

# State of New Hampshire



PERSONNEL APPEALS BOARD  
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Concord, New Hampshire 03301  
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## ***APPEAL OF CYNTHIA BELANGER***

***New Hampshire Hospital***

***Docket #92-O-21***

**January 31, 1997**

The New Hampshire Personnel Appeals Board (Bennett, Rule and Barry) met on Wednesday, January 22, 1997, under the authority of RSA 21-I:58, to hear the appeal of Cynthia Belanger, an employee of New Hampshire Hospital. The appeal was originally filed on Ms. Belanger's behalf by SEA Field Representative Stephen McCormack. However, Ms. Belanger appeared at the hearing *pro se* having withdrawn her SEA membership prior to the scheduling of her appeal. Virginia Larnberton, Director of Personnel, appeared on behalf of the Division of Personnel. The record in this matter consists of the audio tape recording of the hearing and documents submitted by the parties prior to the hearing.

Ms. Belanger was appealing the Personnel Director's decision affirming New Hampshire Hospital denial of her request for retroactive coinpenation as an untimely request. The substance of Ms. Belanger's request is best summarized in SEA Field Representative McCormack's letter to Personnel Director Lamberton (formerly Vogel) dated February 27, 1992. In that letter, Mr. McCormack indicated that as a result of the Mental Health Worker upgrading, Ms. Belanger had received checks for retroactive compensation on January 17,

1986, and February 14, 1986, in the amounts of \$430.56 and \$365.44 for work she performed as a Mental Health Worker when those positions were upgraded. However, he asserted that Ms. Belanger did not receive compensation for any work performed prior to April 9, 1985, although the effective date of the change was March 30, 1984.

Ms. Belanger made no specific offers of proof concerning dates of work for which she believed she was entitled to additional compensation, nor did she make an offer of proof concerning the amount of additional compensation to which she believed she was entitled. Ms. Belanger agreed that she probably should have been more proactive in asserting her claim, and probably should have filed appeals in 1986, 1987 and 1988. However, she said that at the time she was simply "a naive State employee" who thought she had done everything she needed to do by informing her SEA representative that she believed she was entitled to additional compensation.

Ms. Belanger said that she might be at fault for failing to file an appeal. She also argued that the State Employees' Association could be at fault for failing to research or submit her claim. Finally, she asserted that New Hampshire Hospital could be at fault for failing to complete a thorough review of their records to determine if she had been properly compensated. Ms. Belanger said that if New Hampshire Hospital had thoroughly reviewed their records, they would have discovered an error in her compensation. She said that while she could not deny that her appeal was untimely, the State could not deny that she had worked the time and was entitled to compensation.

Ms. Lamberton argued that to the best of the State's knowledge and belief, Ms. Belanger had been appropriately compensated. She noted that during the period of time during which Ms. Belanger worked as a Mental Health Worker, some of her assignments had been as an employee of the Division for Children and Youth Services, and that New Hampshire Hospital would not have had reason to research their payrolls, as those positions were not

subject to the order for retroactive compensation. Ms. Lainberton briefly reviewed correspondence and documents related to Ms. Belanger's appeal. She then asked the Board to deny Ms. Belanger's appeal as untimely filed.

The documentary evidence submitted by the parties reflects the following:

1. Ms. Belanger received checks on January 17, 1986, and on February 14, 1986, in the amounts of \$430.56 and \$365.44, totaling \$796.00, as retroactive compensation for work she performed as a Mental Health Worker at New Hampshire Hospital.
2. On July 23, 1987, the New Hampshire Supreme Court issued a decision in the Appeal of Thomas Robinson, et al, ordering retroactive compensation for those employees who had left their positions as Mental Health Workers before the upgrading was approved. The Court also ordered payment to those persons who were not classified as Mental Health Workers, but who performed over-time assignments as Mental Health Workers.
3. On December 21, 1987, in order to implement the Court's order, the Personnel Appeals Board directed the State Employees' Association and the Office of the Attorney General to file a proposed agreement with the Board for payment of retroactive compensation. That agreement was to have been filed with the Board not later than January 26, 1988. Implementation of the payment scheme included a review of New Hampshire Hospital payment records, posting of notices at New Hampshire Hospital and the Department of Health and Human Services instructing employees who believed they were eligible for retroactive compensation to submit claims, and publication of articles in the State Employees' Association newsletter describing the Court's decision as well as eligibility criteria.
4. Ms. Belanger recalls seeing the notices and newsletter articles.
5. On February 22, 1988, SEA General Counsel wrote to the Attorney General indicating that an SEA Newsletter article was continuing to generate a few responses from

employees. He suggested that the Association be permitted additional time for employees to file claims before the Association submitted its final list.

6. On June 20, 1988, the Association provided the Attorney General with an updated list of those individuals whom they believed to be eligible for additional compensation.
7. On November 4, 1988, the Board issued another order instructing New Hampshire Hospital to immediately begin making payment to those persons who were identified as eligible for compensation between March 30, 1984, and September 13, 1985, inclusive. The Hospital was further directed to forward authorization for payment, through the Board, to the Director of Personnel for payment processing.
8. Ms. Belanger admitted that she was aware of the Court's decision in the Robinson appeal, and believed that she had to submit a request for compensation if she thought she was owed additional compensation.
9. Ms. Belanger spoke with Ann Spear, her SEA Field Representative, to say that she thought she was still entitled to additional compensation.
10. Ms. Belanger said she left State service in 1989 and returned in 1990, when she again began to make inquiries about the compensation received by her co-workers.
11. On December 17, 1991, SEA Field Representative Stephen McCormack wrote to Mark Chittum, New Hampshire Hospital Director of Personnel and Financial Services, indicating that he had spoken with a New Hampshire Hospital representative on November 20, 1991, concerning Ms. Belanger's claim. He wrote that on or about December 3, 1991, Sharon Sanborn of New Hampshire Hospital had directed him to set forth the specific facts surrounding his request and forward it to Mr. Chittum.
12. Mr. Chittum responded to the request by letter dated December 24, 1991, denying the appeal as untimely.
13. By letters dated January 2, 1992 and February 27, 1992, Mr. McCormack appealed that decision to the Director of personnel stating, in part: "Ms. Belanger states it has taken her so long to come forward with this matter because, even though she eventually found out about the Supreme Court

decision of 1987, she was in the midst of career and personal problems. She resigned her State of New Hampshire employment during May of 1988 and lost track of what was happening. It was not until her return to state employment, and eventually asking again about the 1987 Supreme Court decision, did she become aware that she should be entitled to any applicable retroactive monies that she had not received."

14. Ms. Lainberton responded by letter dated April 2, 1992, finding that the appeal was untimely.

15. In her April 2, 1992, letter, Ms. Lainberton wrote: "If Ms. Belanger knew of the Robinson decision in 1987 or when the Board ordered that the parties submit a final list of persons that the Association believed were eligible, and the Association did not include her name, Ms. Belanger should have filed a claim at that time. Ms. Belanger was always employed in a full time basis on the Hospital grounds where the announcements were posted. You now file an appeal to me almost six years subsequent to the alleged adverse action claiming that due to personal and career problems two years after the alleged adverse action Ms. Belanger is coming forward now. As I stated in my first letter to you, the Personnel Appeals Board issued orders to all of the parties to produce a final list. A list was submitted by the Association as well as the State. Payments were made to all eligible individuals on the list pursuant to the board's order." Ms. Lainberton concluded by saying that she concurred with Mr. Chittum's decision that the appeal was untimely.

There is substantial evidence that New Hampshire Hospital did complete a search of its records and did believe that it had made the appropriate payment based on those hours when Ms. Belanger worked as a New Hampshire Hospital employee. According to Ms. Belanger, she returned to employment at New Hampshire Hospital in 1990, and took no steps to ascertain the status of her request until late in 1991.

The Board appreciates how honest and forthright the appellant has been about the timeliness of her appeal. However, throughout the course of her appeal, Ms. Belanger was represented by the State Employees<sup>3</sup> Association, which had an obligation to protect her interests. As late as June of 1988, when Ms. Belanger was still employed by the State and was represented by the Association, the SEA was submitting names of persons entitled to additional compensation. There is no evidence that a claim was submitted on Ms. Belanger's behalf until more than three years later, in December of 1991.

On the evidence, argument and offers of proof, the Board voted unanimously to dismiss Ms. Belanger's appeal as untimely.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



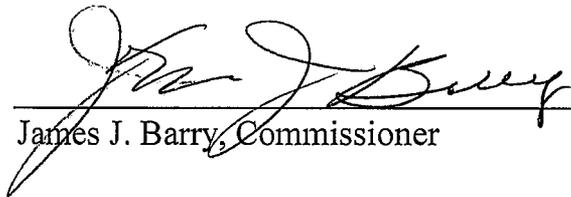
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Mark J. Bennett, Acting Chairman



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Lisa A. Rule, Commissioner



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James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Cynthia Belanger, Appellant  
Marie Lang, Human Resources Administrator, New Hampshire Hospital