

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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

### APPEAL OF CONSERVATION OFFICER DAVID LOVEQUIST

December 28, 1988

By letter dated August 29, 1988, Conservation Officer David Lovequist filed with the Personnel Appeals Board a request for hearing to appeal the Department of Fish and Game decision denying his request for transfer to a position of Conservation Officer in the Littleton Patrol Area. Officer Lovequist was informed of the denial of transfer by letter dated August 18, 1988 from Major Henry P. Mock, Chief of Law Enforcement for the Department of Fish and Game.

On September 12, 1988, Assistant Attorney General Leslie J. Ludtke, on behalf of the Department of Fish and Game, filed with the Board a Motion to Dismiss this appeal. In that Motion, the Department of Fish and Game alleged that Per 302.05 (b) of the Rules of the Division of Personnel provides for appeal of a transfer when the transferred employee believes the action was not in the best interest of the agency. Conservation Officer Lovequist did not allege that the transfer decision was not in the agency's best interest. Further, the State argued that Per 302.03(b) applies only to "the employee affected", or in this instance, to the employee who believes his transfer was made for some reason other than the agency's best interests.

By letter dated September 26, 1988, Attorney William P. Briggs notified the Board that he represented the appellant. On October 12, 1988, Attorney Briggs filed with the Board an Objection to Motion to Dismiss RE: Appeal of Conservation Officer David Lovequist. In his objection, Attorney Briggs argued that an imposition of a new personnel standard upon Officer Lovequist in the decision to deny him the requested transfer was violative of Per 102.01 (b), (c) and (e) of the Rules of the Division of Personnel, denying the appellant fair and equal opportunity based upon merit principles, and failing to provide him the opportunity to render his best service to the State. Further, Attorney Briggs reiterated the appellant's original appeal argument that the criteria used in deciding to deny the transfer were the result of "a new personnel standard...which had not been used in the past nor disseminated to the employees in the form of a personnel directive." Attorney Briggs then argued that utilizing that standard was violative of previous department standards.

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At its meeting of November 22, 1988, the Personnel Appeals Board, Commissioners Cushman, Brickett and Platt sitting, reviewed the original request for appeal, the Motion to Dismiss filed by the State, and the Objection to that motion filed by appellant's counsel. The Board voted unanimously to grant the State's Motion to Dismiss. Per 302.05(b) states, "It is the prerogative of management to determine who and when employees are to be transferred, keeping in mind that they can be made only for the best interests of the agency. Such transfers are subject to appeal to the [Appeals Board] by the employee affected if he feels the transfer was made for some other reason." Whereas Officer Lovequist was not transferred, and therefore not the "employee affected", he had no right to appeal under the provisions of Per 302.05(b) of the Rules of the Division of Personnel. Based upon the foregoing, the Board voted to dismiss the matter.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE

Executive Secretary

cc: Leslie J. Ludtke, Assistant Attorney General  
Environmental Bureau, Office of the Attorney General

William P. Briggs, Esq.  
Dill and Briggs, Attorneys at Law

Virginia A. Vogel  
Director of Personnel

State of New Hampshire

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State House Annex  
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88-0-113

APPEAL OF CONSERVATION OFFICER DAVID LOVEQUIST

Order on Motion for Rehearing

May 22, 1989

Under cover of a letter dated January 11, 1989, Appellant moved for a rehearing of the Board's Decision dated December 28, 1988. That Decision sets out the prior procedural history in great detail.

At its meeting on March 29, 1989, the Board (McNicholas, Cushman and Scott), after reviewing the Motion for Rehearing, the Department's Objection, and the documents cited in the earlier decision, voted unanimously to deny Appellant's Motion for Rehearing.

A

Appellant first argues that he has an absolute right to a hearing under Per 306.04 and RSA 21-1:58, I. Appellant presumably argues he has a right to present oral evidence and/or oral argument.

The Board does not believe that either side has an absolute right to an oral hearing. Where the facts are not in dispute, an oral hearing is not required. In the matter of Gary Blake and Donald LaPlante (November 3, 1986), aff'd without written opinion, Appeal of Blake et al (No. 86-493, October 1, 1987). The same principles apply when the well-pleaded facts are taken as true for the purposes of a Motion to Dismiss.

Appellant has not alleged any further evidence that could or would be produced at any oral hearing which would affect the Board's decision.

B

Appellant raises an objection to the "resubmitted" Motion to Dismiss. The Board rules that Appellant had ample opportunity to respond to both motions, prior to the Board's decision, and has alleged no prejudice by the resubmission. While it might have been better practice for the Department to request permission to file an amended Motion to Dismiss, appellant filed no objection at the time, and will not be heard to complain now.

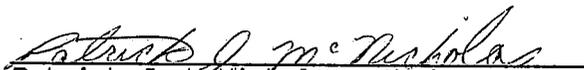
C

Per 302.05(b) establishes the standard by which the Board will judge appeals relating to transfers. That section establishes that "It is the prerogative of management to determine who and when employees are to be transferred". While the grammatical construction may be awkward, the intent seems clear. The Board construes this language to give broad authority to the appointing authority.

An employee may nevertheless challenge a transfer if (a) he is "the employee affected" by such transfer, and (b) "he feels that the transfer was made for some other reason" than "the best interests of the agency". As stated in our earlier decision, the appellant does not meet the final criteria: that he be "the employee affected". He also has not alleged that the failure to transfer was made for some improper reason.

Appellant seeks to rewrite the rule so as to apply an employee affected by a denial of transfer. The rule simply does not provide such right. The Board would find some support for appellant's position if the rule referred to "any employee affected" rather than "the employee affected.". That language suggests that only one employee can be affected by each transfer.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
George R. Cushman, Jr., Member

  
Peter C. Scott, Alternate

cc: William Briggs, Esq.

Leslie J. Ludtke, Asst. Attorney General