

March 29, 2011

TO: Spencer Mooers

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

SUBJECT: Spencer Mooers v. Department of Social and Health Services (DSHS)
Director's Review Request RULE-10-007

On July 23, 2010, the Department of Personnel (DOP) received your request for a Director's review of alleged rule violations by DSHS with regard to standby pay (Exhibits A-1 and A-2). On August 31, 2010, DSHS provided a response to the alleged violations (Exhibit B-1). On September 3, 2010, you provided an additional document addressing DSHS's responses to your rule violation claims (Exhibit A-4). On February 7, 2011, I sent an email to both parties requesting further clarification (Exhibit C-1). Both parties provided additional information via email through March 11, 2011 (Exhibits C-2 through C-10). As the Director's designee, I conducted a Director's review based on the written documents in the record.

Nature of Alleged Violation

On July 13, 2010, Glen Christopherson, Senior Director of DSHS's Human Resources Division (HRD) sent a memo to DSHS's Executive Leadership Team indicating a change in DSHS's standby pay practice for non-represented overtime exempt employees. In the memo, Mr. Christopherson stated that DOP had approved DSHS's request to compensate non-represented overtime exempt staff at a standby pay rate of \$25.00 a day (Exhibit A-3). You allege DSHS's request for an exception to the standby pay rate is a violation of the rules. You assert you are adversely affected because you now receive less compensation when you are required to be in standby status. You ask that the approved exception to the rate of standby pay be reversed and the current compensation plan be followed.

WAC 357-49-010(4) provides you the right to request a Director's review of a law or rule violation claim. However, the process DSHS followed to request an exception to the rate of standby pay specified in the state's compensation plan is separate and apart from the Director's review process outlined in Chapter 357-49 WAC. The issue in this case is whether or not DSHS violated any rules with regard to standby pay.

WAC 357-28-205 addresses when an employee must receive standby pay. Subsection (1) states the following:

Overtime eligible employees required to restrict off-duty activities to be immediately available for duty must be compensated for time spent in standby status. Overtime-exempt employees are not eligible for standby pay unless the employer determines otherwise.

WAC 357-28-210 provides, in part, "[t]he rate of standby compensation must be specified in the compensation plan. The director may approve exceptions to standby rates based upon business requirements.

Summary of Mr. Mooers' Allegations

You assert DSHS's request for an exception to the standby pay rate is a violation of the rules. You contend you are adversely affected by receiving \$45 less per week when you are required to restrict your off-duty activities and be immediately available for duty. You disagree with DSHS's reasons for requesting an exception to the standby rate and assert the disparity between the standby rate for represented and non-represented employees results from two separate systems. You assert WAC 357-28-205 addresses which employees will receive standby pay and when they are entitled to receive it, not what the rate of standby pay should be. You disagree that WAC 357-28-210 provides authority for "how" to change standby rates. You acknowledge the rule allows the Director to approve an exception to standby pay. However, you disagree with setting a flat rate for standby pay and contend the rate should remain a percentage of pay, as stated in the compensation plan. You ask that the approved exception be reversed and the current compensation plan be followed until revised as required under WAC 357-28-015.

Summary of DSHS's Response to Alleged Rule Violations

DSHS asserts the agency followed all applicable portions of the Washington Administrative Code (WAC). DSHS states the agency complied with the requirement to submit a compensation policy for approval by DOP back in 2005. In 2010, DSHS contends the agency requested approval to modify its compensation policy to include a specific rate of pay for non-represented overtime exempt employees in standby status. DSHS asserts this request was based on a valid business decision to reduce the cost of standby pay and to correct an internal disparity in the rate of standby pay between represented and non-represented overtime exempt employees. DSHS asserts the agency submitted its request by following DOP guidelines and that the request was approved by DOP's Director.

Director's Determination and Rationale

In reviewing the written documents, much of the information provided pertained to issues already considered by DOP's Director as part of DSHS's request for an exception to the standby rate in the state's compensation plan (Exhibits C-5, C-6, and C-8). The decision to approve or deny DSHS's request is outside the scope of the Director's review process under Chapter 357-49 WAC. The issue here is whether DSHS violated civil service rules. Therefore, while I considered written comments from both parties as background

information or the parties' respective arguments, I did not consider all of the email attachments detailing pay information for DSHS non-represented employees. That information had already been reviewed by DOP as part of DSHS's request for an exception to the state standby pay rate (Exhibits C-5, C-6, and C-8).

At the time you requested a Director's review, your position was a Juvenile Rehabilitation Program Manager 2, an overtime exempt position, at Naselle Youth Camp (Exhibit C-2). WAC 357-28-205(1) states, in part, "[o]vertime-exempt employees are not eligible for standby pay **unless the employer determines otherwise.**" (**Emphasis added**). The employer has the discretion to provide standby pay to employees who are overtime exempt.

WAC 357-28-030 requires state employers to "develop a written salary determination policy that is subject to the director's approval." A salary determination policy may also be referred to as a compensation policy. DSHS's compensation policy (Administrative Policy 18.28) is specific to DSHS. Modifications to an agency's compensation policy must be approved by DOP's Director (WAC 357-28-030). This differs from changes to the state's compensation plan in which "[t]he director must hold open, public hearings before adopting or revising the plan" (WAC 357-28-015).

In this case, DSHS worked with DOP's Compensation Unit to process the request for an exception to the standby pay rate in the state's compensation plan (Exhibits C-5, C-6, and C-8). In a March 3, 2010 memo to DOP's Director, Eva Santos, Mr. Christopherson requested an exception to the state's standby pay rate. DSHS's request was two-fold: 1) to request non-represented overtime exempt employees be paid at the rate of \$25 for each day spent in standby status and 2) to request approval to modify DSHS's compensation policy (Administrative Policy 18.28) to reflect the rate of \$25 for each day non-represented overtime exempt employees spent in standby status (Exhibit C-3-a).

Consistent with WAC 357-28-210, DSHS made the request based on business requirements, which included aligning non-represented and represented overtime exempt employees and providing salary equity throughout the agency. On June 21, 2010, DOP Director Eva Santos approved DSHS's request. Director Santos also asked DSHS to "include this policy exception in [DSHS's] salary determination policy . . ." (Exhibit C-3-c). Therefore, the modification to DSHS's compensation policy (salary determination policy) had been approved by Director Santos, consistent with WAC 357-28-030.

Both parties referenced subsequent changes to the state's compensation plan that mirror the changes requested by DSHS. However, Director Santos approved DSHS's request on June 21, 2010 (Exhibit C-3-c). DSHS's approval was an action separate from any subsequent revision to the state's compensation plan. Revisions to the state's compensation plan go through an adoption process held through public Director's Meetings, which serve as "open, public hearings," consistent with WAC 357-28-015.

In this case, DSHS followed the steps necessary to request the exception to the state standby pay rate according to WAC 357-28-210. Director Santos approved the exception and asked DSHS to reflect the change in the agency's salary determination policy,

consistent with WAC 357-28-030. Therefore, you have not met your burden of proving DSHS violated civil service law or rules.

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: Glen Christopherson, DSHS
Ellen Andrews, DSHS
Connie Goff, DOP

Enclosure: List of Exhibits

Spencer Mooers v. Social and Health Services
Rule-10-007

A. Spencer Mooers' Exhibits

1. Appeal Form, received July 23, 2010
2. Letter of appeal, received July 23, 2010
3. July 13, 2010 memo from Glen Christopherson, DSHS, regarding Exception to Standby Pay.
4. Spencer Mooers' response to DSHS's August 30, 2010 letter responding to the alleged rule violation

B. DSHS' Exhibits

1. DSHS's August 30, 2010 letter in response to the alleged rule violation

C. Email correspondence between Director's designee and the parties with attached exhibits from the parties.

1. February 7, 2011 email from Teresa Parsons to parties requesting clarification about Mr. Mooers' overtime status and process followed by DSHS.
2. February 7, 2011 email from Spencer Mooers clarifying his position is overtime exempt.
3. March 1, 2011 email from Debbie Goldsby on behalf of Glen Christopherson, DSHS, explaining the process followed when DSHS requested an exception to the rate of standby compensation from Department of Personnel's (DOP's) Director.
 - a. March 3, 2010 memo to Eva Santos, Director, from Glen Christopherson, DSHS, requesting exception to WAC 357-28-205(1) regarding standby pay.
 - b. July 13, 2010 memo to DSHS's Executive Leadership Team from Glen Christopherson regarding rate of standby pay.
 - c. June 21, 2010 letter to Glen Christopherson, DSHS, from Eva Santos, DOP, approving DSHS's request for an exception to standby pay.
 - d. DSHS Administrative Policy No. 18.28 – Compensation, effective July 1, 2005.
4. March 1, 2011 email from Spencer Mooers with comments regarding DSHS's policy on standby pay.
5. March 2, 2011 email from Spencer Mooers providing copies of records DSHS provided to DOP when requesting the exception to standby pay. Mr. Mooers received the records through a public disclosure request to DOP.

- a. DSHS Non-represented classifications affected by standby pay request.
 - b. Excel Spreadsheet attachment in excess of 150 pages. (Did not consider because this level of detail was not required to make a determination regarding the alleged rule violation. This was provided to Eva Santos as supporting documentation for DSHS's request for exception to rate of standby compensation).
6. March 3, 2011 email from Spencer Mooers asserting inaccuracies regarding standby pay information given to Eva Santos as part of the request for an exception to rate of standby compensation. (Considered as background information and part of Mr. Mooers' argument).
7. March 9, 2011 email from Teresa Parsons to parties acknowledging receipt of Mr. Mooers' March 2 & 3 emails and forwarding to DSHS.
8. March 9, 2011 email from Ellen Andrews, DSHS, in response to Exhibit 5 above. . (Considered the email as background information and part of DSHS's argument).
 - a. Excel Spreadsheet attachment in excess of 18 pages. (Did not consider because this level of detail was not required to make a determination regarding the alleged rule violation).
9. March 9, 2011 email from Spencer Mooers with further comments on DSHS's spreadsheet in Exhibit 8. (Considered comments as argument only).
10. March 11, 2011 email from Spender Moores with additional information on the standby issues for DSHS non-represented staff. (Considered comments as argument only).
 - a. July 13, 2007 Correction Memo from Glen Christopherson regarding standby pay for non-represented and represented overtime-exempt employees.