

# State of New Hampshire



## **PERSONNEL APPEALS BOARD**

25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

### ***APPEAL OF ERIC J. PETIT***

***DOCKET #98-O-21***

### ***BUREAU OF EMERGENCY COMMUNICATIONS***

April 14, 1999

The New Hampshire Personnel Appeals Board (Bennett, Wood and Rule) met on Wednesday, March 10, 1999, under the authority of RSA 21-I:58, to hear the appeal of Eric J. Petit, an employee of the Bureau of Emergency Communications. Mr. Petit, who was represented at the hearing by SEA Field Representative Linda E. Chadbourne, was appealing Director Lamberton's decision dated June 17, 1998, denying Bruce Cheney's June 15, 1998, request for retroactive approval to suspend Mr. Petit with pay for the period of May 22 through May 31, 1998. Virginia Lamberton appeared on behalf of the State.

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

#### Appellant's Exhibits

- A. Memorandum NHBEC100 to Bruce Cheney from Timothy Doris dated May 29, 1998
- B. Domestic Violence Petition dated May 22, 1998, with supporting documentation
- C. Voluntary Non-Suit/Withdrawal dated June 1, 1998
- D. Letter to Virginia Lamberton from Bruce Cheney dated June 15, 1998
- E. Letter to Bruce Cheney from Virginia Lamberton dated June 17, 1998

F. Letter to Virginia Lamberton fi-om Bruce Cheney dated June 23, 1998

State's Exhibits

- A. Domestic Violence Petition
- B. Domestic Violence Temporary Order and Notice of Hearing
- C. Memorandum addressed to Bruce Cheney, Director, from Timothy Doris, Supervisor
- D. Notice of Hearing - Domestic Violence
- E. Voluntary Non-Suit/Withdrawal
- F. Letter to V. Lamberton, Director of Personnel, fi-om Bruce Cheney, Director of Emergency Communications
- G. Response to Bruce Cheney from V. Lamberton
- H. Per 1001.06, Suspension With Pay, Rules of the Division of Personnel
- I. Employee Time Sheet for Eric J. Petit

The following facts are not in dispute:

1. Mr. Petit is employed by the Bureau of Emergency Communications as a Telecommunications Specialist.
2. The appellant's estranged wife worlced in the same building but for another department.
3. Shortly before 2:00 p.m. on the afternoon of May 22, 1998, Mr. Petit advised his supervisor that his wife, Danielle Petit, had filed a domestic violence petition against him, and that he had been ordered to stay away from her. Mr. Petit apprised his supervisor, Mr. Doris, of the steps he had taken to comply with the order, and ensure that he would be accompanied by other staff from the bureau whenever he was away from his own work area.
4. Mr. Doris agreed that the appellant could remain on duty provided that he made no attempt to contact his wife, and was accompanied by another bureau employee whenever he was outside of the work unit.
5. Roughly an hour after his conversation with Mr. Petit, Mr. Doris responded to a telephone call from State Police Sgt. McClare. They discussed the domestic violence petition and the steps that Mr. Petit had taken to avoid contact with Mrs. Petit. Sgt. McClare assured Ms.

Doris that the appellant could remain at work without being in violation of the court's instructions.

6. Shortly after 4:00 p.m., a State Trooper served Mr. Petit with a temporary restraining order from Franklin District Court prohibiting the appellant, "...entering the premises wherein the plaintiff resides; plaintiff's place of employment; or plaintiff's school."
7. Mr. Petit again went to his supervisor and informed him that he had received an order from the court prohibiting him from being in the workplace.
8. Mr. Doris telephoned Sgt. McClare, and asked if he was aware that the latest court order forbade the appellant from being in the workplace.
9. Sgt. McClare assured Mr. Doris that the order did not prohibit the appellant from being at work, because Mrs. Petit had notified the court in her petition that she and the appellant worked in the same building but in different offices, and had no need to contact one another.<sup>1</sup> Mr. Doris asked Sgt. McClare to get confirmation that the order did not restrain the appellant from being in the workplace.
10. Sgt. McClare returned the call a short time later and advised Mr. Doris that although no one was available at that time to amend or clarify the court's order, the order would not have required the appellant to leave the workplace.
11. Mr. Doris made several attempts during the afternoon to reach Director Cheney, who was not working at the time, to apprise him of the situation.
12. When Director Cheney returned Mr. Doris' call at approximately 5:00 p.m., he ordered Mr. Doris to send the appellant home until the appellant obtained an amendment to the court order that would permit him to return to work.
13. On or about May 26, 1998, Personnel Director Virginia Lamberton was informed by the Administrative Services Business that Director Cheney had suspended Mr. Petit with pay.
14. Ms. Lamberton informed the Business Office that no such suspension had been authorized, and she requested a copy of the order upon which Director Cheney had relied in ordering Mr. Petit from the workplace.

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<sup>1</sup> In the petition Mrs. Petit wrote, "He and I work in the same building\*, and I would like for him not to bother me or call me there, as he has been coming there and calling me. \*We work in separate offices at the Dept. of Safety, but we do not have reason to contact one another at work."

15. After reviewing a copy of the order and the attached letter from Mr. Doris, Ms. Lamberton advised the Business Office that she disagreed that the order prohibited the appellant from entering his own place of work, and instructed the staff to inform the Bureau of Emergency Communications that she would not approve Mr. Petit's absence as an authorized suspension with pay. She informed them that the appellant should be returned to work, and advised them that the appellant could be placed on paid leave status for the period of his absence if he had any accrued annual leave, compensatory leave, bonus leave or floating holidays. Otherwise, his absence would have to be treated as unpaid annual leave.
16. Mr. Petit did not return to work until after June 1, 1998, when his wife filed a voluntary non-suit/withdrawal of her domestic violence complaint.

In the June 30, 1998, notice of appeal, Ms. Chadbourne wrote:

"We do not disagree with Ms. Lamberton's interpretation of Per 1001.06 of the Personnel Rules. However, the situation in which Mr. Petit and his supervisors found themselves late in the afternoon of May 22 required emergency action. A court order forbade Ms. Petit from being in the same building with his estranged wife. Since they work in the same building, albeit in different departments, Mr. Petit was essentially forbidden to come to work. Mr. Cheney took the only action he could under the circumstances, a one-day suspension with pay until the matter could be resolved."<sup>2</sup>

### Rulings of Law

- A. "Per 1001.06 of the Rules of the Division of Personnel provides that:
  - (a) An appointing authority, with the approval of the director, may suspend an employee with pay for a limited period of time when:

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<sup>2</sup> Exhibit I submitted by Personnel Director Virginia Lamberton indicates that the appellant is actually looking for compensation for ten-hour work days on Friday, May 22<sup>nd</sup>, Saturday, May 23<sup>rd</sup>, Sunday, May 24<sup>th</sup>, Monday, May 25 (including an additional 8 hours of holiday pay), Friday May 29<sup>th</sup>, Saturday May 30<sup>th</sup> and Monday, May 31<sup>st</sup>.

- (1) Allegations made against the employee are related to the employee's duties and require an internal investigation;
  - (2) Such allegations necessitate the removal of the employee from the work site; and
  - (3) The employee must be available at a location acceptable and accessible to the appointing authority for the purpose of completing the investigation.
- (b) An appointing authority shall provide written notice to the employee detailing:
- (1) The cause of the suspension;
  - (2) The duration of the suspension; and
  - (3) The location to which the employee shall report during the period of suspension.
- (c) An appointing authority shall provide an employee with written notice at the conclusion of the internal investigation indicating what action will be taken pursuant to Per 1000."

#### Decision and Order

Per 1001.06 (a) of the Rules limits paid suspensions to those instances when an appointing authority determines that it is necessary to investigate allegations made against an employee that relate to the employee's job responsibilities. The nature of the allegations must be such that they would require removal of the employee from the workplace, and the employee must be available to the employer during the period of suspension for purposes of the investigation. On the evidence, argument and offers of proof, the Board found that none of the allegations contained in Mrs. Petit's domestic violence petition related to the appellant's duties as a Telecommunications Specialist. The agency did not conduct an investigation into any of Mrs. Petit's complaints, nor would the Bureau of Emergency Communications be the party responsible for conducting an investigation into those allegations. Therefore, the provisions of Per 1001.06 (a) would not apply in this case.

By making those findings, the Board does not mean to trivialize Director Cheney's concerns about domestic violence, workplace safety, or the State's potential liability if the State were to ignore an order of the court involving one of its employees. However, the Board agrees with Ms. Lamberton, that the described circumstances did not support a suspension with pay under the provisions of Per

1001.06 (a). The Board is not persuaded that the temporary restraining order prohibited Mr. Petit from reporting for work at the Bureau of Emergency Communications. Had the order imposed such a restriction, however, the Bureau of Emergency Communication had neither an obligation nor the authority to guarantee the appellant's wages for the period of absence.

On the facts in evidence, the Board voted unanimously to DENY the appeal, and to AFFIRM the Director's decision denying the request for retroactive approval of a suspension with pay for the period of May 22, 1999 through May 31, 1999.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman



Patrick H. Wood, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Linda E. Chadbourne, SEA Field Representative, PO Box 3303, Concord, NH 03302-3303  
Director Bruce Cheney, Bureau of Emergency Communications, Hazen Drive, Concord, NH  
03305

# State of New Hampshire



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## *Appeal of Eric Petit*

*Docket #98-O-21*

### *Response to Appellant's Motion for Reconsideration*

*June 2, 1999*

By letter dated April 21, 1999, SEA Field Representative Linda Chadbourne requested reconsideration of the Board's April 14, 1999, affirming Director Lamberton's June 17, 1998, decision that Mr. Petit was not entitled to compensation for the period of May 22, 1998, through May 31, 1998, under Per 1001.06 of the Rules of the Division of Personnel as a suspension with pay.

In general, a request for reconsideration must either allege that the Board has made an error of law or must present additional facts that were not available at the original hearing. In order to request a rehearing, the party dissatisfied with the Board's order must set forth every ground upon which it is alleged that the Board's decision is unlawful or unreasonable. The Board may grant a rehearing if, in its opinion, good reason for such rehearing is stated in the motion.

The Motion presents no new evidence. In a general sense, the legal arguments offered in support of the Motion also are largely the same arguments raised by the appellant during the hearing and considered by the Board in reaching its decision to deny Mr. Petit's appeal.

In the Motion, Ms. Chadbourne argued that, "... the Board's April 14 decision states that 'Mr. Petit did not return to work until after June 1, 1998, when his wife filed a voluntary non-suit/withdrawal of her domestic violence complaint! Mr. Petit was at home pursuant to the

directive of Executive Director Bruce Cheney until June 1, 1998." While the evidence reflects that Mr. Petit called in on a daily basis, there was no evidence that Mr. Petit was ordered to remain in his home, nor was there evidence of an internal investigation that required Mr. Petit to be available or accessible to the appointing authority. Director Cheney's instructions, as described in the Doris memo that was offered into evidence by both parties, were to send the appellant home "Suspending with pay until an amendment to the court order which would allow T/C Petit to return to work on or after Tuesday, May 26, 1998."

The evidence reflects that State Police Sergeant McClare repeatedly assured supervisory personnel in the Bureau of Emergency Communications that the court's order did not prohibit Mr. Petit from working in the Bureau of Emergency Communications. If neither the appellant nor the Director of the Bureau were willing to accept such assurances from the Division of State Police, there is no evidence that either of them attempted to obtain further clarification from the Division of State Police, or that any effort was made to have the order clarified or amended by the Franklin District Court prior to the date that the complaint was withdrawn by the Appellant's wife.

The evidence also reflects that as early as May 26, 1998, the Bureau of Emergency Communications was advised that: 1) the allegations outlined in the domestic violence petition did not relate to Mr. Petit's performance of his duties as an employee of the Bureau and would not provide cause for a suspension with pay, 2) Director Cheney did not have the authority to suspend the appellant with pay, and 3) even if the court order had prohibited Mr. Petit from physically entering his place of work, there was no authority for the State to pay the appellant during the period of absence except by allowing him to use available accrued leave.

In her Motion, Ms. Chadbourne argued that, "...it would be illegal, inequitable, and unjust to force Mr. Petit to use any of his accumulated leave to cover this period of time in question," and

that the Director's and the Board's "failure to exercise their discretion to remedy this unjustness is itself an abuse of discretion, see DeButts v. LaRoche & a., 142 NH 845,847 (1998)."<sup>1</sup>

The Board's order did not require Mr. Petit to use any of his accumulated leave; it simply affirmed the Director's decision that there was no legal basis for approval of a suspension with pay, and that apart from allowing the appellant to use his accrued leave, there was no other mechanism by which payment could have been authorized under the Rules of the Division of Personnel. The Board continues to find that the Director was correct in denying Director Bruce Cheney's request for retroactive approval to treat Mr. Petit's absence from work as a suspension with pay under the provisions of Per 1001.06 of the Rules of the Division of Personnel.

Accordingly, the appellant's Motion is DENIED.

THE PERSONNEL APPEALS BOARD

  
Patrick H. Wood, Commissioner

  
Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Linda Chadboume, SEA Field Representative, PO Box 3303, Concord, NH 03302-3303  
Director Bruce Cheney, Bureau of Emergency Communications, 10 Hazen Dr., Concord  
NH 03305

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<sup>1</sup> The appellant did not provide a copy of the Court's decision in this case. However, the Board did obtain and review a copy of that decision in order to determine what weight, if any, it should be given in considering the appellant's Motion for Reconsideration. In DeButts, the Court found that the lower court abused its discretion by failing to consider alternatives to outright dismissal of the case following the plaintiffs failure to appear for a case structuring conference. In this instance, a ruling adverse to the appellant was issued after the Board convened a hearing, received evidence, heard oral argument, and considered the the alternatives available under the Rules of the Division of Personnel. Having done so, in the Board's view, does not constitute an abuse of discretion.