

January 4, 2011

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

FROM: Kris Brophy, SPHR  
Director's Review Program Investigator

SUBJECT: Anne Carpenter v. The Evergreen State College  
Remedial Action REMA-10-001

### **Background**

On September 2, 2010, the Department of Personnel received Ms. Carpenter's request for remedial action. On October 15, 2010, The Evergreen State College's (TESC) Human Resources Office submitted additional exhibits. Both parties submitted additional information regarding Ms. Carpenter's employment history with TESC, including approval for two temporary employment extensions granted by the Department of Personnel. The final submittal was received on December 21, 2010. A complete list of exhibits is attached for reference.

### **Nature of Request**

Ms. Carpenter asserts that she has been employed in a temporary appointment from January 29, 2008 to the present without a break in service. She asserts she has consistently worked an average of 32 hours per week for more than 12 consecutive months, therefore exceeding the 1050 rule. Ms. Carpenter asserts she was advised that her employer submitted and was approved for at least 2 extensions through DOP, but was not provided with documentation to support this.

Ms. Carpenter contends she has consistently worked more than 1050 hours in a 12 consecutive month period, as outlined in the WAC for temporary employment and should be awarded a permanent position.

### **Director's Determination**

As the Director's designee, I carefully considered all of the documentation and exhibits in the file. After reviewing Ms. Carpenter's time records, I conclude the number of hours worked do not meet the conditions to confer permanent status, as outlined in WAC 357-19-450(1).

Based on Ms. Carpenter's original date of hire on January 29, 2008, the current consecutive twelve-month period of time is January 29, 2010 through January 28, 2011. For purposes of

this appeal, the relevant time period for review is January 29, 2010 through September 2, 2010, the date Ms Carpenter submitted her appeal. During this period, Ms. Carpenter's work hours did not exceed the 1050-hour limit threshold.

Therefore, her request for remedial action to confer permanent status should be denied.

### **Rationale for Determination**

WAC 357-19-450 provides, in part: "For individuals in higher education temporary appointments under the provisions of WAC 357-19-435(1), the director may take remedial action to confer permanent status, set base salary, and establish seniority when it is determined that the following conditions exist:

(1) The employee has worked in one or more positions for more than one thousand fifty hours in any twelve consecutive month period since the original hire date or October 1, 1989, whichever is later. (Overtime and time worked as a student employee under the provisions of WAC [357-04-040](#) are not counted in the one thousand fifty hours.)"

According to WAC 357-19-450(1), an employee has to work more than 1,050 hours "in any twelve consecutive month period since the original hire date . . ." (emphasis added).

The PRB affirmed in Rea v. South Puget Sound Community College (Case No. R-RULE-08-002), that "remedial action is based on the hours worked during any twelve consecutive month period, on an annualized basis, from the original date of hire."

Ms. Carpenter's original hire date was January 29, 2008 (Exhibit D-1(A)). Therefore, Ms. Carpenter's first twelve consecutive month period was from January 29, 2008 through January 28, 2009. The next twelve consecutive month period ran from January 29, 2009 through January 28, 2010. The current twelve consecutive month review time period is January 29, 2010 through January 28, 2011. Therefore, in order for the Director to take remedial action, Ms. Carpenter would need to work more than 1,050 hours for the period January 29, 2010 through January 28, 2011.

WAC 357-19-448 provides in part, that "[r]equests for remedial action must be received in writing within thirty calendar days as provided in chapter [357-49 WAC](#). . . ."

WAC 357-49-010(5) provides, in part, that an individual may make a request for remedial action "within thirty calendar days of the date the individual could reasonably be expected to have knowledge of the action giving rise to violation of the nonpermanent appointment or temporary appointment rules."

Ms. Carpenter has held temporary positions with TESC since 2008. The Student/Temporary Action Form she signed at the start of her temporary employment with TESC supports her knowledge of the rules regarding temporary employment. Ms. Carpenter was notified of the conditions of her employment for the current twelve consecutive month review time period as indicated on the Student/Temporary Action Form dated January 29, 2010 (Exhibit D-3(A)). Additionally, Ms. Carpenter signed timesheets for each pay period. Therefore, Ms. Carpenter was properly notified and had knowledge of the hours worked through September 2, 2010.

Therefore, because she was properly notified of the conditions of her employment and since she filed her request on September 2, 2010, the relevant work hours for consideration are those hours worked from January 29, 2010 through January 28, 2011. Further, Ms. Carpenter's contention regarding the inappropriate use of temporary employment extension by TESC is untimely because the extensions are from an earlier employment cycle and are outside the scope of this appeal.

Based on the time records, the following summarizes her work hours between January 29, 2010 and September 2, 2010:

Current Consecutive 12-month Cycle		
Pay Period	Hours	Total Hours
January 29, 2010	8.75	8.75
February 1-15, 2010	68.25	77.00
February 16-28, 2010	60.50	137.50
March 1-15, 2010	74.67	212.17
March 16-31, 2010	86.92	299.09
April 1-15, 2010	79.25	378.34
April 16-31, 2010	78.50	456.84
May 1-15, 2010	70.25	527.09
May 16-31, 2010	41.75	568.84
June 1-15, 2010	64.25	633.09
June 16-30, 2010	64.50	697.59
July 1-15, 2010	63.75	761.34
July 16-31, 2010	63.50	824.84
August 1-15, 2010	57.50	882.34
August 16-31, 2010	69.00	951.34
September 1, 2010	8.00	<b>959.34</b>
September 16-30, 2010		
October 1-15, 2010		
October 16-31, 2010		
November 1-15, 2010		
November 16-30, 2010		
December 1-15, 2010		
December 16-31, 2010		
January 1-15, 2011		
January 16 - 31, 2011		

Between January 29, 2010 and September 2, 2010 (the date of the appeal), Ms. Carpenter worked a total of 959.34 hours as reported by the Hourly Time Reports (Exhibit D-1(B), and D-2(C) and D-2(D)).

The total hours worked from September 29, 2010 through the time of her request totaled 959.34 hours. This is less than the 1,050 hour threshold necessary for the Director to consider taking remedial action. Therefore, her request for remedial action to confer permanent status should be denied.

**Appeal Rights**

WAC 357-49-018 provides that either party may appeal the results of the Director's review to the Personnel Resources Board (board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located at 600 South Franklin, Olympia, Washington.

If no further action is taken, the Director's determination becomes final.

c: Anne Carpenter  
Susanna Fenner  
Laurel Uznanski

Enclosure: List of Exhibits

**Anne Carpenter v. TESC REMA-10-001**

List of Exhibits

1. Director's Review Form, received September 2, 2010 with attachments:
  - A. Student/Temporary Action Form, with 01/29/08 effective date.
  - B. Hourly Time Reports for Anne M. Carpenter, from August 2009 through August 15, 2010 (25 pages).
2. Response letter from Laurel R. Uznanski, TESC, dated October 12, 2010 with attachments:
  - A. Student/Temporary Action Form, with 07/01/10 effective date.
  - B. Student/Temporary Action Form, with 09/01/10 effective date.
  - C. Hourly Time Reports for Anne M. Carpenter, from August 16-31, 2010.
  - D. Hourly Time Reports for Anne M. Carpenter, for September, 2010.
3. Response letter from Laurel R. Uznanski, TESC, dated November 17, 2010, with attachment:
  - A. Student/Temporary Action Form with 01/29/2010 effective date.
4. Email from Anne Carpenter to Kris Brophy, dated November 17, 2009 with attachment:
  - A. Timeline of employment history for the Program Assistant Position in the department.
5. Email response Laurel Uznanski to Kris Brophy dated December 10, 2010 regarding timeline employment history. Includes attachments regarding temporary employment extensions:
  - A. Email from Melia Olsen to Jennifer Levesque dated September 30, 2009, approving the extension of the non-permanent appointment for Anne Carpenter.
  - B. Email from Meredith Inocencio to Jennifer Levesque, dated November 23, 2009, requesting clarification to the extension approval.
  - C. Email from Melia Olsen to Jennifer Levesque, dated December 29, 2009, granting an extension of the original approval through January 29, 2010.
6. Email from Susanna Fenner to Kris Brophy dated November 17, 2010 with attachments:
  - A. Payroll Activity screens for Anne M. Carpenter (5 pages).
7. Email Response to Payroll Activity screens from Laurel Uznanski to Kris Brophy dated December 9, 2010.

8. Email from Susanna Fenner to Kris Brophy dated December 20, 2010 forwarding a final response from Anne Carpenter regarding the name of the faculty member identified in the employment timeline (see D-4(A)).