

February 25, 2011

TO: Lawrence Wright

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

SUBJECT: Lawrence Wright v. Washington State University (WSU)
Director's Review Request No. RULE-10-011

On September 22, 2010, the Personnel Resources Board received your letter of appeal indicating your disagreement with WSU about your accumulated annual leave at that time of your retirement in July 2010 (Exhibit 1). On September 27, 2010, Washington Personnel Resources Board (WPRB) Appeals Supervisor Holly Platz sent you a letter requesting further clarification about your appeal (Exhibit 2). On October 14, 2010, the Personnel Resources Board received your letter clarifying your allegation that WSU violated WAC 357-01-022 with regard to your anniversary date (Exhibit 3). On October 19, 2010, Ms. Platz informed you that a violation of state civil service law or rules, other than those relating to a layoff action, is appealed to the Board "by filing written exceptions to the director's review determination . . ." Since there had not been a Director's review determination, Ms. Platz forwarded your appeal to the Director's Review Program (Exhibit 4). As the Director's designee, I conducted a Director's review based on the written documents in the record.

Nature of Alleged Violation

On August 19, 2010, WSU informed you that Human Resources Services (HRS) had completed an audit of your time/leave records after you retired on June 30, 2010. The result of the audit revealed WSU had been using the incorrect anniversary date for your position, which resulted in a lower leave balance at the time of your retirement (Exhibit 1-a). You allege WSU violated WAC 357-01-022 and previously violated WAC 251-01-028 by incorrectly applying your anniversary date since 1978 (Exhibit 6).

WAC 357-01-022 provides the following:

For employees of higher education institutions or related higher education boards, anniversary date is the most recent date of hire into state service. The anniversary date is used to determine when vacation leave over two hundred forty (240) hours is lost. Higher education employers may make the anniversary date the first calendar day of the month in which the date of hire

occurred. A higher education employee receives a new anniversary date when that employee is rehired following a break in state service, but not when the employee promotes, demotes, or transfers to another higher education employer.

WAC 251-01-028 was no longer in effect at the time of your request.

Timeliness Issue

In her response to your alleged rule violations, HRS Associate Director Lisa Gehring asserted your request for a Director's review had been untimely filed (Exhibit 5). You assert you "pursued this appeal in a timely manner" and "followed the chain of command with the hope of resolving the dispute within the university" (Exhibit 6). To support your assertion, you provided an appeal timeline with a list of communications (Exhibit 6-a).

Director's Determination and Rationale

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 . . .

The Director's review of an alleged rule violation is the first step in the appeal process (WAC 357-49-017(2)).

WAC 357-49-010(4) provides, in part:

. . . 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 . . . (**emphasis added**).

In this case, you indicated you were "first informed . . . of the error in [your] anniversary date" in the August 19, 2010 letter from Christine Cromar, WSU-Prosser (Exhibit 6-a). As part of my review, I asked both parties to verify "the date and method of delivery" WSU-Prosser provided you with Ms. Cromar's letter (Exhibit 7). In a February 10, 2011 email response, you indicated "the letter was mailed at Prosser on 19 August 2010 and went through Pasco in the afternoon of 20 August 2010." You also stated that you "probably received the letter on 21 August" (Exhibit 8). You provided a scanned copy of the envelope from WSU-Prosser, which verified the letter was deposited in the United States mail on August 19, 2010 (Exhibit 8-a). WSU did not provide any further information. However, I verified that your response sufficiently established the date and method of delivery of Ms. Cromar's letter (Exhibit 9).

Based on your response, it is plausible you received WSU's notification of your incorrect anniversary date on August 21, 2010. This is further supported by the envelope illustrating the letter had been deposited in the mail on August 19 and passed through Pasco on August 20 before arriving at your home address in Prosser. Therefore, you reasonably had knowledge of your incorrect anniversary date when you received notification by mail on August 21, 2010. Although you provided a timeline of subsequent communications with HRS about your reduction in annual leave, you had knowledge of the incorrect anniversary date when you received Ms. Cromar's letter.

Both the Personnel Appeals Board (PAB) and Personnel Resources Board (PRB) have previously addressed the timeliness of an alleged rule violation. The PAB consistently determined "the rule is clear that an appeal of a rule violation must be filed within 30 days" and "this is a jurisdictional requirement pursuant to RCW 41.06.170." Lapp v. Washington State Patrol, PAB No. V94-079 (1995). In Kinney v. Superintendent of Public Instruction, PAB No. RULE-05-0003 (2005), the PAB affirmed the 30-day filing requirement, in particular, within 30 days of the employee having "knowledge of the action giving rise to a law or rule violation claim," based on the facts in that case. The PRB further determined that "[r]egardless of whether [appellant] was seeking additional information, [appellant] must comply with the jurisdictional requirements of the RCW and WAC. Mishra v. University of Washington, R-RULE-07-002 (2007). In Mishra, the PRB cited Roberts v. Dept. of Corrections, PAB Case No. RULE-03-006 (2004), in which the PAB determined the following:

. . . [a]ppellant had knowledge of the actions giving rise to this appeal . . . when he was informed that he could not return because his doctor's note was unacceptable. Appellant was fully aware, as evidenced by his note to the department, that the reason the department was not returning him to work was because he was restricted to working eight hours per day. Appellant filed this appeal on October 30, 2003, more than thirty days after July 22, 200[3]. Therefore, even when considering the facts in the light most favorable to Appellant, we must conclude that the appeal was untimely filed, therefore, the appeal should be dismissed.

Though different circumstances, you had knowledge of the action giving rise to your rule violation claim when you were informed of the incorrect anniversary date in Ms. Cromar's August 19, 2010 letter, which you reasonably had knowledge of when you received it on August 21, 2010. The deadline for requesting review elapsed on September 20, 2010. Since your request was not received until September 22, 2010, it was untimely. Therefore, the matter is closed.

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: Lisa Gehring, WSU
Connie Goff, DOP

Enclosure: List of Exhibits

Lawrence Wright v. Washington State University

RULE-10-011

List of Exhibits

1. September 19, 2010 letter of appeal, received at the Personnel Resources Board Office on September 22, 2010.
 - a. August 19, 2010 letter to Mr. Wright from Christine Cromar, WSU-Prosser, regarding incorrect anniversary date and change in annual leave balance.
2. September 27, 2010 letter from Holly Platz, WPRB Appeals Supervisor, requesting clarification about Mr. Wright's appeal.
3. October 11, 2010 response from Mr. Wright to Ms. Platz, clarifying the appeal, received at Personnel Resources Board Office on October 14, 2010.
4. October 19, 2010 letter from Holly Platz, WPRB Appeals Supervisor, forwarding appeal to Director's Review Program.
5. November 15, 2010 response to appeal from Lisa Gehring, WSU, addressed to Karen Wilcox, Director's Review Coordinator, received via fax on November 15, 2010.
6. December 5, 2010 letter from Mr. Wright in response to WSU's November 15, 2010 response.
 - a. Appeal timeline (list of communications between Mr. Wright, WSU, and other appeal correspondence).
7. February 9, 2011 email from Teresa Parsons to Mr. Wright and Ms. Gehring regarding timeliness of Mr. Wright's appeal and requesting verification of date and method of delivery of WSU's letter regarding anniversary date.
8. February 10, 2011 response to timeliness and verification of date and delivery method of WSU's letter regarding anniversary date.
 - a. Envelope used to mail WSU's letter regarding anniversary date.
9. February 10, 2011 email from Teresa Parsons to Mr. Wright and Ms. Gehring confirming that Mr. Wright provided sufficient information regarding date and method of delivery of WSU's letter regarding anniversary date.