

August 31, 2007

Mr. Edward Earl Younglove III
Younglove Lyman & Coker, P.L.L.C
1800 Cooper Point Road SW, BLDG 16
PO Box 7846
Olympia, WA 98507

RE: Chandrama Mishra v. University of Washington (UW)
Director's Review No. RULE-06-005

Dear Mr. Younglove:

On August 28, 2007, I conducted a Director's review meeting at the Department of Personnel, 2828 Capitol Boulevard, Olympia, Washington, concerning Mr. Mishra's alleged violation of RCW 41.06.070. Present at the Director's review meeting were you and Mr. Mishra; Assistant Attorney General Shelley Kostrinsky, representing the UW; and Janelle Browne, Executive Director of Human Resource (HR) Operations for the University Medical Centers.

Nature of Alleged Violation

By letter dated September 22, 2006, Johnese Spisso, Chief Operating Officer at Harborview Medical Center, notified Mr. Mishra that he was being dismissed from his position as HMC Safety Officer in the Department of Facilities and Engineering (Employer Exhibit 1). By separate letters addressed to David Jaffe, CEO at Harborview Medical Center, dated October 2 and November 21, 2006, Mr. Mishra asserted he had a reversion right to his last highest classified position according to RCW 41.06.070 and asked UW to reinstate him to a Fire Protection Engineer classified position (Employee Exhibits A-3 and A-4). On December 19, 2006, the Department of Personnel received Mr. Mishra's request for a Director's review, alleging the UW violated RCW 41.06.070 (Exhibit A).

Issue of Timeliness

On August 21, 2007, Ms. Kostrinsky sent an email to the Director's Review Coordinator, Karen Wilcox, with an attached letter also dated August 21, 2007, in which the University requested that Mr. Mishra's appeal (Director's review request) be dismissed as untimely (Exhibit B). In

light of the University raising the timeliness issue, I spoke briefly with you and Ms. Kostrinsky the day prior to the Director's review meeting and indicated the purpose of the August 28, 2007 meeting would be to first address the issue of timeliness.

Summary of Mr. Mishra's Perspective on Timeliness

Mr. Mishra asserts his request for a Director's review is timely filed. Mr. Mishra contends that after his exempt position was terminated, he timely requested to exercise his reversion rights to the classified service but argues the University never responded to his request. Mr. Mishra further contends that he believed he had reversion rights based on a conversation with an ombudsman and from information he researched, including a procedure for requesting reversion to classified service, as indicated in the Professional Staff Program – Ending Employment information posted on the University's website (Employee Exhibit A-8). Mr. Mishra asserts he followed the procedure on the website, which stated the request must be within 30 days of termination. As such, Mr. Mishra argues he hand-delivered his October 2, 2007 letter requesting reversion to classified service to Ms. Browne and asserts she told him she would respond in writing after discussing it with UW's leadership.

Mr. Mishra contends he submitted a subsequent letter, dated November 21, 2007, by fax or mail to Mr. Jaffe's office because he had not received a written response. Mr. Mishra contends he filed a timely request for a Director's review after he eventually concluded the University was not going to respond to his requests, effectively denying his request for reversion. Therefore, Mr. Mishra believes his request for a Director's review was timely filed within 30 days after his last letter to the University, dated November 21, 2007.

Summary of UW's Perspective on Timeliness

The UW contends Mr. Mishra's request for a Director's review is untimely. The UW argues Mr. Mishra was terminated from his exempt position on September 22, 2006, but did not file a request for a Director's review until December 19, 2006. It is the UW's position that Mr. Mishra is not entitled to reversion rights to classified service under RCW 41.06.070 and, as a result, Mr. Mishra was not specifically provided with that information at the time of his termination. However, the UW contends Ms. Browne and Human Resource Consultant Lynn Diaz met with Mr. Mishra on October 2, 2006, to discuss a number of questions Mr. Mishra had, for example, payout for annual leave. During that October 2, 2006 meeting, the University contends Mr. Mishra raised the issue of his reversion rights to classified service.

In response, the University argues that both Ms. Browne and Ms. Diaz verbally told Mr. Mishra he did not have reversion rights under the RCW. The UW further contends that on or around that date, Mr. Mishra was provided with documentation that clarified the University's interpretation of the RCW regarding reversion rights. The UW asserts Mr. Mishra acknowledged receipt of the documentation regarding reversion rights because he referenced the copy of the University's interpretation of RCW 41.06.070 in an email to Ms. Diaz, dated October 3, 2006. While Mr. Mishra may have disagreed with UW's interpretation of the RCW, the

University contends Mr. Mishra had knowledge of the action giving rise to the alleged violation by October 3, 2006. As a result, the UW argues the request for a Director's review filed on December 19, 2006, is untimely.

Director's Determination

As the Director's designee, I carefully considered the documentation in the file, the exhibits, and the verbal comments provided by both parties. Based on my review, I conclude Mr. Mishra's request for a Director's review of the alleged violation of RCW 41.06.070 is untimely. Therefore, the Department of Personnel lacks jurisdiction to consider his request.

Rationale for Determination

The Director's review of an alleged violation of the civil service laws or rules is the first step in the appeal process. RCW 41.06.170 provides an employee the right to appeal. Specifically, RCW 41.06.170(2) states, in part, the following:

An employee who is . . . adversely affected by a violation of the state civil service law, chapter 41.06 RCW, or rules adopted under it, shall have the right to appeal . . . not later than thirty days after the effective date of such action . . .

WAC 357-49-010(4) states, in part, the following:

. . . an employee who has been adversely affected by a violation of the civil service laws or rules may request a director's review within thirty calendar days of the date the employee could reasonably be expected to have knowledge of the action giving rise to a law or rule violation claim or the stated effective date, whichever is later.

. . .

In this case, after being terminated from his exempt position on September 22, 2006, Mr. Mishra researched his options, consulted with an ombudsman, and eventually met with Ms. Browne and Ms. Diaz of Human Resource Operations on October 2, 2006. While Mr. Mishra could not specifically recall when he received the document containing reversion rights background information, including information regarding RCW 41.06.070 (Employer Exhibit 3), he acknowledged during the Director's review meeting that he received it sometime in October 2006. This is supported by his reference to the RCW in an email he sent to Ms. Diaz on October 3, 2006, in which he wrote, "[t]he copy of the RCW 41.06.070 which you gave me in [sic] not the proper RCW. It is an interpration [sic] of [the] RCW in question" (Employer Exhibit 2).

Mr. Mishra's email to Ms. Diaz further supports Ms. Browne's contention that she and Ms. Diaz told Mr. Mishra it was the UW's position that he did not have reversion rights but that Mr. Mishra continued to disagree with the University's interpretation regarding those rights.

During the Director's review meeting, Ms. Browne acknowledged that Mr. Mishra handed her the October 2, 2006 letter requesting reversion rights (Employee Exhibit A-3) at some point during their meeting on October 2 and that she did not forward the letter to Mr. Jaffe or provide a written response. Ms. Browne, however, stated that she considered the matter closed. Ms. Browne further stated she was unaware of Mr. Mishra's second letter, dated November 21, 2006 (Employee Exhibit A-4).

The primary issue is whether Mr. Mishra could have reasonably been expected to have knowledge of the action giving rise to his claim the UW violated RCW 41.06.070. Mr. Mishra's October 3, 2006 email to Ms. Diaz establishes his awareness of the RCW and his disagreement with the University's interpretation. In considering whether or not Mr. Mishra could have reasonably had knowledge the UW did not plan to reinstate him to classified service, it would be reasonable for him to expect such an answer, verbal or written, could come from Ms. Browne, as the Executive Director of HR Operations, or Ms. Diaz as an HR Consultant. Regardless of whether he was waiting for a written response from the CEO of Harborview, Mr. Jaffe, it is reasonable to expect he had knowledge the UW did not agree he had reversion rights in light of his discussion with Ms. Browne and Ms. Diaz on October 2, 2006, even though they discussed other personnel issues as well.

In reviewing the timeliness issue, I also considered previous decisions the former Personnel Appeals Board (PAB) issued on the matter. The PAB had a long history of making decisions on this point "dealing with a host of unfortunate circumstances in which an appeal was not timely filed," as noted in Birkland v. Dep't of Social & Health Services, PAB No. L-93-011 (1994). One example is the case of Brown v. Dep't of Social & Health Services, PAB No. V93-006 (1993) in which the department's personnel incorrectly advised employees they must exhaust administrative procedures before filing an appeal of a rule violation with the Board.

Another example can be found in Lapp v. Washington State Patrol, PAB No. V94-079 (1995), where the Board determined an appeal was untimely even though the affected employee had been unintentionally misled by an agency policy and erroneously informed an internal grievance procedure had to first be exhausted before filing an appeal of a rule violation. In a more recent decision, the Board continued to maintain the rule is clear that an appeal of a rule violation must be filed within 30 days of the date an employee has "knowledge of the action giving rise to a law or rule violation claim." Kinney v. Superintendent of Public Instruction, PAB No. RULE-05-0003 (2005). In Kinney, the Board continued to cite earlier decisions, including Lapp, where the Board determined it had "long held that [filing within 30 days] is a jurisdictional requirement pursuant to RCW 41.06.170."

In this case, I conclude Mr. Mishra reasonably had knowledge of the action giving rise to his claim on October 3, 2006, based on his references to RCW 41.06.070 in his email to Ms. Diaz. Additionally, Mr. Mishra acknowledged he received the documentation about the University's position on reversion rights and its interpretation of RCW 41.06.070 (Employer's Exhibit 3) at some point during October 2006. Mr. Mishra, however, did not file his request for a Director's review of RCW 41.06.070 until December 19, 2006, more than 30 days past the latest date in

October. Therefore, even when considering the circumstances in the light most favorable to Mr. Mishra, I conclude his request for a Director's review is untimely and the Department of Personnel lacks jurisdiction to consider his request.

Appeal Rights

Mr. Mishra may appeal this determination (lack of jurisdiction) to the Personnel Resources Board. 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 address for the Personnel Resources Board is 2828 Capitol Blvd., P.O. Box 40911, Olympia, Washington, 98504-0911.

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

Sincerely,

Teresa Parsons
Director's Review Supervisor
Legal Affairs Division

c: Chandrama Mishra
Shelley Kostrinsky, AAG

Enclosure: List of Exhibits