



**STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT**

STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM
P.O. Box 40911 · Olympia, WA 98504-0911 · (360) 407-4101 · FAX (360) 586-4694

May 16, 2018

TO: Connie Goff
Rules and Appeals Program Section Chief

FROM: Karen Wilcox
Human Resource Consultant

SUBJECT: Joseph Vandal v. Bellevue College (BC)
Remedial Action REMA-18-001

On March 27, 2018, the Office of Financial Management State Human Resources office (OFM-SHR) received a request for a Director's review of Joseph Vandal's hourly position asking the Director to take remedial action to confer permanent status. (Exhibit 1) He included a written statement with a timetable listing his working hours from March 2017 to March 2018. (Exhibit 2)

On April 24, 2018, Bellevue College Human Resources provided time records beginning March 2017 through March 2018. (Exhibit 5) HR also provided employment authorization forms for October 2015 and July 2016 (Exhibits 3 and 6), and the original appointment letter for Mr. Vandal's temporary hourly position, dated July 1, 2016. (Exhibit 4)

On April 24 and 25, 2018, Mr. Vandal provided written arguments disputing July 1 as his original date of hire (Exhibit 9), and his student status from March to June, 2017. (Exhibit 10)

Relevant Laws and Rules

The State Civil Service Law is found in Chapter 41.06 RCW. RCW 41.06.070 provides, in part:

(1) The provisions of this chapter do not apply to:

...
(l) Inmate, student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board;

The state civil service rules are found in Title 357 WAC. WAC 357-04-010 provides, in part:

The provisions of the civil service rules apply to all employees and employers under the jurisdiction of chapter 41.06 RCW

WAC 357-19-435 provides:

A higher education employer may make a temporary appointment for the following reasons:

(1) The number of hours to be worked by the individual will not exceed one thousand fifty hours in any twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later, in accordance with WAC 357-04-045; or

(2) The employing official formally assigns a classified employee the duties and responsibilities of a higher-level class for a period of less than six consecutive months.

WAC 357-19-450 provides:

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.)

(2) The position or positions are subject to civil service.

(3) The employee has not taken part in any willful failure to comply with these rules.

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 the employment records and investigating Mr. Vandal's arguments, I conclude the number of hours worked in his temporary/hourly classified position does not meet the conditions to confer permanent status as outlined in WAC 357-19-450(1). Therefore, remedial action is denied.

Background

On October 16, 2015, Mr. Vandal was hired as a student employee for Student Programs. (Exhibit 3) This appointment was considered hourly student work and not a temporary/hourly appointment subject to the civil service laws and rules. In addition, the appointment as a student employee does not meet the criteria for temporary/hourly appointment under WAC 357-19-435(1). Additionally, hours worked as a student employee are not counted toward the 1050 hour threshold for granting a remedial action request and conferring permanent status.

On July 1, 2016, the college hired Mr. Vandal for a temporary/hourly position, also in Student Programs, and issued him an appointment letter that same day.

On March 6, 2017, Mr. Vandal accepted a position in Technology Administration and Compliance (Exhibit 7), and on March 27, 2018, requested remedial action be granted his position by OFM SHR, believing he had exceeded 1050 hours in his twelve month temporary employment period. (Exhibit 1)

Rationale for Determination

When determining whether remedial action is warranted, the original date of hire is the date the employee was first hired into a non-student temporary/hourly appointment. On July 1, 2016, the college sent a letter of appointment to Mr. Vandal to a temporary hourly position in Student Programs (Exhibit 4). Mr. Vandal disputes the July 1 date of hire and believes March 6, 2017, when he entered a new position in Technology Administration and Compliance, to be his date of hire. However, his original date of hire is the date of his first temporary/hourly position, not his current position.

Mr. Vandal's original date of hire into a non-student, temporary/hourly appointment was July 1, 2016, the date Bellevue College HR issued the letter notifying him in writing of the conditions of his appointment pursuant to WAC 357-19-444. Therefore, consistent with WAC 357-19-450, the twelve consecutive month period for this review has been established as July 1, 2017 to June 30, 2018. The following summarizes Mr. Vandal's work hours included in this period.

PAY PERIOD	NON-OVERTIME HOURS
July 1-15, 2017	38
July 16-31, 2017	44
August 1-15, 2017	41 45 min
August 16-31, 2017	47 15 min
September 1-15, 2017	38
September 15-30, 2017	38
October 1-15, 2017	38
October 16-31, 2017	47 30 min
November 1-15, 2017	47 30 min
November 16-30, 2017	37 30 min
December 1-15, 2017	38
December 16-31, 2017	40
January 1-15, 2018	36 15 min
January 16-31, 2018	54 45 min
February 1-15, 2018	68
February 16-28, 2018	46
March 1-15, 2018	40 30 min
March 16-31, 2018	48
Total	789 HOURS

Mr. Vandal's work hours have not yet exceeded 1,050 during this relevant twelve consecutive month period, July 1, 2017 to June 30, 2018.

Additionally, Mr. Vandal disagrees with the college determining his employment status as student during the weeks between March and June of 2017 (Exhibit 10). Since that period is not within the review period of July 1, 2017 to June 30, 2018, I will not address that issue. However, I urge Bellevue College HR to carefully comply with WAC 357-04-040, which outlines which student employees are exempt from civil service rules, and to notify employees of their status.

Because Mr. Vandal has not worked more than 1050 hours within the twelve consecutive month period of July 1, 2017 to June 30, 2018, remedial action is 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 on the 3rd floor of the RAAD Building, 128 10th Avenue SW, Olympia, Washington. The main telephone number is (360) 407-4101, and the fax number is (360) 586-4694.

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

c: Joseph Vandal
Brynn Vrabel, BCC

Exhibits:

1. Request for Director's Review form from Joseph Vandal, received March 27, 2018
2. Statement attachment with table of hours worked March 2017 to March 2018
3. October 16, 2015 employment authorization
4. July 1, 2016 appointment letter
5. March 2017 to March 2018 time records
6. July 1, 2016 employment authorization
7. March 6, 2017 employment authorization
8. October 2016 to February 2017 time records
9. Written argument regarding original date of hire from Joseph Vandal
10. Email disputing student status from March 2017 to June 2017 from Joseph Vandal