

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301
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Appeal of Julie Johnson

Docket # 2013-P-002

FACTS:

Julie Johnson is employed as a part-time Criminal Evidence Technician at the Department of Safety. Ms. Johnson applied for a full time Evidence Technician position and was notified by letter dated March 29, 2013 that she did not get the position. Ms. Johnson, through her attorney, filed an appeal with the Personnel Appeals Board ("PAB") board on April 12, 2013. The State filed an objection to the request for appeal citing two issues. First, that the appeal was not filed in a timely manner and second, that the PAB lacks subject matter jurisdiction to hear the appeal. The PAB met on November 12, 2014 to determine whether the matter should be scheduled for hearing pursuant to RSA 21-I:58 or whether the request for hearing should not be accepted for lack of subject matter jurisdiction.

DISCUSSION:

This matter was filed in March of 2013 and has not been reviewed until this date. The PAB stopped meeting in October 2013 as it lacked a quorum of members to conduct its business pursuant to RSA 21-I:46. The PAB was reconstituted by Governor and Council in May 2014 and started meeting in June 2014. The PAB scheduled termination cases first and now turns to those cases where termination is not at issue.

Pursuant to the New Hampshire Code of Administrative Rules Per-A 207.02(b)(3) the PAB may hear cases related to the non selection for a vacancy. However, RSA 21-I:58 I. states:

Any *permanent* employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal. (emphasis added)

The definition of "permanent employee" may be found in Per 102.42 which states:

"Permanent employee" means a full-time employee who has satisfactorily completed a probationary period and whose continued employment in a position is contingent upon the recommendation of the appointing authority.

And further the definition of part-time employee is found in Per 102.41 which states:

"Part-time employee" means an individual who works less than the basic workweek established for a specific class.

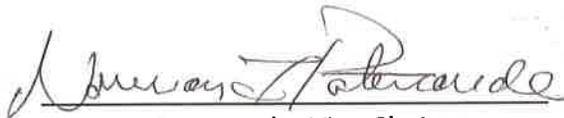
CONCLUSION OF LAW:

Because the appellant is employed by the State as a part-time employee, the appellant does not have a statutory right to appeal her non-selection to a permanent position. Because the PAB lacks jurisdiction over this matter, this case shall not be scheduled for hearing and is dismissed.

The PAB need not rule on the state's other argument for dismissal regarding whether the request was filed in a timely manner pursuant to the PAB rules in that this Board lacks the subject matter jurisdiction for the reasons explained above.

PERSONNEL APPEALS BOARD

DECISION ISSUED NOVEMBER 12, 2014



Norman Patenaude, Vice Chairman



Charla Stevens

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