



**STATE OF WASHINGTON**  
**OFFICE OF THE STATE HUMAN RESOURCES DIRECTOR**

DIRECTOR'S REVIEW PROGRAM

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April 8, 2013

TO: Ryan Collins, WSDOT Employee  
  
Jennifer Martin, WSDOT Human Resources (HR)  
Classification, Compensation & Benefits Unit

FROM: Teresa Parsons, SPHR  
Director's Review Program Supervisor

SUBJECT: Ryan Collins v. Washington State Department of Transportation (WSDOT)  
Allocation Review Request ALLO-12-059

On October 19, 2012, the Office of the State Human Resources Director (OSHRD) received Mr. Collins' request for a Director's review of WSDOT's September 20, 2012 decision (Exhibit A-1). WSDOT's decision stated that his position #00224 had been "temporarily reallocated" to a Bridge Engineer 4 effective 02/15/12 through 04/30/12 (Exhibits A-2 and B-1).

On December 21, 2012, I acknowledged Mr. Collins' request and initially indicated that it appeared there was no remedy the Director could provide (Exhibit C-1). However, after performing a second review, I determined additional clarification was needed, and I conducted a telephone conference with both parties on January 31, 2013 (Exhibit C-2).

**Background**

Although Mr. Collins addressed information about a prior reallocation request (Exhibits B-7 through B-16), the issues relevant to this case are based on the Position Review Request (PRR) that Mr. Collins submitted to WSDOT's HR Office on February 15, 2012 (Exhibit B-3). In that request, he asked that his Bridge Engineer 3 (BE 3) position be reallocated to the Bridge Engineer 4 (BE 4) classification. On April 18, 2012, Mr. Collins' HR Representative, Stephanie Price, completed a Position Action Form proposing reallocation to the BE 4 class. WSDOT's Classification, Compensation & Benefits Unit received Ms. Price's proposal and Mr. Collins' request packet on May 23, 2012 (Exhibits B-4 and B-5).

After receiving Mr. Collins' request and the associated paperwork from Ms. Price, HR Consultant Jennifer Martin in the Classification, Compensation & Benefits Unit corresponded via email with Mr. Collins and his managers regarding Mr. Collins' assigned duties and his position's allocation (Exhibit B-6). During the Director's review conference, Ms. Martin

indicated that while his managers agreed he had been performing higher-level duties, they did not agree on the length of time he had performed those duties. The documents support that Mr. Collins' supervisor and Director recognized his performance of higher-level duties throughout the project, which began in April 2011 (Exhibit B-7). Ultimately, Ms. Martin determined the duties described on Mr. Collins' Classified Position Description Form (CPD) fit the BE 4 job classification (Exhibit B-3).

### **Issues**

Ms. Martin agreed Mr. Collins' position should be reallocated to the BE 4 job classification, effective February 15, 2012, "the date the employee request was filed with [his] local HR office" through April 30, 2012, the end date based on "the conclusion of the higher level duties as provided by [his] management (Exhibits A-2 and B-1). In her letter, Ms. Martin characterized the reallocation as a "temporary reallocation." During the Director's review conference, she clarified that WSDOT treated the non-permanent reallocation of Mr. Collins' position as a non-permanent appointment (Exhibit B-5).

WAC 357-19-360 provides that a general government employer may fill a position with a nonpermanent appointment when any of the following conditions exist:

- (1) A permanent employee is absent from the position;
- (2) The agency is recruiting to fill a vacant position with a permanent appointment;
- (3) The agency needs to address a short-term immediate workload peak or other short-term needs;
- (4) The agency is not filling a position with a permanent appointment due to the impending or actual layoff of a permanent employee(s); or
- (5) The nature of the work is sporadic and does not fit a particular pattern.

During the Director's review conference, Ms. Martin also affirmed the September 20, 2012 decision had been in response to Mr. Collins' February 15, 2012 Position Review Request (PRR). WAC 357-13-085(3) provides that "[t]he effective date of a reallocation resulting from an employee request for a position review is the date the request was filed with the employer . . ." In this case, the request that is the subject of this review was filed on February 15, 2012.

### **Director's Determination and Rationale**

It is undisputed Mr. Collins performed higher-level duties as described by the BE 4 class level based on a review and analysis of his duties and responsibilities as described on the CPD (Exhibit B-3).

While WAC 357-19-370 allows an agency to fill a position with a non-permanent appointment, the appointment is based on the criteria specified in the rule. In this case, WSDOT did not appoint Mr. Collins to a non-permanent appointment for one of those reasons. Instead, the September 20, 2012 decision was in response to Mr. Collins' request for a position review, not

management's request to fill a non-permanent appointment. A non-permanent appointment cannot be retroactively filled in response to a request for a position review.

Furthermore, the rules do not provide for a "temporary reallocation." Instead, WAC 357-13-090 provides that a reallocation to a class with a higher salary range maximum resulting from a position review occurs, in part, as follows:

If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:

The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. . . .

Based on the information in the record, Mr. Collins' position should have been permanently reallocated with an effective date of February 15, 2012. In Mr. Collins' request for a Director's review, he stated that he "accepted a new position in the Bridge Preservation Office in May 2012 with Bridge Engineer 3 duties" (Exhibit A-1). Because Mr. Collins is no longer in position #00224, the effective remedy in this case is that Mr. Collins has gained permanent status in the BE 4 classification, and any subsequent employment actions should reflect that status accordingly.

c: Lisa Skriletz, OSHRD  
Connie Goff, OSHR

**RYAN COLLINS v. WSDOT**  
**ALLO-12-059**

A. Ryan Collins Exhibits

1. Director's Review Form received October 19, 2012 (2 pages)
2. September 20, 2012 WSDOT temporary reallocation letter (1 page)

B. WSDOT Exhibits

1. September 20, 2012 WSDOT temporary reallocation letter (1 page)
2. WAC 357-13-385 for effective date
3. Employee submitted CPD date stamped 2/15/12
4. Position Action Form submitted by Ryan's HR Rep, Stephanie Price
5. Allocation Assessment prepared by Ryan's HR Rep, Stephanie Price, as part of package submittal to Class & Comp
6. E-mail communications regarding the 2/15/12 request (8 pages)
7. Timeline and meeting notes from 8/14/12 meeting with Supervisor, Appointing Authority and Director (4 pages)
8. Classified Position Description submitted by Mr. Collins for reallocation on August 1, 2012
9. September 7, 2011 WSDOT allocation determination letter (3 pages)
10. August 1, 2011 cover email and revised CPD dated July 6, 2011 (3 pages)
11. July 2011 Assessment of Observed Job Performance
12. July 7, 2011 handwritten note attached to revised CPD
13. Classified Position Description submitted by Mr. Collins for reallocation on July 7, 2012 with cover email attached (4 pages)
14. July 14, 2011 email from Jugesh Kapur to HR explaining Mr. Collin's duties
15. August 25, 2011 email from Richard Stoddard to HR explaining Mr. Collin's duties
16. Explanation of work in CPD submitted by Ryan Collins August 1, 2011

C. Director's Exhibits

1. December 21, 2012 acknowledgement letter from Teresa Parsons, Director's Review Program Supervisor
2. January 2, 2013 amended acknowledgement letter from Teresa Parsons, Director's Review Program Supervisor, requesting additional clarification