

# State of New Hampshire

WPPID1042



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

**APPEAL OF CARL DANIELS**  
Docket #93-O-1  
Department of Postsecondary Technical Education

February 16, 1993

By letter dated January 11, 1993, **SEA** Director Thomas Hardiman requested that the Board issue an "expedited decision" in the appeal of Carl Daniels. In support of that request, The appellant responded on January 11, 1993, requesting that the Board issue an expedited decision without evidentiary hearing. In support of that request, the appellant offered the following:

"We would be willing to submit a position memorandum on this issue, however, if the PAB is going to deny jurisdiction then it would be most beneficial to the affected employees if we could seek a final resolve at a higher level as soon as possible. Your expedited decision would move the process along in a much quicker fashion."

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, January 20, 1993, to consider the written submissions by the parties in the above-captioned appeal.

On November 5, 1992, Carl Daniels, through his representative Thomas F. Hardiman, **SEA** Director of Field Operations, requested a hearing before the Board, alleging the Department of Postsecondary Technical Education was "...not following a state law which provides benefits for laid off state employees." From reviewing the attachments, it appears the "law" to which the appellant referred was Chapter 261, Laws of 1990 (HB 1506).

On December 31, 1992, the Department of Postsecondary Technical Education, filed a Motion to Dismiss. In support of that Motion, the Department argued the Appellant's lay-off from service was due to a reduction in student enrollment causing a decline in program workload. The Department further argued that the benefits provided pursuant to Chapter 261, Laws of 1990, extended only to those employees laid-off as a result of 1990, 1:16 or any other State law. As such, the Department concluded the Board lacked subject matter jurisdiction to hear Mr. Daniels appeal as set forth in the New Hampshire Supreme Court decision in the Appeal of Higgins-Broderson, 133 NH 576, 578 A2d 868 (1990).

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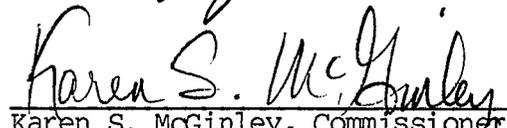
In the Appeal of Higgins-Brodersen (1990) 133 NH 576, 578 A2d 868, the Court found the Board had reasonably concluded it lacked jurisdiction to hear the appeal, as it did not arise out of the application of a personnel rule. RSA 21-I:46 clearly provides that the Board shall hear and decide appeals "...as provided by RSA 21-I:57 and 21-I:58 and appeals of decisions arising out of the application of rules adopted by the director of personnel...". To date, the Board has no evidence upon which it might decide if Mr. Daniels' appeal arises from the application of a rule, and if so, what rule the appellant alleges to have been applied.

Mr. Hardiman indicated in his January 11, 1993 letter to the Board that he had no intention of waiving Mr. Daniels' right to a request a full hearing, but suggested that because of the volume of pending appeals, a decision on the "Board's feeling on their jurisdiction" would be helpful. If the parties wish to request that the Board dispose of this matter without an evidentiary hearing, they may do so, provided that they submit a joint stipulation of facts and memoranda of law supporting their positions on the matter of the Board's jurisdiction to hear and decide this appeal. Should such a request be filed, and should the Board grant that request, Mr. Daniels will only be entitled to further review of his appeal by the Board if the Board decides his appeal is within its subject matter jurisdiction.

THE PERSONNEL APPEALS BOARD

  
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Mark J. Bennett, Acting Chairman

  
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Robert J. Johnson, Commissioner

  
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Karen S. McGinley, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Sara Sawyer, Human Resource Administrator  
Department of Postsecondary Technical Education  
Thomas F. Hardiman, Director of Field Operations  
State Employees' Association