BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

KELLY MOCKLI, Appellant, v. EMPLOYMENT SECURITY DEPARTMENT, Respondent.	Case No. RIF-04-0010 ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

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, on oral argument of Respondent's Motion to Dismiss on May 23, 2005.

1.2 **Representation.** Appellant Kelly Mockli was present and represented himself *pro se*. Emily Calkins, Assistant Attorney General, represented Respondent Employment Security Department (ESD).

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including:

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a) Respondent's Motion for Dismissal, with attached Declaration of Carol Rembaugh in Support of Respondent's Motion to Dismiss and exhibits, filed April 25, 2005;

b) Appellant's Response to Motion to Dismiss and Counter-Motion for Summary Judgment, filed May 11, 2005;

c) Respondent's Reply in Support of Its Motion for Dismissal and Response to Counter-Claim, with attached Declaration of Emily Calkins in Support of Respondent's Reply, filed May 17, 2005.

II. BACKGROUND AND FACTS

2.1 Prior to the reduction in force that is the subject of this appeal, Appellant was an Unemployment Insurance (UI) Specialist 4 with Respondent Employment Security Department.

2.2 By letter dated June 14, 2004, Dr. Sylvia P. Mundy, ESD Commissioner, notified Appellant that his UI Specialist 4 position was "identified as a position to which another employee has reduction-in-force rights." Appellant's reduction in force was effective June 30, 2004, and he was provided with an attached form listing his bump options.

2.3 For reduction in force purposes, WAC 356-30-330 states, "[e]mployees may be separated in accordance with the statutes and the agencies' approved reduction in force procedures . . . when there are fewer positions than there are employees entitled to such positions either by statute or within other provisions of merit system rules." WAC 356-30-330(3)(e) specifically states, "[b]umping by employees with greater seniority will be limited to: (i) The same layoff unit; and (ii) Classification in which the 'bumping' employee previously held permanent status . . ." WAC 356-05-075 defines class as "the identification of a position, or a group of positions, sufficiently similar in duties so that the same requirements of training, experience, or skill and the same title, examination, and salary range may be applied."

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2.4 ESD's reduction in force policy states, "[w]hen a reduction is necessary because of a lack of funds, the least senior employee(s) within a class . . . will be designated first for reduction-in-force, whenever possible."

2.5 The class specification defines a UI Specialist 4 as a "[d]esignated leadworker for UI Specialists taking and processing unemployment insurance claims; or adjudicates unemployment insurance claims. All positions apply complex laws, rules, regulations, policies and procedures applicable to the unemployment insurance program."

2.6 The distinguishing characteristics for a UI Specialist 4 are as follows:

> Intake Lead Worker: Designated leadworker for UI Specialists who take and process basic and complex unemployment insurance claims. . . .
>
> Adjudication: This is the fully qualified adjudicator. Works independently. Makes and issues determinations or redeterminations to allow or deny UI benefits that involve nonmonetary issues. . . .

2.7 A UI Specialist 4 may perform adjudicator work or lead intake work, and there are no specific selectives imposed. At the time the department implemented the reduction in force, Appellant worked as a UI Specialist 4, performing adjudicator work. Appellant was bumped by a more senior employee who previously held permanent status in the UI Specialist 4 position, performing lead intake work.

2.8 Based on Appellant's selection of bump options, ESD offered him the position of Intermittent UI Specialist 4, which was in the same salary range as his previous UI Specialist 4 position. Appellant was appointed to the new Intermittent UI Specialist 4 position, effective July 1, 2004.

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III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues there are no genuine issues of material fact. Respondent asserts Appellant was appropriately bumped by an employee who previously held status in the UI Specialist 4 class and that a Journey Level Adjudicator and Intake Lead Worker are in the same class. Respondent argues WAC 356-05-075 specifies that a class includes positions "sufficiently similar in duties" and asserts the Personnel Resources Board has not approved any "selectives" or specialized qualifications to distinguish a Journey Level Adjudicator from an Intake Lead Worker. In addition, Respondent argues Appellant was offered a position within the same salary as the position he was bumped from, based upon his selection of options, and that he has essentially worked a full-time schedule. Therefore, Respondent argues Appellant has not been harmed as a result of the reduction in force action.

3.2 Appellant agrees there is no genuine issue as to material fact. Appellant, however, strongly disagrees with the department's characterization of the facts and alleges there is a clear violation of reduction in force procedures. Appellant argues that a Journey Level Adjudicator and Intake Lead Worker are not in the same class because there are different sets of characteristics and minimum qualifications for each position. Appellant contends an Intake Lead Worker does not qualify as a "fully qualified adjudicator," and does not possess the proper training or experience to perform the duties as an adjudicator. Further, Appellant asserts that in a May 2004 email to Department of Personnel, Human Resource Manger Carol Rembaugh described the Journey Level Adjudicator and Intake Lead Worker positions as having different sets of minimum qualifications and stated, "the training and experience required for these jobs is so different" that the minimum qualifications for each position would have to met "even in a RIF." Appellant argues he has been harmed by the RIF due to his loss of permanent status as a UI Specialist 4 and the uncertainly of an intermittent position.

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IV. DISSCUSION

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

4.2 There are no disputed facts to be resolved or inferences that need to be drawn to decide this motion. The issue is whether the agency followed the appropriate reduction in force rules with regard to Appellant being bumped as a result of another employee's reduction in force action. We are able to make this determination based on the uncontroverted facts presented here.

4.3 Although Appellant and the individual who "bumped" his position may have had different work experience, WAC 356-30-330 (e) requires the agency to offer the more senior employee options within "the same layoff unit" and in the "classification in which the 'bumping' employee previously held permanent status." There is no dispute that the person who exercised a bump option to Appellant's position was more senior and previously held permanent status as a UI Specialist 4. Therefore, Respondent has proven that ESD complied with reduction in force rules.

Having reviewed the file and record in this matter and being fully advised in the premises, the Board enters the following:

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion for Dismissal is granted, and the appeal of Kelly Mockli is dismissed.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

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