

November 29, 2010

TO: Krista Wisner

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

SUBJECT: Krista Wisner v. Washington State Liquor Control Board (WSLCB)  
Director's Review Request RULE-10-005

On June 15, 2010, you filed a request for a Director's review alleging WSLCB violated the civil service law and rule regarding performance evaluation. The Director's review has been completed based on a review of the written documents in the record.

**Nature of Alleged Violation**

WAC 357-49-010(3)(b) states that an employee may request a Director's review of a performance evaluation process or procedure per WAC [357-37-080](#).

WAC 357-37-080(1) provides, in part, the following:

. . . within thirty days of receipt of a completed and signed performance evaluation . . . a WGS employee may request a director's review of alleged irregularities in the use of the approved performance evaluation form and/or procedures outlined in the civil service rules. The content of an evaluation is not subject to review.

You allege WSLCB violated RCW 41.06.176 and WAC 357-37-080 with regard to your Performance and Development Plan (PDP) Evaluation for the period of May 1, 2009 through April 30, 2010. You initially received the PDP Evaluation on April 29, 2010 (Exhibit A-2-a). However, the evaluation was completed and signed on May 27, 2010 (Exhibit A-2-e).

RCW 41.06.176 provides the following:

Each employee whose work is judged unsatisfactory shall be notified in writing of the areas in which the work is considered deficient. Unless the deficiency is extreme, the employee shall be given an opportunity to demonstrate improvement.

Chapter 357-37 WAC provides rules regarding performance management.

### **Background**

On April 29, 2010, you received an unsigned copy of your PDP Evaluation (Exhibit A-2-a). You were then asked to complete your comments to the PDP by May 3, 2010, which you provided to your supervisor (Exhibit A-2-b). On May 12, 2010, you received an updated version of your PDP Evaluation; however, it did not contain your comments (Exhibit A-2-c). On May 19, 2010, you submitted revised comments to your supervisor (Exhibit A-2-d).

On May 25, 2010, you met with your supervisor, Roberta Seale, General Ledger Manager. Since Ms. Seale incorporated your comments into the PDP during your meeting, you asked for additional time to review the entire document. On May 26, 2010, you signed and scanned a copy of the PDP to Ms. Seale. On May 27, 2010, you returned the original, signed PDP to Comptroller Stacey Sitko. Both Ms. Seale and Ms. Sitko signed your PDP on May 27, 2010.

Although the PDP Evaluation that is the subject of this review identifies the review period as 05/01/2010 to 04/30/2011 (Exhibit A-2-e), the Performance Feedback in Part 5 actually covers the prior year period (05/01/2009 to 04/30/2010). The PDP Evaluation also directly corresponds to the PDP Expectations for 05/01/2009 to 04/30/2010, detailed in Part 1 (Exhibit B-2).

### **Summary of Ms. Wisner's Allegations**

You assert your PDP evaluation contains negative items that should be removed because you had not been notified in writing of any deficient work prior to receiving the PDP. You contend that WSLCB violated RCW 41.06.176 because your supervisor did not notify you about areas of your work considered to be deficient and did not allow you an opportunity to improve your work before including the negative comments in your PDP. You further contend that you were unaware of any deficient performance and that you have asked for clarification and specific details regarding comments on the PDP. You request that the negative comments be removed from your PDP and that you be afforded an opportunity to improve in the areas described as deficient (Exhibits A-1 and A-3).

### **Summary of WSLCB's Response to Alleged Rule Violations**

WSLCB asserts that while an employee may request a Director's review of alleged irregularities in the use of the approved performance evaluation or procedures, the content of an evaluation is not subject to review. WSLCB contends that you signed the PDP Expectations for the period of May 1, 2009 through April 30, 2010, on April 24, 2009. WSLCB asserts those expectations outlined the key competencies and expectations for that performance period. WSLCB further asserts that when negative circumstances or implications hinder an employee's roles and responsibilities, it is the employee's

responsibility to communicate those issues and any discrepancies to the supervisor. In this case, WSLCB states that you were provided expectations and an evaluation according to the PDP process and procedures. WSLCB also notes that you were allowed time to review and respond to the content of the evaluation. Therefore, WSLCB asserts no violation occurred (Exhibit B-1).

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

In summary, RCW 41.06.176 and WAC 357-37-035 provide that an employee be notified in writing of unsatisfactory performance and be given the opportunity to demonstrate improvement, unless the deficiency is extreme. WAC 357-37-30(2) indicates that employers must provide feedback and formally evaluate a permanent employee's performance "on an annual basis." WAC 357-37-040 further indicates that employers "must use standardized employee performance planning and evaluation procedures and forms developed by the director or alternate procedures and forms approved by the director." In this case, WSLCB used the Department of Personnel (DOP) PDP Expectations and Evaluation forms (Exhibits B-2 and A-2-c) and followed the standardized employee performance planning and evaluation procedures developed by the Director of DOP.

The PDP process provides a method for employers to notify employees of work expectations and then evaluate those work expectations on an annual basis. The rules do not require that written notification of work deficiencies be provided to the employee in a separate format prior to being identified in the PDP. Rather, the PDP is the method for communicating expectations and providing feedback about work performance. WAC 357-37-045 provides employers the option of supplementing the standardized planning and evaluation forms and procedures with special performance factors and assessment approaches specific to organizational needs. However, any supplement assessment of work performance is discretionary based on the employer's specific needs.

In addition, WAC 357-37-080(1) specifically states, in part, that an employee "may request a director's review of **alleged irregularities in the use of the approved performance evaluation form and/or procedures . . .**" However, "[t]he content of an evaluation is not subject to review." (Emphasis added).

By following the PDP process outlined in Chapter 357-37 WAC, WSLCB satisfied RCW 41.06.176. There is no evidence any violations occurred. You signed the PDP Expectations for the period of May 1, 2009 through April 30, 2010, on April 24, 2009. Those expectations outlined the key expectations and competencies for that performance period. WSLCB conducted an evaluation of your performance for that time period in accordance with the PDP process and procedures. WSLCB allowed you time to review and respond to the content of the evaluation. Therefore, no violation in the use of the approved performance evaluation form and/or procedures occurred.

**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. The main telephone number is (360) 664-0388, and the fax number is (360) 753-0139.

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

c: Vanessa Underwood, WSLCB  
Connie Goff, DOP

Enclosure: List of Exhibits

**Krista Wisner v. Liquor Control Board**  
**Rule-10-005**

A. Krista Wisner Exhibits

1. Request for Director's Review Form
2. Performance Development Plan (PDP) for 05/01/2009 to 04/30/2010:
  - a. Unsigned PDP given to Ms. Wisner for review
  - b. May 3, 2010 comments to the PDP from Ms. Wisner
  - c. Updated version of PDP without Ms. Wisner's comments
  - d. Revised comments from Ms. Wisner
  - e. Completed and signed PDP
3. Performance and Development Plan Evaluation 05/01/2010 to 4/30/2011 with comments attached.
4. Ms. Wisner's written summary of alleged violations, dated September 8, 2010

B. Liquor Control Board Exhibits

1. WSLCB's written response to the alleged violations, dated August 24, 2010
2. PDP Expectations for 05/01/2009 to 04/30/2010, including highlighted information from WSLCB.