

# State of New Hampshire

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## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
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### APPEAL OF ELIZABETH LINCOLN Docket #89-C-45

September 26, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Johnson) met Wednesday, September 11, 1991, to review a number of appeals currently pending before the Board. The above captioned appeal was received by the Board on October 24, 1989. In her request for hearing, the appellant stated, in part:

"I and five other Public Health Nurses III in the Bureau of Disease Control requested a reclassification review January 12, 1989. Subsequently, the Division of Personnel requested further information; this was supplied to Barbara Ingerson, Human Resources, CMB, Department of Health and Human Services, in an extensive response dated July 28, 1989. A telephone conversation between Ms. Ingerson and Ed McCann indicated the Division of Personnel did not wish to consider the further information available. On August 9, 1989, Dr. Wallace requested Director Vogel to accept the information as a clarification of the request. In a letter dated October 4, 1989 and received in the Division of Public Health Services October 10, 1989, Ms. Vogel rejected the request."

In light of the dates provided by the appellant, it appears the instant appeal constitutes an appeal of the Director's refusal to complete a position review in accordance with the statutory prohibition against "considering" any requests for reclassification between June 5, 1989 and July 1, 1991.

In reviewing its own records, specifically that information which the Board considered in the appeals of Bailey, Burton and Eaton, the Board notes that on September 1, 1989, Assistant Attorney General Douglas Jones, in a memorandum to former Commissioner of Administrative Services, George C. Jones, stated:

"On September 1, 1989, Larry Smukler asked me to reply to your August 25, 1989 memorandum to him. Therein you refer to 'classification/allocation request that was processed prior to June 5, 1989.' (emphasis supplied).

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"If by 'processed', you mean that the Division of Personnel has approved the classification/allocation request, then the matter would appear to be out of your hands. If, however, the Division of Personnel had not approved the request before June 5, 1989, then it may not now be approved.

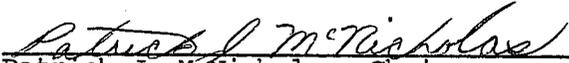
"The final sentence of Laws of 1989, Chapter 408; Section 105, II provides that no reclassifications can be granted before July 1, 1990. This applies to requests which were pending before June 5, 1989 and to requests pending before June 29, 1988. . . ."

The Legislature subsequently extended the moratorium on position reviews and reclassifications until July 1, 1991, by enacting HB 1225-FN-A (Laws of 1990, ch. 109). The relevant passage of HB 1225 states:

"Notwithstanding any other provision of law, the director of personnel shall not consider any requests for reclassification or reallocation until July 1, 1991."

In light of the foregoing, the Board voted to dismiss the instant appeal, finding that the Director acted in compliance with the legislative moratorium on position reviews by refusing to consider a completed request for reclassification submitted to the Division of personnel on July 28, 1989.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Mark J. Bennett

  
Robert J. Johnson

cc: Virginia A. Vogel, Director of Personnel  
Stephen J. McCormack, SEA Field Representative