered Appellant's selective certification requirement to ensure she did not displace another employee, if unqualified. Respondent asserts Appellant did not indicate the necessary experience for the ES Program Coordinator 2 position and argues the department properly implemented the reduction in force because she was offered and accepted her second bump option.

3.2 Appellant asserts she is qualified for the ES Program Coordinator 2 position. Appellant contends she has years of experience working in unemployment adjudication, as reflected on her job application. Appellant acknowledges she included the word "non-monetary" one time on her application but argues her knowledge of laws and procedures and her experience adjudicating unemployment claims were clearly reflected on her application. Appellant further argues her experience adjudicating claims and issuing formal decisions far exceeds the required two years listed in the selective certification. Appellant asserts she is qualified to perform the duties of the ES Program Coordinator 2 position and argues the department incorrectly determined she was unqualified. Therefore, Appellant argues the department failed to offer her the correct position based on her bump options.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

4.2 In an appeal of a reduction-in-force, Respondent has the burden of proof. WAC 358-30-170. Respondent has the burden of proving by a preponderance of the credible evidence that it laid the employee off for the reason stated in the RIF letter. O'Gorman v. Central Washington University, PAB No. L93-018 (1995).

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4.3 Similar to the case here, in Linowski v. Employment Security Dep't, PAB No. L94-013 (1995), the Appellant applied for a position requiring a selective certification. In Linowski, the Board concluded that the selective certification for the desired position was approved when the position was established as required by WAC 356-30-330(7)(a) and was confirmed prior to the reduction in force; therefore the Appellant did not receive the desired position as a reduction-in-force option.

4.4 Here, the selective criteria included issuing formal and informal written decisions on unemployment claims that involve non-monetary issues. The department provided Appellant with specific instructions informing her that her application determined qualification for the ES Program Coordinator 2 position. Appellant used the word "non-monetary" to describe her duties handling unemployment claims for the time period of February through September 1989. Based on Appellant's detailed application and her years of experience, we can only infer she understood the specialized nature and complexity of dealing with non-monetary claims. Appellant, however, provided no evidence to support that she issued non-monetary decisions during any other period of time.

4.5 Under the facts and circumstances, Respondent has proven that the Employment Security Department complied with WAC 356-30-330 and the agency's reduction-in-force policy, and Appellant's appeal should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Viola De Ochoa is denied.

DATED this _____ day of _____, 2006.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

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