

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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APPEAL OF MARY KAY MACNICHOL

Docket 99-0-4

Department of Safety

August 26, 1999

The New Hampshire Personnel Appeals Board (Wood, Johnson, and Barry) met on Wednesday, July 28, 1999, under the authority of RSA 21-I:58, to hear the appeal of Mary Kay MacNichol, an employee of the Department of Safety.

Ms. MacNichol was represented by Ms. Linda Chadbourne, SEA Field Representative. The State was represented by Ms. Virginia A. Lamberton, Director of Personnel, and Ms. JoAn Buntan,, Certification Specialist. Ms. MacNichol is appealing the decision of the Personnel Director decertifying Ms. MacNichol's application for the position of Technical Support Specialist II.

The appeal was heard on offers of proof by the representatives of the parties. The record in this matter consists of the audio tape recording of the hearing, notices and orders issued by the Board, pleadings submitted by the parties, and documents entered into evidence as follows:

Appellant's Exhibits

- A. Job Posting for Technical Support Specialist II
- B. Generic & Supplemental Job Descriptions for Technical Support Specialist II
- C. Mary Kay MacNichol's application and supporting documentation
- D. Memorandum from Paul Amante to Mary Kay MacNichol dated May 21, 1998
- E. Memorandum from Mary Kay MacNichol to Paul Amante dated May 21 1998
- F. Memorandum from Mary Kay MacNichol to Col. James Barthelmes dated May 28, 1998
- G. Memorandum from Virginia Lamberton to Claude Ouellette dated June 5, 1998

State's Exhibits

- A. Memorandum to MK MacNichol from Paul Amante
- B. Memorandum from MacNichol/Soucy from Susan Anderson
- C. Letter to Commissioner Flynn from Linda Chadbourne
- D. Letter to Linda Chadbourne from Commissioner Flynn
- E. Letter to V. Larnberton from Linda Chadbourne
- F. Letter to Linda Chadboume from V. Larnberton
- G. Letter to PAB from Linda Chadboume
- H. Job Specification, Technical Support Specialist II
- I. Application completed by appellant
- J. Job Specification, Word Processor I
- K. Job Specification, Executive Secretary
- L. Job Specification, Police Communication Specialist Trainee
- M. Supplemental Job Description, Position #10573, Executive Secretary

Background

Ms. MacNichol is currently working as a Data Control Clerk II, labor grade 11, at the Department of Safety. On April 10, 1998, the Department of Safety published a "job posting" for the position of Technical Support Specialist II, labor grade 20. [Appellant's Exhibit A] Ms. MacNichol applied for that position. Ms. Lamberton explained to the Board that she had delegated limited authority to two persons at the Department of Safety, Mr. Claude Ouellette and Ms. Susan H. Anderson, to certify applicants as meeting the minimum qualifications for certain positions. However, Ms. Lamberton indicated that a final decision on certification still rested with her.

On April 17, 1998, Ms. Anderson reviewed Ms. MacNichol's application and determined that Ms. MacNichol did not have the minimum qualifications for the position and notified Ms. MacNichol of that decision around April 20, 1998. On April 20, 1998, Mr. Ouellette told Ms. Anderson he was going to reconsider Ms. MacNichol's application. According to Ms. Anderson, Mr. Ouellette told Ms. MacNichol to reapply and that he would certify that she met the minimum qualifications. However, Ms. Anderson also stated in her memo, State's Exhibit B, that Mr. Ouellette told Ms. MacNichol there was no guarantee and "the final approval would be with the Division of Personnel."

Ms. MacNichol did reapply on April 20, 1998, Appellant's Exhibit C, and after being interviewed, was offered the position. See Appellant's Exhibit D, Memorandum dated May 21, 1998, from Paul Amante to Mary Kay MacNichol. On May 21, 1998, Ms. MacNichol notified Mr. Amante of her acceptance of the job offer. Appellant's Exhibit E. On May 28, 1998, Ms. MacNichol notified her employer, the Division of State Police, that she was resigning effective June 4, 1998, to take the position with the Bureau of Information Services. Appellant's Exhibit F. By memorandum dated June 5, 1998, Ms. Lamberton notified Mr. Ouellette that her staff had reviewed the application of Ms. MacNichol and determined that she did not have the minimum qualifications for the position and should not be considered for the vacancy. Appellant's Exhibit

The job offer to Ms. MacNichol was withdrawn and this appeal ensued. Fortunately for Ms. MacNichol, her position with the Division of State Police was still available so she did not become unemployed.

Position of the Parties

Ms. Chadbourne argued that Ms. MacNichol was told she had the job but that the Division of Personnel had to approve the labor grade which could be dropped from 20 to 18. Ms. Chadbourne argued that Ms. MacNichol was never told her qualifications for the job would have to be reviewed and that the Division of Personnel had to approve her qualifications as meeting the requirements for the position. Ms. Chadbourne argued that Ms. MacNichol had sufficient college credits and work experience and did, nevertheless, meet the minimum qualification requirements for the job.

Ms. Lamberton explained that under Rule 603.01(a), 5 days before an appointing authority may appoint an employee, the authority must submit to the Director a personnel action form. Ms. Lamberton argued that while she had delegated some of her authority to certify potential employees to Ms. Anderson and Mr. Ouellette at the Department of Safety, the ultimate responsibility is hers as the Director of Personnel. Ms. Lamberton stated that this five day notice requirement was not followed in this case.

Ms. Lamberton explained the substantial efforts made by the State of New Hampshire to upgrade its classifications of information technology positions. Under the upgraded specifications, there are five levels of Technical Support specialists with labor grades ranging from 16 to 26.

Ms. Lamberton then explained their review of Ms. MacNichol's application and qualifications. She argued that there were no college transcripts attached to the application, as required, and that the Division of Personnel could not certify that Ms. MacNichol had taken the required 15 hours of computer science courses. Ms. Lamberton then reviewed the experience requirements for the Technical Support Specialist II position. After reviewing Ms. MacNichol's prior applications

and work history, Ms. Lamberton said her office could not certify that Ms. MacNichol had the required experience for this position.

Ms. Lamberton then explained that her office must approve each personnel action form and must determine whether the applicant meets the current minimum qualifications for the position for which the application is made Per 603.03(b).

Ms. Lamberton noted that this matter came to her attention because another employee at the Department of Safety had raised the issue of Ms. MacNichol's qualifications. Ms. Lamberton also stated that she had not been requested to review the labor grade of this position.

Ms. Chadbourne argued that while there had been no official request for a downgrade of this position, Ms. MacNichol would be willing to settle this matter if the State would agree to increase her current labor grade from 11 to 18. Ms. Chadbourne argued that the total lost wages Ms. MacNichol has suffered since being denied the position would be just over \$8,000.00.

In response to questioning from the Board, Ms. Chadbourne stated that Ms. MacNichol was essentially seeking to enforce a contract for employment.

In consideration of the evidence, arguments of the representatives of the parties and offers of proof, the Board made the following findings of fact.

Findings of Fact

1. On the basis of the evidence presented, Ms. MacNichol does not meet the educational requirement for the position of Technical Support Specialist II.
2. On the basis of the evidence presented, Ms. MacNichol does not have the requisite experience for the position of Technical Support Specialist II.

Based on the documents presented and the offers of proof, the Board concludes that the Division of Personnel correctly refused to certify that Ms. MacNichol has the necessary education and experience to meet the minimum qualifications for the position of Technical Support Specialist II and the appeal of Ms. MacNichol is DENIED.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



Patrick H. Wood, Chairman



Robert J. Johnson, Commissioner



James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol Street, Concord, NH 03301
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Claude Ouellette, HR Administrator, Department of Safety, Hazen Dr., Concord, NH
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