

Terry E. Branstad, Governor

Kim Reynolds, Lt. Governor

Teresa Wahlert, Director

July 9, 2013

MEMORANDUM

TO: Chief Operating Officer
Department of Administrative Services –
Human Resources Enterprise

FR: Teresa Wahlert, Director
Department of Iowa Workforce Development

RE: Proposed Layoff

Due to funding reductions, it will be necessary to institute a layoff in the Department of Workforce Development, Unemployment Insurance Appeals Bureau. In accordance with 11 IAC 60.3, your approval of the following plan is requested:

Effective Date: August 12, 2013.

Organizational Unit: IWD – all other divisions.

Job Classification: (1) Administrative Law Judge 3.

Number of Employees to be Laid Off: 1.

Cutoff Date: June 30, 2013.

Retention Point Calculation Worksheet attached for Joseph Walsh.

Please call me at (515) 281-5365 if you have any questions.

LAYOFF PLAN
Non-Contract Covered Employees

Department: IWD - Appeals Bureau

Reason for Layoff: Reduction in funds

Amount of savings from this Layoff: \$150 000

Total number of positions to be reduced: 1

Non-supervisory positions reduced: 0

Supervisory positions reduced: 1

Retention point cut-off date: June 30, 2013
(Attach retention points for employees in each affected job class in the layoff unit)

Current Span of Control: 1:23

Span of Control, if implemented: Staff members will be supervised by a different staff member for the time being.

Proposed effective date of Layoff: August 12, 2013.

Layoff Unit: Unemployment Insurance Appeals Bureau

Services impacted by this layoff and plans to address this impact: Supervisory duties and being absorbed by other remaining supervisors.

Department Director Signature		Date
Approved <input checked="" type="checkbox"/>	Disapproved <input type="checkbox"/>	Date <u>7/11/13</u> DAS-HRE COO <u>[Signature]</u>
Approved <input checked="" type="checkbox"/>	Disapproved <input type="checkbox"/>	Date <u>7/11/13</u> DAS Director: <u>[Signature]</u>
Approved <input checked="" type="checkbox"/>	Disapproved <input type="checkbox"/>	Date <u>7/13/13</u> DOM Director <u>[Signature]</u>
Approved <input checked="" type="checkbox"/>	Disapproved <input type="checkbox"/>	Date <u>7-15-13</u> Governor's Office <u>[Signature]</u>

Terry E. Branstad, Governor

Kim Reynolds, Lt. Governor

Teresa Wahlert, Director

IOWA
WORKFORCE
DEVELOPMENT

April 5, 2013

Joe Walsh
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319

Dear Joe:

The Department of Administrative Services has amended the definition of *confidential employee* for purposes of the merit-system coverage (Iowa Administrative Code r. 11-50.1). Your position is excluded from merit-system provisions in accordance with Iowa Code § 8A.412. Effective April 26, 2013, you will no longer be covered under the merit-system provisions of Iowa Code chapter 8A, subchapter IV.

You must acknowledge receipt of this notice. Please sign this letter and return it to me by April 15, 2013. If you have any questions, please contact me at (515) 281-5364.

If you believe your position does not meet the definition of *confidential employee* under r. 11-50.1, you may appeal this determination in accordance with Iowa Administrative Code ch. 11-61.

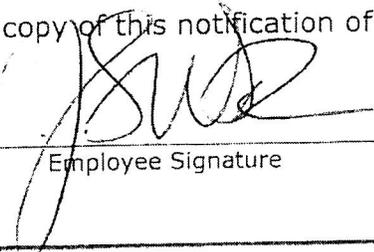
Sincerely,



Teresa Wahlert
Director, IWD

cc: Personnel File

I have received a copy of this notification of the change in merit-system coverage.



Employee Signature

4/8/13

Date

Walsh, Joseph [IWD]

From: Lamb, T. Ryan [DAS]
Sent: Friday, May 31, 2013 9:38 AM
To: Walsh, Joseph [IWD]
Subject: RE: Need to Talk ASAP

I will come to you.

From: Walsh, Joseph [IWD]
Sent: Friday, May 31, 2013 8:52 AM
To: Lamb, T. Ryan [DAS]
Subject: RE: Need to Talk ASAP

Am I coming over to your office at 10 a.m.? If yes, where is that?

From: Lamb, T. Ryan [DAS]
Sent: Wednesday, May 29, 2013 8:29 AM
To: Walsh, Joseph [IWD]
Subject: Re: Need to Talk ASAP

Can you meet Friday? 10?

T. Ryan Lamb
DAS General Counsel
Office: 515-725-2205
State Cell: 515-783-6780

On May 28, 2013, at 12:05 PM, "Walsh, Joseph [IWD]" <Joseph.Walsh@iwd.iowa.gov> wrote:

Mr. Lamb

I have been trying to call you since last Wednesday although I only left three messages. I know you are busy but I want to impress upon you how important this is.

On April 5, I received a letter from my Director that my merit status was being removed. I quickly did some research and I learned that it is illegal for a Judge to be non-merit (as defined by U.S. Department of Labor). I quickly printed out some information and gave it to my H.R. person Jon Nelson on April 8. Jon agreed that the entire matter would be placed on "hold" pending a review of the situation. I then left town for a scheduled vacation.

When I got back from vacation I began hounding Jon about what was going on. Jon assured me that the matter was still on "hold." I documented this with him on April 26. I was given the strong impression from Jon that it was understood that this could not be done since it was illegal and it would be resolved by removing the "confidential" designation. I was again out of the office for a conference the week of May 13, thinking that everything was okay.

When I got back, I learned that while I was out of town, the paperwork had gone through without any notice to me and that I became non-merit as of May 22. Needless to say, this was a surprise. I spoke with Director Wahlert on May 24 and explained that this was illegal. She told me to call you. She stated that you had reviewed this and assured her it was legal. She suggested that you must have some type of

authority for your legal opinion. I contacted U.S. DOL and I was told that it is not legal. I was further told that since I brought this to their attention, they *had to conduct an investigation*.

I just want to get this resolved without making it a big deal. If you have some authority I would really like to see it so I can call U.S. DOL back and ask them to drop it before it gets bigger than it needs to be. I do not want to cause unnecessary headaches or embarrassment for everyone. Please call me as soon as you can. (515) 401-8170 is my personal cell phone. I am looking forward to your call.

Joseph L. Walsh

Chief Administrative Law Judge
Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov

Walsh, Joseph [IWD]

From: Walsh, Joseph [IWD]
Sent: Wednesday, May 22, 2013 1:52 PM
To: Wahlert, Teresa [IWD]
Cc: Nelson, Jon [IWD]
Subject: FW: April 5, Letter

To my great surprise, Jon informed me last night that my "confidential" status was approved after some sort of a DAS review. To my even greater surprise Jon told me it is effective as of today.

I confirmed last week with U.S. DOL that it is *clearly* illegal for a non-merit employee to be an ALJ and decide contested cases. I provided Jon with all the information on this in April and assumed that it would be resolved. (Jon told me he provided the information to you).

I have not decided whether to file an appeal with PERB. To me, such an appeal is silly. It is illegal by federal law and it places the UI grant in jeopardy (U.S. DOL cannot fund an agency which is not using merit employees). I am really in a position where I have to go to U.S. DOL. I am afraid this is going to cause the issue to blow up into something unnecessarily contentious. I need to stress that I believe this is a really big deal to U.S. DOL.

What I am asking for at this point is the following:

1. Place the matter on hold for further research so, at a minimum, DAS or you can contact U.S. DOL for yourself. I have had no communication with anyone at DAS (who apparently decided this was legal).
2. After an additional period where I can communicate with whoever is making the decision at DAS, if it is still determined I should be "confidential", provide me with a new letter with appeal rights so I have a fair opportunity to decide whether to appeal.
3. At the very minimum, I would request the name of the person at DAS who made the decision this is okay so I can find out what authority he/she has. Again, it is my understanding that once I am non-merit, our entire UI grant is in jeopardy. I have found no contrary authority.

I am stopping down to discuss this with you right away.

Joseph L. Walsh

Chief Administrative Law Judge
Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov

From: Walsh, Joseph [IWD]
Sent: Tuesday, May 21, 2013 5:05 PM
To: Nelson, Jon [IWD]
Subject: FW: April 5, Letter

Reminder. If this is moving forward I need a new letter to appeal. I will stop down to review the information.

From: Walsh, Joseph [IWD]
Sent: Friday, April 26, 2013 11:38 AM

To: Nelson, Jon [IWD]
Subject: April 5, Letter

Jon – I am just writing to confirm that the letter I received on April 5, 2013, is on hold. In other words, I am verifying that my merit status has not been stripped.

As you will recall, Director Wahlert gave me a letter that date which indicated I am now considered a “confidential employee” which removed me from the merit system. I signed the letter acknowledging the notification on April 8, 2013 and returned it to you. I also provided you an email on that date which laid out the reasons under law that I am required to be a “merit employee” as defined by U.S. DOL. We discussed that further action would not be taken (i.e. the matter was on hold). I was out of the office from April 9 through April 19. The Director set up a meeting with me for yesterday which I presumed would be about this issue. To my surprise, she did not bring it up.

I just want to confirm we are on the same page and determine what the next steps (if any) should be.

Joseph L. Walsh

Chief Administrative Law Judge
Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov

**DEPARTMENT OF ADMINISTRATIVE SERVICES – HUMAN RESOURCES ENTERPRISE (DAS-HRE)
POSITION DESCRIPTION QUESTIONNAIRE (PDQ)**

Please read instructions before completing this form.

FOR AGENCY USE ONLY	FOR DAS-HRE USE ONLY
M-5 #:	PDQ #:
<input type="checkbox"/> New Position	Class Title:
<input type="checkbox"/> Position review requested	18-Digit Position #:
<input checked="" type="checkbox"/> Update only	Personnel Officer:
<input type="checkbox"/> Response to DAS-HRE request	Date:

1. Name of employee (if none, write VACANT) Joseph L. Walsh	2. Current 18-digit position # 309-107-APUM-00792-001	3. Current Class Title Chief Administrative Law Judge
4. Department, Division, Bureau, Section and Work Address IWD, UI Appeals Bureau, 1000 East Grand Avenue, Des Moines, IA 50319-0209		
5. Hours worked (shifts, rotations, travel) 8:00 a.m. - 4:30 p.m., M - F. Travel is required.	6. <input checked="" type="checkbox"/> Full-time (40 hours per week) <input type="checkbox"/> Part-time (list number of hours per week):	
7. Have the assigned duties changed since this position was last reviewed for a classification decision? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, place an "X" beside each NEW task written below. Also, describe in detail how those tasks are different from those previously assigned.		
8. Classification requested Administrative Law Judge 3	9. Name and job classification of the immediate supervisor Teresa A. Wahlert, IWD Director	
10. Description of Work: Describe the work in detail. Make the description so clear that the reader can understand each task exactly. In the % column, enter the percent of time spent on each task during an average work week, not to exceed 100%. List tasks in descending order of time spent. If this is a reclassification request, the previous PDQ must be attached. This PDQ will be returned if any section is incomplete.		

%	WORK PERFORMED
80%	Manage Unemployment Insurance Appeals Bureau. Supervise 14 administrative law judges and 11 support staff members. Ensure that Bureau's hearings and decisions follow applicable state and federal law and serve as a model of appropriate judicial conduct. Organize and control appeals system to allow Bureau to exceed federal time standards. Monitor Bureau's activities to maintain high level of accuracy and timeliness. Control expenses to stay within operating budget. Communicate with agency management and public as appropriate on matters involving unemployment insurance law.
15%	Provide guidance and prepare responses for the Director regarding constituent issues. Provide consultation to the Director on proposed legislation and potential impact of possible changes to unemployment insurance. Advise the Director and assist with legislative committees in drafting legislation. This position is in need of being confidential due to the nature of issues being discussed and decisions made. Train other professional staff in hearing techniques, decision writing, changes in the law of unemployment insurance and the requirements of the Code of Administrative Judicial Conduct.
5%	Ensure agency compliance with Executive Orders 8 through 11 concerning comprehensive review of all agency rules. Serve as liaison with other divisions within agency and the public on matters relating to rulemaking. Maintain agency rulemaking docket on agency web site. Draft rules of Unemployment Insurance Appeals Bureau. Communicate with agency management and public as appropriate on rulemaking process.

(To insert additional "Description of Work" items, [Click Here.](#)) Otherwise, proceed to Item 11.

11. Is this position considered to be supervisory? Yes No (If Yes, complete the *Supervisory Analysis Questionnaire* form [CFN 552-0193] and attach it with this PDQ.)
12. For what reasons are you requesting that this position be reviewed? Include, if applicable, significant changes or additions to duties, comparison(s) with other positions, etc. Be specific. Attach additional sheets, if necessary.

Employee Signature

I certify that I have read the instructions for the completion of this questionnaire, that the answers are my own, and that they are accurate and complete.

OR

The questionnaire was completed by department management. I have read and been provided a copy of this questionnaire.

Signed _____

(Incumbent Employee)

(Date)

For position review requests, if you have not been notified by your department's management of their decision to either support or not support this request within 30 days, you may send this request directly to DAS-HRE for review. Address it to: Administrator, Program Delivery Services, Iowa Department of Administrative Services – Human Resources Enterprise, Hoover Building, Level A, 1305 East Walnut, Des Moines, Iowa 50319.

Supervisor Review of PDQ

This section must be completed within 30 days after the PDQ is received from the employee. The employee must be notified of the decision to either support or not support the request. Regardless, the request must be forwarded to DAS-HRE. This PDQ will be returned if any section is incomplete. Attach additional sheets, if necessary.

13. Indicate to what extent, if any, the statements on this form are, in your opinion, not correct or need clarification.

No clarification is required.

14. Describe the origin of any new duties, i.e., those marked with an "X" in item 10. If new duties have been added, where were they performed prior to being assigned to this position? Are these duties performed by anyone else? If so, identify the person(s) and the position classification of their positions. How long have the new duties been performed?

No new duties.

15. What is the basic purpose of this position?

The basic purpose of the position is to manage the Bureau that conducts contested case proceedings under Iowa Code Chapter 17A involving the awarding and charging of unemployment insurance benefits.

16. Identify the essential functions that must be performed by the incumbent, with or without reasonable accommodations for disabilities. Identify any certifications or licenses that are required. Refer to the instruction sheet, Section 3.15 of the *Managers and Supervisors Manual*, or Chapter 5 of the *Applicant Screening Manual* for more information on essential functions.

The individual must be able to speak and comprehend speech in order to communicate by telephone or face to face with ALJs, co-workers, parties and representatives. The individual must be able to comprehend written language in order to evaluate written documents and correspondence. The individual must be able to operate computers and other office equipment to store and transfer information.

17. Identify the most critical competencies required to perform the job duties of this position as described in Item 10. *Competencies are observable and measurable knowledge, abilities, skills and behavior that must be applied to achieve results aligned with the goals of the organization.* Refer to Chapter 5 of the *Applicant Screening Manual* or the *State of Iowa Competency Guide* for more information about competencies.

The individual must be able to communicate orally with a variety of individuals who may be unfamiliar with hearing procedures and who may be under significant emotional stress due to economic conditions. The individual must be able to remain focused on time sensitive tasks in a high-volume environment rife with interruptions. The individual must demonstrate behaviors consistent with notions of fairness and impartiality at the heart of our legal system and the standards of customer service that is a part of agency culture.

18. If this position is non-supervisory, is it considered to be confidentially or managerially exempt from collective bargaining?
Yes No (If Yes, complete the Bargaining Exemption Questionnaire form (CFN 552-0631) and attach it with this PDQ.)

Supervisor Comments and Signature

19. Support Request Do Not Support Request

Comments (if applicable):

Signed *Laura Wabnitz*
(Supervisor)

6-10-13
(Date)

Appointing Authority Comments and Signature

- Support Request Do Not Support Request

Comments (if applicable):

Signed *Laura Wabnitz*
(Appointing Authority)

6-10-13
(Date)

10. Description of Work: Describe the work in detail. Make the description so clear that the reader can understand each task exactly. In the % column, enter the percent of time spent on each task during an average work week, not to exceed 100%. List tasks in descending order of time spent. If this is a reclassification request, the previous PDQ must be attached. This PDQ will be returned if any section is incomplete.

%	WORK PERFORMED

[Click Here](#) to continue with Item #11

DEPARTMENT OF ADMINISTRATIVE SERVICES – HUMAN RESOURCES ENTERPRISE SUPERVISORY ANALYSIS QUESTIONNAIRE

This form is to be completed by the employee, or the supervisor if the position is vacant, for use in determining the supervisory status of the position and to check for its proper classification. This form must be completed for all positions considered supervisory or when supervisory duties change. Attach additional sheets if answers to questions need further clarification. **Submit completed form to your Personnel Assistant.**

Walsh	Joseph	L.	Iowa Workforce Development
<i>Last Name</i>	<i>First Name</i>	<i>M.I.</i>	<i>Department</i>
309-107-APUM-00792-001			Director's
<i>Position Number (18 digits)</i>			<i>Division</i>
U.I. Appeals Bureau			1000 East Grand Avenue, Des Moines, IA 50319
<i>Bureau/Section</i>			<i>Work Location</i>

1. List the names and class titles of all supervisors above you in your chain of command. Start with your immediate supervisor.

Teresa A. Wahlert, IWD Director

2. List the class titles and number of employees you directly supervise. Do not include inmates, clients or patients. Do indicate which employees work part-time or temporary.

14 ALJs; 1 AA2; 1 AA1; 2 Clerk Specialist; 4 Clerk Advanced; 3 Word Processor

3. If any of those listed in #2 directly supervise other employees, list their names and the number of positions they supervise.

N/A

4. Number of functional program areas you supervise: 1

List: Unemployment Insurance Appeals

5. What percent of your duties and responsibilities are:

- 0 % The same kind and level of difficulty as your subordinates.
- 0 % The same kind as your subordinates, but requiring a higher level of expertise.
- 75 % Strictly supervisory in nature.
- 25 % Other tasks not specified above.

6. Do you participate in the hiring process? YES NO If yes, check one of the following:

- a. Regularly serve on an interview committee which selects employees where there is little or no additional review by a higher supervisor.
- b. Regularly interview and recommend applicants to a higher supervisor who selects the employees you will supervise.

7. Do you prepare performance evaluations on the employees listed in #2? YES NO

- a. Do you sign as the first line supervisor? YES NO
- b. Do you determine the evaluation rating? YES NO

8. Do you have the authority to take or recommend disciplinary action? YES NO If yes, check one of the following:

- Can recommend any discipline up to and including discharge with little or no additional review by a higher supervisor.
- Can recommend any discipline up to and including discharge, but subject to review by a higher supervisor.
- Limited to written reprimands.
- Limited to verbal warnings.

9. Are you a step in the grievance process? YES NO

Do you have authority to settle grievances? YES NO

10. Do you have the authority to change the work assignments of your subordinate employees and utilize them as staffing needs require? YES NO

11. Is a higher supervisor available to assist you with non-routine decision-making? YES NO

If yes, list the name and class title:

Teresa A. Wahlert, IWD Director

12. Are subordinates located in your immediate work area? YES NO

If no, where:

Some in immediate area, some working in other agency offices or remotely.

13. Note the hours of the shift(s) for which you are responsible; give actual times:

6:30 a.m. - 5:30 p.m.

14. Do you have the authority to call in off duty employees when your area is understaffed? YES NO

15. Are you authorized to approve/require overtime? YES NO

16. Are you authorized to approve vacation/sick leave YES NO

17. What are the dollar amounts for personnel, supplies, and equipment in the operating budget for the unit(s) or program(s) you supervise? Note the unit(s) or program(s) and the \$ amount:

U.I. Appeals Bureau. \$3.2 million.

Employee Signature

Date

THE FOLLOWING IS TO BE COMPLETED BY THE SUPERVISOR AND/OR APPOINTING AUTHORITY

I agree with the above statements

I disagree with the above statements and add these comments/clarifications:

Supervisor's Signature and Classification

Date

Teresa A. Wahlert

Authority's Signature

6-10-13

Date

SUBMIT COMPLETED FORM TO YOUR PERSONNEL ASSISTANT

Walsh, Joseph [IWD]

From: Lamb, T. Ryan [DAS]
Sent: Wednesday, June 12, 2013 6:23 PM
To: Wahlert, Teresa [IWD]
Cc: Walsh, Joseph [IWD]; Nelson, Jon [IWD]; Pirkl, Stefanie [DAS]; Carroll, Mike [DAS]; Minnehan, Michelle [DAS]
Subject: Re: Letter

Director and Mr. Walsh,

First I did not state any particular action was illegal and find it regrettable that my statements were construed as such. There has been no finding of illegality.

Second, there is no need for continued debate as there is consensus that federal dollars are not jeopardized as long as the position is not hearing cases.

Third, management has the authority to modify duties and the structure of its organization barring a particular Iowa law stating the contrary.

Fourth, as the only issue were the DOL requirements related to federal dollars, I see no law or rule that requires a modified PDQ prior to a finding that the position is exempt from the State's merit system because that determination was already made. Subsequent to that decision it appears as though IWD has taken action to cure any DOL concern by modifying a small percentage of the prior duties that would not impact the prior determination.

Finally, and in accord with the Director's recommendation, the apparent procedure for challenging the determination would be the appeal process prescribed in the letter or DAS administrative rules.

Respectfully,

Ryan

T. Ryan Lamb
DAS General Counsel
Office: 515-725-2205
State Cell: 515-783-6780

On Jun 12, 2013, at 5:02 PM, "Wahlert, Teresa [IWD]" <Teresa.Wahlert@iwd.iowa.gov> wrote:

Please either sign the PDQ or not. This position you hold is described in the revised PDQ. I would like you to give me the signed or not signed document - your decision - this is the current job description. The issues you have outlined have a process for you to utilize itemized in the letter. However the new PDQ reflects the current duties of the position.

- Teresa Wahlert

On Jun 12, 2013, at 2:24 PM, "Walsh, Joseph [IWD]" <Joseph.Walsh@iwd.iowa.gov> wrote:

You have asked me to respond to the PDQ you provided me in your office yesterday. I want to do this, but I am still bogged down in the process here because it doesn't feel right.

I spoke with Ryan Lamb yesterday and he conceded that U.S. Department of Labor has confirmed to him that it was illegal to make me a non-merit employee while I was hearing cases. Therefore, I never should have received the attached letter. What I am asking at this time is to have this letter officially rescinded before I address the new PDQ. I presume once the PDQ is official, I should get a new letter stripping my merit status on the basis that I no longer hear cases under my new PDQ. I would like to have a resolution to this issue before I address my concerns about the PDQ.

Thanks in advance for your consideration of my request. I will try to stop by before you leave today.

Joseph L. Walsh

Chief Administrative Law Judge
Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov

<Walsh.Confidential.pdf>

Walsh, Joseph [IWD]

From: Walsh, Joseph [IWD]
Sent: Thursday, June 13, 2013 11:23 AM
To: Dotzler, Bill [LEGIS]; Running-Marquardt, Kirsten [LEGIS]; Chapman, Jake [LEGIS]; Hanusa, Mary Ann [LEGIS]
Cc: glewis@afscmeiowa.org; sovel@kirkwood.edu; sissongreer@dol.gov; Iowa AFLCIO; cwa7110@msn.com; deevanderhoef@gmail.com; sfalb@alpinecom.net; kanderson@marshalltown.org; Walsh, Joseph [IWD]
Subject: Chief Administrative Law Judge
Attachments: Re: Need to Talk ASAP; FW: April 5. Letter

Dear Iowa Workforce Board Members

I am writing to provide you with information regarding a serious problem at Iowa Workforce Development. First, I apologize for dragging you into this. I know many of you and I hate putting anyone in an awkward position. Second, I apologize that I forwarded several of you (legislators) an unexplained email chain early this morning. This email will provide context. Unfortunately, it has gotten to a point that I think I have no choice but to go beyond my superiors at IWD to get help. I am just not sure what else to do.

I am the Chief Administrative Law Judge of the Appeals Bureau at Iowa Workforce Development. The Chief Administrative Law Judge oversees all of the judges who oversee unemployment insurance appeals. It has always been a merit, non-partisan position for decades and it is required to be so under the Social Security Act and the regulations prescribed by the U.S. Department of Labor. Those laws and regulations clearly state that any individual who hears contested cases must be "merit."

On April 5, 2013, in response to new administrative rules passed by the Department of Administrative Services, IWD Director Teresa Wahlert gave me a letter informing me that she was making my position non-merit or "confidential" thus stripping my merit protection so that I serve only at her pleasure. After explaining to the IWD H.R. Manager that this was illegal, we agreed that the letter would not go into effect until there was further research. Unfortunately, IWD did not do what it promised and went through with making me at-will contrary to our explicit understanding.

I contacted U.S. DOL. My regional representative is Betsy Schloesser. She has referred me to national office, Steve Massey. I have been told by U.S. DOL, in no uncertain terms, that what has happened to me is contrary to well established law. I finally met with the DAS attorney, Ryan Lamb. He is the individual who made the initial legal error and determined that my position could be at-will because it was mostly managerial. He promised to contact U.S. DOL and get it straightened out. I was glad because I was not looking for any type of confrontation, I just wanted to make sure the agency was following the law. Mr. Lamb was told that "as long as a Judge is deciding cases, he cannot be made at-will."

IWD then formulated a response based upon this. Instead of rescinding the illegal letter, they gave me a new job description on June 11, 2013, which removed my authority to hear cases. It appears that Mr. Lamb is attempting to cover his legal mistake with bad judgment. After the Director did this, things have really gone sideways in an unfortunate way (as you can see by the email chain below). While she did not say it to me initially, after the fact she told me I was supposed to cease any of my work on hearings. I still have not received further information about whether I am supposed to complete cases I have already heard but not written. In addition to violating every fundamental principle of judicial autonomy, this is a violation of the code of administrative judicial ethics. Worse, it is clearly being done for the sole purpose of getting around the fact that it already broke the law on April 5.

As members of the Iowa Workforce Board, I thought you would want to be aware of this. If there is anything you think you can do to help resolve the situation, your efforts would be greatly appreciated. Thanks so much in advance for your

consideration. I would be happy to take your calls if you would like more information. My personal cell phone is (515) 401-8170.

Joseph L. Walsh

Chief Administrative Law Judge
Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov

From: Walsh, Joseph [IWD]

Sent: Thursday, June 13, 2013 5:29 AM

To: Lamb, T. Ryan [DAS]; Wahlert, Teresa [IWD]

Cc: Nelson, Jon [IWD]; PirkI, Stefanie [DAS]; Carroll, Mike [DAS]; Minnehan, Michelle [DAS]; Schloesser, Elizabeth - ETA; Boeyink, Jeffrey [IGOV]; Dotzler, Bill [LEGIS]; Running-Marquardt, Kirsten [LEGIS]; Chapman, Jake [LEGIS]; Hanusa, Mary Ann [LEGIS]

Subject: RE: Letter

* Director Wahlert and Mr. Lamb

Please allow me to clarify a couple of fairly significant points. For a variety of reasons, I have gone ahead and copied this email to the U.S. Department of Labor, the Governor's office, as well as the legislative members of the IWD Board. I will follow up with all of these individuals and others to provide full context, but since the two of you have felt it necessary to bring in an array of others to witness this email exchange, I feel it is necessary at this time to bring this issue into the full light of day until something meaningful is done to correct the problems you have created.

1. Here is exactly what occurred in my conversation with Ryan Lamb on June 11. Mr. Lamb told me his attorney, Jeff Edgar, had spoken with U.S. DOL. He could not recall who Mr. Edgar had spoken to. It was Betsy Schloesser. Ms. Schloesser told Mr. Edgar that as long as I am deciding cases, I cannot have my status changed to a non-merit employee. This is exactly what both Mr. Lamb and Ms. Schloesser told me. While it was probably not stated directly in the conversation, I think the context made it clear that the reason my status cannot be changed to an at-will (non-merit) status as long as I am deciding cases, is because it is contrary to federal law. In other words it is illegal. Nevertheless, this is exactly what occurred on April 5.
2. When I met with Director Wahlert on June 11, she handed me a new PDQ (job description) and she specifically asked for my input and to get back with her on June 12. She never told me that the PDQ was in effect. On the contrary, she implied that I would have some "input" and she wanted to "hear back" from me. It was never presented to me that it was my "current" PDQ, as I would have objected (See #3). To be clear, I spent most of the day on June 12, deciding cases in an effort to quickly clean up my outstanding cases (those heard but not written). The other portion of the day I spent trying to get in and see the Director who never had time to see me.
3. In the June 11, meeting, the Director did mention reassigning cases which have not been heard. I have a few of those and I will take steps to reassign cases which I have not already heard. I am sure, however, that no one is requesting that I stop in the middle of a case which has been heard but not decided. Not only would that be an intrusion on my administrative judicial independence and authority to decide cases under federal law, I believe strongly that it would be a breach of my ethical duties. Again, Director Wahlert did not ask me to do that on Tuesday and I am sure no one is asking me to do that now. Canon 1 of the Code requires me to uphold the integrity and independence of the administrative judiciary. Canon 3 (6) requires me to dispose of all adjudicative matters promptly and efficiently. Importantly reassigning outstanding cases could harm the parties who have submitted their cases to me for determination. I only have a handful of these remaining but there is no compelling reason for reassignment which has been communicated at this time. Furthermore, I presume

that I am a merit employee until I am finished with cases. I will report to Director Wahlert this morning how quickly I can resolve these as soon as I am able to review my case report this morning.

4. I have no choice but to conclude that the two of you are deliberately attempting to sabotage my due process rights. I received the notice that I was losing my merit status on April 5, 2013. I spoke with IWD HR Manager Jon Nelson the following Monday, April 8. I explained to him the letter was a violation of federal law. I showed him the law and the guidance letters from U.S. DOL. Jon agreed that it was a problem. He agreed to place the merit status issue "on hold." In other words, he agreed that the letter would not go into effect until it was reviewed. You both knew this because I sent both of you emails (which I have attached hereto). No one has disputed that the letter was on hold at any point throughout these proceedings until now. I left for vacation and did not return to Iowa until April 21, after my appeal deadline had passed. Jon and I had specifically agreed that if it was illegal under federal law, it was illegal. There was no need to appeal. The legal and fair way to fix this violation of the law is to rescind the illegal taking of my merit rights and then providing me with a new letter (with appeal rights) after I am not longer deciding cases.
5. Finally, and most importantly to me, this is a horrible management decision. After Director Wahlert gave me the PDQ and asked me to get back with her, I agreed. I specifically told her I would sleep on it and give it meaningful thought. And I did. I really did. After doing so, it was my hope to have a heart to heart with her in order to explain why this decision is bad for the Appeals Bureau, bad for IWD and bad for Iowa. Mr. Lamb will remember that I did have this discussion with him. And, if he is honest, he will admit he agreed with me. This might be a good plan in for California or New York where they have hundreds of judges. This is not good for Iowa. We have 14. We are a small state and this will cause the unit to lose all of its flexibility that is built in. If I am unable to perform the same work as the Judges are, I do not believe I can command respect the way I need to. This is not merely a substantial change in the job of the Chief ALJ, it is monumental. It is not what I signed up for. It appears we are past this point now and I will never get to have any meaningful input. For whatever reason, things have gone completely sideways. But please understand this is a bad decision and I still have not heard a single business reason for why this needs to be done. The only reason given at all was that the Appeals Bureau needed "more management." My response to that is how about the lead worker I have been requesting for a year and a half? I have worked hard to make Appeals successful despite the lack of support because I love this agency and I believe in what we do. When I started as Chief in 2011 our time lapse numbers were under 10 percent and I improved that so we have hit or nearly hit 60 percent consistently despite being down 4 Judges. I have improved our MPU efficiency from 36th in the nation to 18th in the nation. I have kept us significantly under budget despite substantial federal budget cuts. I have met expectations on all my employment evaluations and I have hardly heard a negative word from anyone about my management until the last 6 weeks. Something is wrong here and we all know it. There is obviously another motive for what is happening. It is not right to interfere with the judicial integrity of our entire system, just to get at me.

It is my sincere hope to sit down and work this out this morning when we all get in to work. I am exhausted and will be in a little late. I will, however, be in - ready to resolve all of these issues in good faith. I hope are too.

Joseph L. Walsh

Chief Administrative Law Judge
Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Personal Cell Phone: (515) 401-8170
joseph.walsh@iwd.iowa.gov

From: Lamb, T. Ryan [DAS]

Sent: Wednesday, June 12, 2013 6:23 PM

To: Wahlert, Teresa [IWD]

Cc: Walsh, Joseph [IWD]; Nelson, Jon [IWD]; Pirkl, Stefanie [DAS]; Carroll, Mike [DAS]; Minnehan, Michelle [DAS]

Subject: Re: Letter

Director and Mr. Walsh,

First I did not state any particular action was illegal and find it regrettable that my statements were construed as such. There has been no finding of illegality.

Second, there is no need for continued debate as there is consensus that federal dollars are not jeopardized as long as the position is not hearing cases.

Third, management has the authority to modify duties and the structure of its organization barring a particular Iowa law stating the contrary.

Fourth, as the only issue were the DOL requirements related to federal dollars, I see no law or rule that requires a modified PDQ prior to a finding that the position is exempt from the State's merit system because that determination was already made. Subsequent to that decision it appears as though IWD has taken action to cure any DOL concern by modifying a small percentage of the prior duties that would not impact the prior determination.

Finally, and in accord with the Director's recommendation, the apparent procedure for challenging the determination would be the appeal process prescribed in the letter or DAS administrative rules.

Respectfully,

Ryan

T. Ryan Lamb
DAS General Counsel
Office: 515-725-2205
State Cell: 515-783-6780

On Jun 12, 2013, at 5:02 PM, "Wahlert, Teresa [IWD]" <Teresa.Wahlert@iwd.iowa.gov> wrote:

Please either sign the PDQ or not. This position you hold is described in the revised PDQ. I would like you to give me the signed or not signed document - your decision - this is the current job description. The issues you have outlined have a process for you to utilize itemized in the letter. However the new PDQ reflects the current duties of the position.

- Teresa Wahlert

On Jun 12, 2013, at 2:24 PM, "Walsh, Joseph [IWD]" <Joseph.Walsh@iwd.iowa.gov> wrote:

You have asked me to respond to the PDQ you provided me in your office yesterday. I want to do this, but I am still bogged down in the process here because it doesn't feel right.

I spoke with Ryan Lamb yesterday and he conceded that U.S. Department of Labor has confirmed to him that it was illegal to make me a non-merit employee while I was hearing cases. Therefore, I never should have received the attached letter. What I am asking at this time is to have this letter officially rescinded before I address the new PDQ. I presume once the PDQ is official, I should get a new letter stripping my merit status on the basis that I no longer hear cases under my new PDQ. I would like to have a resolution to this issue before I address my concerns about the PDQ.

Thanks in advance for your consideration of my request. I will try to stop by before you leave today.

Joseph L. Walsh

Chief Administrative Law Judge
Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov

<Walsh.Confidential.pdf>

Walsh, Joseph [IWD]

From: Walsh, Joseph [IWD]
Sent: Tuesday, June 18, 2013 11:36 AM
To: Carroll, Mike [DAS]; Lamb, T. Ryan [DAS]
Cc: Pirkl, Stefanie [DAS]; Minnehan, Michelle [DAS]
Subject: My Current Status
Attachments: Report of Employees Changed from Merit to Non-Merit Jan-June 2013.pdf; April 5, Letter; FW: April 5, Letter; Re: Remaining Files

Director Carroll and Mr. Lamb

Would DAS please provide me with an update on my current status?

As you know, I received a letter on April 5, 2013 removing my merit status. On April 8, Jon Nelson and I agreed that any action was on "hold." I documented this to Jon on April 26, attached. Without notice, Jon Nelson informed me on May 21, that I had been removed from merit protection as of that date. Information I have now been provided shows that my merit status was actually removed on April 26, 2013, ironically the same date that I had confirmed with Jon that the matter was on hold. I have attached all of this information.

Shortly after my meeting with Ryan Lamb on May 31, DAS came to the conclusion and agreed that it was illegal, or at least improper under federal law, to classify me as a non-merit employee "as long as I am deciding cases." On June 11, the Director provided me with a new PDQ removing my authority to hear cases. I immediately explained to the Director that I am still deciding cases and the Director agreed I am still hearing cases in an email (attached) dated June 13. She specifically has not directed me to cease deciding the current cases that I have.

I would also note – just so everyone understands – that I was spending far more than 15 percent of my time deciding cases. My PDQ was wrong and someone probably should have asked me about it. In a report I gave to the Director in 2011, I wrote the following: "**Judging Cases.** I have been spending about 50 percent of my time on this function. Most weeks I am working 50 to 60 hours and I am spending 25 to 30 doing cases. For my credibility, I think it is important that I continue to do this function at some level. I hear all cases involving discovery disputes." The number fluctuated over time, but was probably still around 30 to 40 percent of my time through the first half of 2013.

With all this in mind, what is my current status? Am I confidential and non-merit or am I covered by merit protection at the present time? I believe to be in compliance, I must be merit at the present time. Furthermore, since I have been deciding cases for this entire period of time, can we agree that my status for the entire period of time is changed back to merit? I appreciate a timely response to this inquiry. Thanks in advance for your consideration.

Joseph L. Walsh

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Terry E. Branstad, Governor

Kim Reynolds, Lt. Governor

Teresa Wahlert, Director



June 20, 2013

Joseph L. Walsh
929 - 30th Street
Des Moines, IA 50312

Dear Joe:

On April 5, 2013, you were notified that you would no longer be covered under the merit-system provisions of Iowa Code chapter 8A, subchapter IV. This letter serves to notify you that the aforementioned letter is hereby rescinded and withdrawn.

You must acknowledge receipt of this notice. If you have any questions, please contact me at 515 -281-5364.

Sincerely,

Handwritten signature of Teresa Wahlert in cursive.

Teresa Wahlert
Director, IWD

I have received a copy of this notification.

Handwritten signature of the employee in cursive.

Employee Signature

6/20/13
Date