BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GORDON BOWMAN, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. RULE-05-0009 ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

I. INTRODUCTION

1.1 **Consideration of Motion.** This matter came before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Member, to hear oral arguments on Respondent's Motion to Dismiss. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on December 19, 2005.

1.2 **Representation.** Michael Hanbey, Attorney at Law, represented Appellant Gordon Bowman. Amy Heller, Labor Relations Consultant, represented Respondent Department of Social and Health Services.

II. FINDINGS OF FACT

2.1 Appellant works as a Recreational Specialist 4 in position number JR74 for Respondent Department of Social and Health Services, Western State Hospital. In October 2001 and from approximately November 2002 to November 2004, Appellant worked in various temporary

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appointments as a Therapies Supervisor, including a temporary appointment to position number SZ31, beginning on December 1, 2003.

2.2 On November 1, 2004, Appellant returned to his permanent position as a Recreational Specialist 4 in position JR74. At that time, Appellant worked with two other employees as part of a Quality Control/Audit team.

2.3 By memo dated May 24, 2005, CAS Director Rae Simpson notified Appellant that the Quality Control/Audit team was going to be disbanded and that his Recreational Specialist 4 position, JR74, was going to be reassigned to South Hall, effective June 1, 2005. Ms. Simpson also informed Appellant that he was to report to a new supervisor, that his schedule was going to change, and that he could contact his new supervisor to discuss his assigned duties and expectations.

2.4 On June 13, 2005, Appellant filed an appeal alleging the department violated his rights under the Reduction-in-Force Merit System rules or DSHS policy. On August 19, 2005, Appellant clarified his appeal by alleging the department failed to implement WAC 356-30-330 and RCW 41.06.250(10) by not following Reduction-in-Force (RIF) rules or offering him available RIF options.

III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues the department abolished his position, claiming a lack of funds, and unilaterally moved him to another position at Western State Hospital. Appellant, therefore, asserts the department violated WAC 356-30-330 and RCW 41.06.250(10) when it failed to follow reduction-in-force procedures. In addition, Appellant contends he had been performing Therapies

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Supervisor work until June 1, 2005, the effective date of his reassignment, and he asserts the department should have made his temporary appointment to the Therapies Supervisor position permanent. Appellant contends that he currently has a reallocation request pending at the Department of Personnel (DOP) and asserts that if DOP's decision is favorable, then he would have RIF rights to a different classification.

3.2 Respondent argues Appellant's position was neither abolished nor unilaterally moved to another position. Respondent asserts that while Appellant was reassigned to a different area of Western State Hospital and was assigned to work a different schedule, he retained his position number JR74, Recreational Specialist 4. Respondent, therefore, contends that management's decision to relocate Appellant's position cannot be construed as a reduction-in-force. Respondent disputes Appellant's argument asserting that Appellant was not separated from service, did not suffer any loss in salary, or experience any direct harm. Respondent asserts there is no basis for Appellant's appeal and argues the appeal should be dismissed as a matter of law because there is no genuine issue as to any material fact. Additionally, Respondent argues Appellant's appeal was both incomplete and untimely and should be dismissed for those reasons as well.

IV. CONCLUSIONS OF LAW

4.1 The Board may decide an appeal by motion if the documents on file, depositions and affidavits show there is no genuine issue as to any material fact and the appeal should be dismissed as a matter of law. WAC 358-30-060(1). All facts and reasonable inferences therefrom are to be determined in favor of the nonmoving party. Hall v. University of Washington, PAB No. 3863-V2 (1995).

4.2 The issue here is whether the department violated RCW 41.06.150(10) or WAC 356-30-330 when it reassigned the duties, location, and schedule of Appellant's position number JR74.

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4.3 RCW 41.06.150 states:

> The board [Personnel Resources Board] shall adopt rules, consistent with the purposes and provisions of this chapter, as now or hereafter amended, and with the best standards of personnel administration, regarding the basis and procedures to be followed for:
>
> . . .
>
> (10) Layoffs when necessary and subsequent reemployment, both according to seniority;

4.4 WAC 356-30-330 addresses a reduction in force action as follows:

> Employees may be separated in accordance with the statutes and the agencies' approved reduction in force procedures . . . because of lack of funds or curtailment of work, or good faith reorganization for efficiency purposes, ineligibility to continue in a position which has been reallocated, or when there are fewer positions than there are employees entitled to such positions either by statute or within other provisions of merit system rules.
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> . . .
>
> (3) (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.

4.5 In this case, there was no reduction-in-force action taken by the agency. Appellant had been working in the Recreational Specialist 4 classification in position number JR74 since November 1, 2004. Effective June 1, 2005, the department reassigned the duties, location, and schedule of the position in which the Appellant was the incumbent. The decision to disband the Quality Control/Audit team and reassign the duties attributed to position JR74 was within the scope of management's authority. Appellant has failed to meet his burden of proving he was transferred to another position, was separated from service, or suffered a loss in pay when the Quality

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Control/Audit team was eliminated and he was reassigned to another work unit. Therefore, no genuine issue as to any material fact exists, and the appeal should be dismissed.

4.6 Although the department raises the issue of timeliness, WAC 358-20-040(1) provides, in relevant part:

> (1) An appeal must be received in writing at the principal office of the personnel appeals board within 30 days after: . . . (e) the employee could reasonably be expected to have knowledge of the action giving rise to a law or rule violation claim under WAC 358-20-020 or the stated effective date of the action, whichever is later.

4.7 In this case, Appellant was notified on May 24, 2005, of the changes to his position, effective June 1, 2005. Appellant then filed his appeal with the Board on June 13, 2005. While additional clarification was needed, the appeal itself was filed within the required 30 days. Therefore, timeliness is not an issue here.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is granted, and the appeal of Gordon Bowman is dismissed.

DATED this _____ day of _____, 2006.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Gerald L. Morgen, Member

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