



STATE OF WASHINGTON
OFFICE OF THE STATE HUMAN RESOURCES DIRECTOR

DIRECTOR'S REVIEW PROGRAM
521 Capitol Way South, P.O. Box 40911, Olympia, WA 98504-0911
(360) 664-0388 · FAX (360) 586-4694

November 13, 2012

TO: Shannon Kelley

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

SUBJECT: Shannon Kelley v. Bellevue College (BC)
Remedial Action REMA-12-002

On May 2, 2012, the Office of the State Human Resources Director (OSHRD) received your request for a Director's review asking the Director to take remedial action to confer permanent status (Exhibits 1-2). On June 11, 2012, BC's Vice President for Human Resources, Cesar Portillo, provided time records for the period of August 16, 2011 through April 30, 2012 (Exhibit 3). Mr. Portillo also affirmed your most recent appointment began on August 29, 2011, and you had not worked in the six months prior to that date (Exhibits 5 and 6).

On July 11, 2012, I sent an email to Mr. Portillo requesting additional records to establish your original hire date and twelve consecutive month period. We exchanged a number of emails with attachments regarding your work history with the college (Exhibits 7 – 22).

On August 20, 2012, I summarized the records we had received as of that date (Exhibit 21). On September 14, 2012, we had a telephone conference to clarify the remaining issues. During the conference we agreed on dates for you and Mr. Portillo to provide any final comments (Exhibit 23). On September 21, 2012, we received your written summary (Exhibit 24 and 24-a).

On October 31, 2012, I forwarded your written summary to Mr. Portillo to allow him and opportunity to respond on behalf of BC (Exhibit 26).

On November 8, 2012, Mr. Portillo indicated that he had no further response (Exhibit 27).

Nature of Request

WAC 357-19-450 provides, in part, the following:

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.)

The Personnel Resources Board (PRB) has affirmed 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." Rea v. South Puget Sound Community College, PRB Case No. R-RULE-08-002 (2009).

Director's Determination

As the Director's designee, I carefully considered all of the documentation and exhibits in the file. After reviewing your employment records, I conclude the number of hours worked meets the conditions to confer permanent status, as outlined in WAC 357-19-450(1). Therefore, I am granting your request for remedial action to confer permanent status.

Background

On September 1, 2008, you were hired as a Cross-Country Assistant Coach; however, this appointment was considered part-time faculty and not a temporary appointment under WAC 357-19-435(1) (Exhibit 16-a).

Your original date of hire under WAC 357-19-435(1) was May 4, 2009, when you were hired as an hourly employee in Campus Operations/Grounds (Exhibit 18-a). Therefore, the twelve consecutive month period has been established as May 4 through May 3. You continued to work intermittently from May 4, 2009 through April 30, 2012 (Exhibit 12-b).

The twelve consecutive month period since the original hire date, which is the twelve month period relevant for this review, is May 4, 2011 through May 3, 2012. During this time period you signed the following Bellevue College Hourly/Student Employment Authorization forms:

- Start Date: 8/29/2011 – End Date: 10/31/2011 (Exhibit 22-a)
- Start Date: 10/31/2011 – End Date: 2/29/2012 (Exhibit 22-b)
- Start Date: 3/1/2012 – End Date: 6/30/12 (Exhibit 22-c)

You indicated that for the most part, you had worked 40-hour weeks from August 2011 through Friday, April 27, 2012, when your supervisor called you at home and indicated you were "no longer needed" (Exhibit 24-a). During our conference call, Mr. Portillo stated that HR typically monitors the hours of temporary, hourly employees and notifies an employee's supervisor when reaching 1,000 hours. He indicated the person responsible for monitoring the hours for temporary employment had been on medical leave during the time your position exceeded 1,050 hours. He further indicated HR would have requested an extension of your temporary appointment had they realized your hours were approaching 1,050.

The three Bellevue College Hourly/Student Employment Authorization forms for the twelve month period relevant to this review had been signed by you and Teri Eidson, a manager in Campus Operations/Grounds, and included the conditions regarding temporary employment (Exhibit 22 a-c).

Rationale for Determination

The twelve month period relevant for this review is May 4, 2011 through May 3, 2012.

The following summarizes your work hours included in the above period, specifically between August 29, 2011 and April 26, 2012 (Exhibit 4).

PAY PERIOD	NON-OVERTIME HOURS
August 16-31 2011	24.00
September 1-15, 2011	77.00
September 16-30, 2011	72.00
October 1-15, 2011	48.00
October 16-31, 2011	48.00
November 1-15, 2011	56.00
November 16-30, 2011	67.00
December 1-15, 2011	64.00
December 16-31, 2011	80.00
January 1-15, 2012	64.00
January 16-31, 2012	56.00
February 1-15, 2012	78.00
February 16-29, 2012	72.00
March 1-15, 2012	75.50
March 16-31, 2012	48.00
April 1-15, 2012	64.00
April 16-30, 2012	64.00
Total	1057.50

There is no disagreement your work hours exceeded 1,050 during the relevant twelve consecutive month period since the original hire date. Further, there is no disagreement that no extension of your temporary appointment had been requested. You worked 68% of full-time hours for the period of August 29, 2011 through April 26, 2012, the date you passed the 1,050 hour threshold. The percentage of full-time hours is calculated as follows:

Month and Year	Total Non-overtime Hours	Total Work Hours Available
August 2011	24.00	184 (8x23)
September 2011	149.00	176 (8x22)
October 2011	96.00	168 (8x21)
November 2011	123.00	176 (8x22)
December 2011	144.00	176 (8x22)
January 2012	120.00	176 (8x22)
February 2012	150.00	168 (8x21)
March 2012	123.50	176 (8x22)
April 26, 2012	128.00	152 (8x19)
Total	1057.50	1552.00
% of full-time hours	1057.50/1552.00 = 68%	(Includes holidays but not weekends)

In reaching my determination, I also reviewed a prior Personnel Appeals Board (PAB) decision in which the Board found that “[i]n spite of Respondent’s efforts to monitor Appellant’s hours of temporary work . . . Appellant . . . exceeded the 1050 hour threshold.” While the circumstances differ from this case, the Board concluded Respondent had been “aware of its duty and responsibility to monitor Appellant’s hours of work and to comply with the provisions of the temporary appointment rules,” which Respondent, for the most part, had successfully done. However, the Board further concluded “the intent of the rules . . . lead to inclusion in the civil service with exclusion being the exception within narrowly defined parameters.” Therefore, the Board granted permanent status. Myers v. University of Washington, PAB Case No. RULE-01-0038 (2002).

In this case, BC renewed the Hourly/Student Employment Authorization on March 1, 2012, when you had already worked over 800 hours at that point in the twelve month consecutive period. Based on the end date of June 30, 2012, it appears BC had intended to work your position through the end of the twelve month consecutive period and into the next one. Your manager had signed the Hourly/Student Employment Authorization forms dating back to 2009, which outlined the conditions regarding temporary employment.

Your request for remedial action meets the criteria outlined in WAC 357-19-450. Therefore, you became a permanent classified employee on April 26, 2012, the date you exceeded the 1,050 hour temporary employment limitation. Your seniority date is April 26, 2012. The percentage of time is 68% of full-time. BC’s HR Office will establish your position’s allocation, salary range, and periodic increment date, and any vacation/sick leave accrual, holidays, personal holiday, personal leave, and eligible retirement in accordance with the civil service rules. Similarly, BC will pay the difference between the actual salary paid and the salary due, if any, including premium pay, had the appropriate employment procedures been applied.

Further, HR staff should review the notification process to ensure that supervisors are aware in a timely manner that temporary employees are approaching 1,050 hours.

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 main telephone number is (360) 664-0388. The fax number through November 21, 2012, is (360) 586-4694. **Call to verify the correct fax number** after that date.

If either party plans to hand-deliver an appeal to the PRB, please call the above number for details. The PRB Office is currently located at 521 Capitol Way South, Olympia.

Director's Determination for Kelley
Remedial Action REMA-12-002
Page 5

However, on or around **November 26, 2012, PRB staff will move to a new location in the Insurance Building on the Capitol Campus, 302 – 14th Avenue S.W., 4th Floor, Olympia, Washington.**

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

c: Cesar Portillo, BC
Connie Goff, OSHRD

Enclosure: List of Exhibits

SHANNON KELLEY v. BELLEVUE COLLEGE
REMA-12-002

List of Exhibits

1. May 2, 2012 Director's Review Form
2. April 29, 2012 written background from Shannon Kelley
3. June 7, 2012 cover letter from Cesar Portillo, BC HR
4. Shannon Kelley time records for August 1, 2011 to April 30, 2012
5. Shannon Kelley employee status screen shot listing August 29, 2011 start date
6. Email from Cesar Portillo to Karen Wilcox, Director's Review Coordinator, stating Ms. Kelley did not work during the six month period prior to August 29, 2011.
7. July 11, 2011 email from Teresa Parsons to requesting clarification and additional documents regarding Ms. Kelley's employment.
8. August 7, 2011 email from Shannon Kelley regarding requested documents
9. August 8, 2011 email from Cesar Portillo with clarification about documents regarding temporary employment.
 - a. Bellevue College Hourly/Student Employment Authorization form 3/1/12 – 6/30/12.
10. August 9, 2011 email from Shannon Kelley regarding requested documents
11. August 10, 2011 email from Teresa Parsons asking for clarification about original hire date and requesting documents.
12. August 13, 2011 email from Cesar Portillo clarifying Ms. Kelley's work history with BC
 - a. Bellevue College Hourly/Student Employment Authorization form 3/1/12 – 6/30/12 (same as exhibit 9-a).
 - b. Spreadsheet of Ms. Kelley's work history broken down by payment check date and pay period end date
13. August 13, 2011 email from Shannon Kelley regarding requested documents
14. August 15, 2011 email from Teresa Parsons clarifying the documents received, still needed, and asking clarifying questions.
15. August 15, 2011 email from Teresa Parsons responding to Ms. Kelley's request for documents she had not received.
16. August 15, 2011 email from Cesar Portillo, clarifying information and providing Ms. Kelley's employment record for coaching assignment.
 - a. Bellevue College Special Assignment Authorization form 9/1/2008 – 11/10/2008.
17. August 15, 2012 email from Teresa Parsons requesting Hourly/Student Authorization forms beginning with May 2009
18. August 15, 2012 email from Cesar Portillo sending missing documents.

- a. Bellevue College Hourly/Student Employment Authorization form 5/4/09 – 6/30/09.
19. August 15, 2012 email from Shannon Kelley stating that copies received were incomplete.
 20. August 17, 2012 email from Teresa Parsons notifying parties that she will review and compile a list of documents and let them know if further clarification needed.
 21. August 20, 2012 email from Teresa Parsons summarizing documents, employment history based on documents received, and requesting additional clarification and missing documents.
 22. September 14, 2012 email from Cesar Portillo to Karen Wilcox with attachments of missing documents.
 - a. Bellevue College Hourly/Student Employment Authorization form 8/29/2011 – 10/31/2011.
 - b. Bellevue College Hourly/Student Employment Authorization form 10/31/2011 – 02/29/2012.
 - c. Bellevue College Hourly/Student Employment Authorization form 3/1/12 – 6/30/12 (same as exhibit 9-a and 12-a).
 23. September 14, 2012 email from Teresa Parsons with recap of conference call conducted on that date.
 24. September 21, 2012 email from Shannon Kelley with attached closing statement.
 - a. Closing statement (written summary) from Shannon Kelley
 25. October 31, 2012 email from Teresa Parsons responding to Ms. Kelley's request for status of case.
 26. October 31, 2012 email from Teresa Parsons forwarding Ms. Kelley's closing statement to Cesar Portillo, BC.
 27. November 8, 2012 email from Cesar stating that BC had nothing further to add.