



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM

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May 27, 2015

TO: Connie Goff, PHR  
Rules and Appeals Program Manager

FROM: Kris Brophy  
Director's Review Program Investigator

SUBJECT: David Graves v. Department of Social and Health Services (DSHS)  
Rule Violation RULE-14-006

On October 31, 2014, Mr. Graves filed a request for a Director's review alleging DSHS violated the civil service law and rules regarding the position allocation process. The Director's review has been completed based on a discussion with the parties and a review of the written documents in the record.

**Background**

On June 29, 2007, as part of the Department of Personnel's Phase 4 Consolidation of the state classification plan, Mr. Graves was notified by letter that his position was being reallocated from Supply Officer 2 class to the Procurement and Supply Specialist 3 class (Exhibit A-1(b)).

In the notification letter, Mr. Graves was advised that he did not have the right to request a Director's review of the reallocation of his position. The letter stated in part:

...Based upon the Department of Personnel's Director's implementation of a new classification plan under the Provisions of RCW 41.06.136, you do not have the right to request a Director's review of this action...

The letter indicated that his salary increased from Range 46 to Range 51 and that his salary step remained the same. This action was effective on July 1, 2007.

Mr. Graves stated during the review telephone conference that he spoke with his local HR Department but took no further action at that time. He stated that his duties remained unchanged from there forward and that he continued to work in his position.

On September 9, 2014, the DSHS Classification and Compensation Unit received an updated Position Description Form (PDF) from Mr. Graves, requesting that his position be reallocated to the Procurement and Supply Specialist 4 class.

By letter dated, October 31, 2014, Mr. Mike Raich, Classification & Compensation Unit Manager, notified Mr. Graves that his position was being reallocated to the Procurement and Supply Specialist 4 class, effective September 9, 2014 (Exhibit A-1(a))

### **Alleged Violation**

Mr. Graves appeals the effective date of the DSHS October 31, 2014 reallocation notice, on the basis that his position was originally misclassified in 2007 when the agency reallocated his position from Supply Officer 2 to Procurement & Supply Specialist 3 as part of the Department of Personnel's classification system consolidation project.

Mr. Graves states he was performing supervisory functions when his position was reallocated to the Procurement and Supply Specialist 3 class in July 2007. Mr. Graves asserts the Procurement and Supply Specialist 3 class does not contain supervisory functions and that his position should have been reallocated to Procurement and Supply Specialist 4 which is the supervisory level class for that series.

Mr. Graves states in his letter of appeal (Exhibit A-1) that he asked his local Human Resources Department about the misclassification and was told by that staff that this was overlooked in the consolidation of the job classes. Mr. Graves asserts that had he been entitled to union representation at that time, he could have been advised by the union of other avenues of appeal for his incorrect classification.

Mr. Graves asserts his supervisory responsibility was recognized by DSHS in the October 31, 2014 letter, when his position was reallocated to the Procurement and Supply Specialist 4 class, effective September 9, 2014.

In total, Mr. Graves asserts his position has performed supervisory functions throughout the entire time period and that his position was misclassified and underpaid between July 1, 2007 and September 9, 2014.

Therefore, Mr. Graves asserts DSHS violated WAC 357-13-085 by making October 31, 2014 the effective date of his reallocation. Mr. Graves requests that the effective date of the classification to the Procurement and Supply Specialist 4 class be retroactively applied to July 1, 2007 and that he be awarded back pay for that period of time.

### **Analysis**

#### July, 2007

On July 1, 2007, the following statutes and Department of Personnel rules were in effect:

**RCW 41.06.136 Board review of rules affecting classified service – Rules to be developed – Goals.**

...

(2) By March 15, 2004, the board shall adopt new rules governing the classification, allocation, and reallocation of positions in the classified service...

**RCW 41.06.139 Classification system for classified service – Director implements – Rules of the Board – Appeals.**

In accordance with the rules adopted by the board under RCW 41.06.136, the director shall, by January 1, 2005, begin to implement a new classification system for positions in the classified service. Any employee who believes that the director has incorrectly applied the rules of the board in determining a job classification for a job held by that employee may appeal the director's decision to the board by filing a notice in writing within thirty days of the action from which the appeal is taken. Decisions of the board concerning such appeals are final and not subject to further appeal.

**WAC 357-13-080 Can an employee request a director's review of a position review or reallocation of the employee's position?**

(1) An employee may request a director's review of the results of the employee's position, per WAC 357-49-010. The employee must request the director's review within (30) calendar days of being provided the results of the position review or the notice of reallocation.

(2) When an employee's position is reallocated to a class with the same salary range maximum based upon the Director implementing a new classification plan under the provisions of RCW 41.06.136, an employee does not have the right to request a director's review. The employee may request a position review in accordance with the provisions of WAC 357-13-065. Following the position review, the employee may request a director's review of the results of the position review per WAC 357-49-010. [Emphasis added]

**WAC 357-13-065 Must the employer's procedure allow an employee to request a review of his/her position?**

The employer's procedure must allow an employee to request the employer to review his/her position at least every six months.

**357-49-010 For what actions can an individual request a director's review?**

(3) An employee may request a director's review of the following:

(a) Allocation or reallocation per WAC 357-13-080, or...

The June 29, 2007 notification letter to Mr. Graves indicated that he did not have the right to request a Director's review of the reallocation of his position. The letter stated in part that:

*...Based upon the Department of Personnel's Director's implementation of a new classification plan under the Provisions of RCW 41.06.136, you do not have the right to request a Director's review of this action...* [Emphasis added]

However, in accordance with WAC 357-13-080, only employees whose positions were reallocated to a class with the same salary range maximum did not have a right to request a director's review of the reallocation action.

In this case, Mr. Graves' position was reallocated to a class with a higher salary range maximum. The letter indicates that his salary increased from Range 46 to Range 51. Mr. Graves's position was reallocated to a class with a higher salary range maximum. Therefore, it appears from the record that DSHS incorrectly concluded that Mr. Graves was not entitled to request a director's review. Therefore it appears DSHS erred in its June 29, 2007 notification letter to Mr. Graves. Since Mr. Graves was not reallocated to a classification in the same salary range, the letter to him should have notified him of his right to file a request for a director's review.

WAC 357-13-080 provides the following:

(1) An employee may request a director's review of the results of the employee's position, per WAC 357-49-010. The employee must request the director's review within (30) calendar days of being provided the results of the position review or the notice of reallocation.

This rule states that director's review request must be filed within 30 calendar days of the notice of reallocation. Thus, although DSHS erred by not providing the proper notification to Mr. Graves regarding his right to request a director's review in 2007, his avenue for appealing his position's allocation to the Procurement and Supply Specialist 3 class, rather than the Procurement and Supply Specialist 4 class, elapsed thirty calendar days after being provided the notice of reallocation on June 29, 2007.

This is supported in earlier Personnel Appeals Board (PAB) decisions in which the board dealt with various circumstances for which an appeal was not timely filed, (as noted in Birkland v. Dep't of Social & Health Services, PAB No. L-93-011 (1994). For example, in Brown v. Dep't of Social & Health Services, PAB No. V93-006 (1993) the department's personnel incorrectly advised employees they must exhaust administrative procedures before filing an appeal of a rule violation with the PAB.

In Lapp v. Washington State Patrol, PAB No. V94-079 (1995), the PAB 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 PAB held that 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 PAB cited earlier decisions, including Lapp, where it determined it had "long held that [filing within 30 days] is a jurisdictional requirement pursuant to RCW 41.06.170."

Therefore, while by both parties acknowledge that Mr. Graves was performing supervisory functions in July 2007 when his position was reallocated to the Procurement and Supply Specialist 3 class, his request to make July 1, 2007 the effective date of his reallocation to Procurement and Supply Specialist 4 class is untimely.

October, 2014

Mr. Graves appeals the effective date of the DSHS October 31, 2014 reallocation notice, on the basis that his position was misclassified in 2007 when the agency reallocated his position from Supply Officer 2 to Procurement & Supply Specialist 3.

**WAC 357-13-085 How is the effective date of a reallocation determined?**

The effective date of a reallocation is determined as follows:

(1) The effective date of a reallocation resulting from the director's revisions to the classification plan is the effective date of the director's action.

(2) The effective date of an employer-initiated reallocation is determined by the employer. Notice of a reallocation to a class with a lower salary range maximum must be provided in accordance with WAC 357-13-070.

(3) The effective date of a reallocation resulting from an employee request for a position review is the date the request was filed with the employer unless the result of the position review is a reallocation to a class with a lower salary range maximum. Notice of reallocation to a class with a lower salary range maximum must be provided in accordance with WAC 357-13-070. [Emphasis added]

...

On September 9, 2014, the DSHS Classification and Compensation Unit received an updated Position Description Form (PDF) from Mr. Graves, requesting that his position be reallocated to the Procurement & Supply Specialist 4 class (Exhibit B-1)

By letter dated, October 31, 2014, Mr. Mike Raich, Classification & Compensation Unit Manager, notified Mr. Graves that his position was being reallocated to the Procurement and Supply Specialist 4 class, effective September 9, 2014 (Exhibit A-1(a)).

Mr. Graves' position was reallocated to a class with a higher salary range maximum. In accordance with WAC 357-13-085 (3), DSHS made Mr. Graves' reallocation request effective September 9, 2014, the date the request was filed with DSHS Classification and Compensation Unit. Therefore, DSHS complied with the requirements of WAC 357-13-085(3) and no violation occurred.

### **Determination**

No violation occurred regarding the civil service law and rules regarding the position allocation process regarding Mr. Graves' reallocation to the Procurement and Supply Specialist 4 class effective September 9, 2014.

### **Appeal Rights**

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following:

(4) An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the Washington Personnel Resources Board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The mailing address for the Personnel Resources Board 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.

Sincerely,

Connie Goff, PHR  
Rules & Appeals Program Manager  
State Human Resources Division

c: David Graves, APP  
Stephen Bergman, ATTY  
Mike Raich, DSHS/Comp & Class

**DAVID GRAVES v DEPT. OF SOCIAL AND HEALTH SERVICES**

**RULE-14-006**

List of Exhibits

A. David Graves Exhibits

1. Letter of appeal from David Graves received November 24, 2014 with attachments listed below:
  - a. Position Allocation Determination letter from Mike Raisch to David Graves dated October 31, 2014.
  - b. Position Reclassification notice from DSHS to David Graves dated June 29, 2007.

B. DSHS Exhibits

Email from Mike Raich to Kris Brophy dated April 10, 2015 with attachments listed below:

1. The Position Description Form (PDF) Mr. Graves submitted directly to the Classification and Compensation Unit (CCU) on September 9, 2014. He signed the PDF, but his supervisor did not. This PDF was used to set the effective date for the reallocation. This PDF shows my signature approving it.
2. Email with attachments sent to CCU by Lakeland Village HR on 10/1/14.
  - a. Position Action Request form dated 9/24/2014.
  - b. Position Review Request (PRR) form.
  - c. Organization Chart
3. The PDF that includes Mr. Graves' and his supervisor's signatures received in CCU from Lakeland Village HR on October 1, 2014. The email provided shows this date and includes the PDF within one of its attachments.

The date of 9/9/14 was stamped on this PDF by CCU. Our practice is to stamp documents with the effective date. Following this practice avoids certain types of confusion. This PDF is considered the current one and includes my signature to indicate the reallocation was approved. The work in both PDFs is the same.

4. Mr. Graves' Position Review Request (PRR) received from Lakeland Village HR on October 1, 2014 showing CCU's effective date of 9/9/14. The email provided includes the PRR within one of its attachments.

5. Email from Mike Raich to Kris Brophy dated April 6, 2015 enclosing a letter to Mr. Graves regarding the designation of his position as non-represented effective September 9, 2014.

C DIRECTOR'S EXHIBITS

1. RCWs and Department of Personnel WAC rules in effect on July 1, 2007:
  - a. RCW 41.06.136, RCW 41.06.139.
  - b. WAC 357-13-080.
  - c. WAC 357-13-065.
  - d. WAC 357-49-010.
2. Current OFM WAC rules:
  - a. WAC 357-13-070.
  - b. WAC 357-13-085.