

State of New Hampshire

WPPID864



PERSONNEL APPEALS BOARD  
State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

APPEAL OF RUTH BLAKE  
Docket #91-0-34  
Response to Appellant's Motion for Reconsideration

January 16, 1992

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, January 8, 1992, to consider the appellant's Motion for Reconsideration in the above-captioned appeal. The Board, in its decision dated October 11, 1991, denied the appellant's Petition for Declaratory Ruling, finding that the proposed ruling actually constituted a request for rulemaking on matters beyond the Board's jurisdiction.

In support of her Motion, the appellant stated the following:

"...RSA 21-I:46(V) gives the Board the authority to advise the Director of the Division of Personnel with regard to all existing rules of the Division. We petition the Board to take under consideration the lack of consistency in applying Per 307.08 of the Rules of the Division of Personnel, and advise the Director to interpret it evenly, thus making a change to Per 307.08."

The appellant argued that it has been the past practice for agencies to grant civil leave for hearings, and that the state does not require employees who attend hearings on the agency's behalf to use annual leave.

The appellant asked that the Board advise the Director to apply Per 307.08 evenly by allowing employees to use civil leave when they attend hearings, whether they appear on behalf of the State or on their own behalf. The appellant further asked that the Board order reinstatement of 8 hours of annual leave Ms Blake utilized for the purposes of attending her Workers' Compensation hearing.

The Board voted unanimously to affirm its decision of October 11, 1991, and to deny the appellant's Motion for Reconsideration for the following reasons:

APPEAL OF RUTH BLAKE

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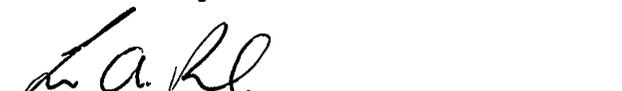
1. The appellant has offered no evidence that "past practice" involved allowing employees to utilize civil leave for the purpose of attending Worker's Compensation hearings when such hearings are convened at their request.
2. An employee called to testify on behalf of an agency does so as a work assignment and presumably has no personal or vested interest in the outcome of such hearing. Requiring that employee to use annual leave to perform a work assignment would be a violation of the Personnel Rules and the Collective Bargaining Agreement.
3. In requesting that the Director be advised to allow employees to utilize civil leave for purposes other than those clearly defined by Per 308.05, the appellant has asked the Board to direct the Division of Personnel to violate its own rules.

Accordingly, the Board voted to deny the appellant's Motion for Reconsideration, and to affirm its decision of October 11, 1991, denying the Petition for Declaratory Ruling.

THE PERSONNEL APPEALS BOARD

  
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Mark J. Bennett

  
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Robert J. Johnson

  
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Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel  
Margo Hurley, SEA Field Representative  
Sandra Knapp, Superintendent, Glencliff Home for the Elderly

# State of New Hampshire

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## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

RUTH BLAKE  
Docket #91-O-34  
Glencliff Home for the Elderly

October 11, 1991

### Response to Appellant's Petition for Declaratory Ruling

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met October 9, 1991, to review the petition for declaratory ruling filed by SEA Field Representative Margo Hurley on April 24, 1991, on behalf of Ruth Blake, an employee of the Glencliff Home for the Elderly.

Ms. Hurley, on behalf of Ms. Blake, argued that the appellant should not have been required to use her own accumulated leave time in order to attend her own hearing on a Workers' Compensation claim. In support of that position, Ms. Hurley argued, in part, that "Ms. Blake was only at the hearing because of a condition arising from her employment..."

Per 307.08 of the Rules of the Division of Personnel states.:

"An employee shall be given time off without loss of pay or annual leave when performing jury duty, when subpoenaed to appear before a court, public body, or commission, and may be given time off with the appointing authority's permission for the purpose of taking department of personnel examinations or to attend a legislative hearing."

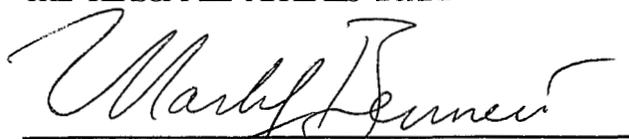
Ms. Hurley suggested a "Draft of Proposed Rule" which would include time off without loss of pay or annual leave "...when attending a workers' compensation hearing, either as a witness or as a participant...".

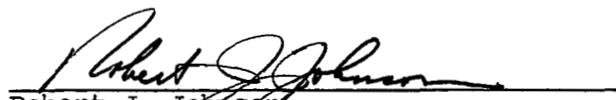
The proposed ruling is a substantive issue involving a proposed amendment to the Rules of the Division of Personnel, and does not constitute a proposed ruling as to the specific applicability of any statutory provision or of any rule or order of the Board. [See Per-A 102.02 of the Rules of the Personnel Appeals Board.] The "Draft of Proposed Rule" suggested by the appellant is beyond the Board's rulemaking authority as defined by RSA 21-I:46 VII, which clearly limits the Board's authority to the adoption of rules relating to "procedures for the conduct of [the Board's] business." Accordingly, the petition is denied.

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Glenclyff Home for the Elderly  
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On the basis of the information submitted by the appellant, the Board found that the Director correctly applied Per 308.08 in denying Ms. Blake's request for the use of civil leave to attend a Workers' Compensation hearing. Inasmuch as the appellant was not "subpoenaed to appear before a court, public body, or commission", she was not entitled to use civil leave for the purpose of attending the hearing in question. Therefore, Ms. Blake's appeal is denied.

THE PERSONNEL APPEALS BOARD

  
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cc: Virginia A. Vogel, Director of Personnel  
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