

State of New Hampshire

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PERSONNELAPPEALSBOARD

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Response to Request for Reconsideration Appeal of Grace Marsh Division of Public Health Services

March 15, 1990

By letter dated February 20, 1990, received by the Board on February 21, 1990, SEA Field Representative Stephen McCormack filed a request for reconsideration of the Board's February 1, 1990 decision in the classification appeal of Grace Marsh.

Appellant argues that her position should have been reclassified from Laboratory Scientist III to Laboratory Scientist IV, retroactive to March 29, 1985. In support of her request, she raises arguments identical to those raised in her initial appeal, and further contends that the Board's decision was improper because it "incorporated previous decisions regarding the Laboratory Scientist Series".

In its decision in the appeals of Drake and Peters, the Board made no specific findings concerning the appropriateness of the classification of positions in the Laboratory Scientist class series. For the purposes of that decision, the Board did not review the specific job duties or responsibilities of those positions as they existed in 1985. The decision turned solely upon the issue of whether or not a standing request for reconsideration by the Appellants preceded the effective date of Chapter 12, Laws of 1986, thereby altering the standard upon which the effective date of reclassification or reallocation should be calculated.

Ms. Marsh was the only appellant to specifically challenge the classification of her position based upon the actual duties and responsibilities of that position in 1985. Upon review of the evidence, the Board found that Ms. Marsh's duties and responsibilities could not support reclassification as she had requested.

Appellant failed to demonstrate material or substantial changes in her position which should warrant reclassification from Laboratory Scientist III to Laboratory Scientist IV. Appellant has also failed to raise any arguments to

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support a claim that the Board's review of her duties and responsibilities, and its subsequent denial of request for reclassification, is either unreasonable or unlawful.

Accordingly, Appellant's Motion for Reconsideration is denied..

THE PERSONNEL APPEALS BOARD



Patrick J. McNicholas, Chairman



Mark J. Bennett

cc: Stephen J. McCormack, SEA Field Representative
Virginia A. Vogel, Director of Personnel
Dr. John Wallace, Director, Division of Public Health Services
David S. Peck, Assistant Attorney General

State of New Hampshire

WPP462



PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
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APPEAL OF GRACE MARSH Division of Public Health Services

dated: February 1, 1990

On March 1, 1989, the Personnel Appeals Board (McNicholas, Cushman and Scott) heard the classification appeal of Grace Marsh, an employee of the Division of Public Health Services. Ms. Marsh had appealed the Division of Personnel's refusal to reclassify her position from Public Health Scientist III to Public Health Scientist IV. Ms. Marsh was represented at the hearing by SEA Field Representative Stephen J. McCormack. The substance of Ms. Marsh's appeal was outlined in a November 7, 1988 letter to the Board from SEA Representative McCormack:

- "1. Since the initial request of a position review of position #14793 it has always been maintained by the Division of Public Health and the appellant that position #14793 needed to be reclassified to Laboratory Scientist IV;
2. Numerous documents have been provided to the Division of Personnel to substantiate this request;
3. The Division of Personnel has never visited the work area of the cited position to either verify or not verify the contention of the Division of Public Health;
4. The Division of Personnel has offered no reason why position #14793 should not be reclassified."

The Board finds that the last two of the issues listed above have no bearing upon the merits of Ms. Marsh's appeal. First, the Board finds that the Division of Personnel has no obligation, under statute or administrative rule, to conduct an on-site job audit in order to complete a position classification review, and neither the statutes nor administrative rules prohibits the Division of Personnel from making a position classification decision in the absence of an on-site visit.

With regard to Appellant's first two arguments, the Board finds that the appellant bears the burden of proof in the hearing of classification and evaluation appeals, and must document "material changes in the duties and

responsibilities of the positions occupied" [Per 303.04 (a)]. "If the director finds that substantial change in organization, creation or change of positions or other pertinent conditions make necessary the establishment of a new class, amendment of an existing class or abolishment of an existing class, he shall make appropriate changes." [Per 303.04 (b)]

The Division of Personnel is not required to prove that a position "should not be reclassified". Rather, the appellant must prove that the current position classification is improper, documenting material changes in that position which show that such position should be reclassified.

Finally, Appellant's argument that the Division of Public Health had always believed Ms Marsh's position should be upgraded to Laboratory Scientist IV and had provided numerous documents in support of that belief also has little bearing upon the appropriate classification of Ms Marsh's position. The only issues properly before the Board for consideration are the duties and responsibilities of Appellant's position, material changes in those duties and responsibilities, and the effective date of any documented change.

Background Information

The Laboratory Scientist III position occupied by Ms Marsh is assigned to the Environmental Microbiology Section of the Division of Public Health Laboratory. On March 28, 1985, Susan Epstein, former Deputy Director of the Division of Public Health Services, requested that the Department of Personnel conduct a review of Public Health Laboratory Staff positions. On May 13, 1985, the Department of Personnel responded, asking that the position incumbents complete and return Position Classification Questionnaires, and that the Director of Public Health make specific recommendations in regard to requested salary grades. The May 13, 1985 letter from former Personnel Director Judy Bastian also referred to Experience and Working Conditions as the basis for the requested reviews. That letter also stated, "If you wish to suggest a new staffing pattern in the Public Health Laboratory to make it consistent with other laboratories in state government, we would be glad to consider same. We would, of course, need sufficient documentation to support the reorganization you are recommending."

The Division of Public Health (hereinafter "Division") submitted classification questionnaires from the Lab Scientists on September 12, 1985. In his cover memo, Dr. Wallace, Director of the Division, also noted that he was forwarding a list of suggested title changes, and a proposed organizational chart.

The former Director of Personnel responded on October 27, 1986, approving the upgrading of Laboratory Scientist I to salary grade 15, and Laboratory Scientist III to salary grade 20. The Division of Personnel did not approve upgrading any positions of Laboratory Scientist II or IV. The Division of

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Personnel also denied the request for reclassification of any positions to the title Laboratory Scientist V. November 3, 1986, Deputy Director Epstein requested reconsideration of that decision.

On March 13, 1987, former Deputy Director Epstein wrote to Virginia Vogel, Director of Personnel, "...forwarding Roni Malmberg's memo [dated March 11, 1987] and supporting documentation on inequities perceived between the Public Health lab and other laboratories operating in the [Health and Human Services Building]."

On June 23, 1988, the Director and the Classification and Compensation Administrator for the Division of Personnel met with the Deputy Director of Public Health, the Chief of the Clinical Laboratory, and Director of Disease Prevention and Control to discuss job titles and salary grades for positions within the Public Health Services Laboratory. Following that meeting, on July 22, 1988, the Director of Personnel wrote to Deputy Director of Public Health, Brian Strohm, summarizing the June 23, 1988 meeting, and responding to the reclassification requests.

The Director of Personnel approved the upgrading of two Laboratory Scientist IV positions to Laboratory Scientist V, and the promotion of an employee in a downgraded Laboratory Scientist V to that same classification, "[b]ased upon the information provided by you, and a comparison of the proposed organizational chart with the staffing pattern used within other laboratories in state government...". Those three positions in the proposed organizational chart were identified as heading the three major sections within the Public Health Laboratory Bureau (Chemistry, Microbiology and Virology/STD). The Division of Personnel also authorized the upgrading of one position in each of the identified units within the three major sections of the Public Health Labs for upgrading to Laboratory Scientist IV. Approval was also given for the reclassification of two Laboratory Scientist II positions to Laboratory Scientist III.

Deputy Director Strohm wrote to the Division of Personnel on August 9, 1988, questioning the status of two Laboratory Scientist II positions, and arguing that the effective date of the approved changes should be March 28, 1985, and not March 17, 1987, as indicated in the Division of Personnel's decision. The position occupied by M~~S~~ Marsh was not mentioned in Strohm's August 9th letter.

The Division of Personnel responded on October 5, 1988, denying the request for an effective date of March 28, 1985. The Division's October 5, 1988 letter also stated, "In my July 22, 1988 communication to you, I requested you to provide me with the position numbers for two positions to be classified as Laboratory Scientist IV. To date, I have not received this information." While M~~S~~ Marsh's position is not specifically identified by number or incumbent name, it appears from a thorough review of the previous

correspondence that her position of Laboratory Scientist III was one of the positions in question.

Ms. Marsh's appeal was filed by SEA Field Representative McCormack on October 20, 1988, indicating that "On October 14, 1988, the Division of Public Health decided to reclassify upward position #14602, not position #14793 [occupied by the appellant]".

Appeal of Grace Marsh

In her November 3, 1988 letter to the Board, Ms. Marsh argues that "At the time of the original request for reclassification in 1985, and also on the date that the Personnel Department is dictating that retroactive pay be based (March 1987), both Joyce Whitcomb (position #14602) and ■ (position 1114793) were doing comparable work."

Review of the testimony and exhibits support the contention that the Laboratory Scientist III incumbents in the Microbiology Unit were performing the same work in 1985, and that the Division of Personnel recommended that those positions be upgraded from salary grade 19 to salary grade 20. The Division of Public Health Services found that recommendation, as part of the review of the entire Laboratory Scientist class series, unacceptable and filed a request for reconsideration.

Throughout the correspondence which followed, between 1985 and 1988, Ms. Marsh's position is not mentioned by the Division of Public Health Services, except to the extent that the Division of Public Health Services accepted the Division of Personnel's July 22, 1988 "recommendation for the positions addressed in the letter" which stated, "In Environmental Micro Biology, you have recommended that both Laboratory Scientist III positions, number 14602 and 14793, be reallocated to Laboratory Scientist IV. Although I agree that in this Section there should be a single Laboratory Scientist IV, you must recommend to me which position should be reclassified to that level."

Public Health's August 9, 1988 acceptance of this recommendation is in direct contradiction to the position taken in Veronica Malmberg's November 3, 1988 letter to the Board, in which she stated, "The duties of the three Laboratory Scientist III's now in Environmental Microbiology remained exactly the same as they had been when the units were administratively separate."

Ms. Malmberg's letter of November 3, 1988, describes the organizational structure within the Labs in March 1985, and how the "...food, milk, shellfish/rabies units were combined into one unit called Environmental Microbiology" in January, 1986. Ms. Malmberg argued, "Since Grace Marsh's level of responsibility was on a par with the other Laboratory Scientist III's recently reclassified to Laboratory Scientist IV, we feel strongly that her position should be upgraded so that retroactive pay can be authorized".

Shellfish/rabies units were combined into one unit called Environmental Microbiologyⁿ in January, 1986. Ms Malmberg argued, "Since Grace Marsh's level of responsibility was on a par with the other Laboratory Scientist III's recently reclassified to Laboratory Scientist IV, we feel strongly that her position should be upgraded so that retroactive pay can be authorized".

While it is clear that the "food", "milk" and "rabies" testing may once have been administratively separate units, the Division of Public Health combined them into one unit in 1986. (See Appellant's Exhibit XI) It is equally clear that the review conducted by the Division of Personnel in 1988 utilized the organizational charts offered by the Division of Public Health which identified Environmental Biology (including "food", "milk", "shellfish", "PSP, and "rabies") as one of three units in the Microbiology Section. It is also clear that the Division of Personnel utilized this description of the organizational structure when it determined that only one position in each of the three units should be upgraded to Laboratory Scientist IV. (Appellant's Exhibit IV).

The Board concluded, from its review of documents provided by the Division of Public Health Services, that the decision to reclassify various Laboratory Scientist positions had been based upon the organizational structure and reporting relationships proposed for each section and unit of the Public Health Laboratories,

The Board then reviewed the specifications for the classifications of both Laboratory Scientist III and IV to see which specification most clearly described Appellant's work, both at the time of her appeal and as represented by her in her position classification questionnaire dated September 12, 1985 (Appellant's Exhibit XIV).

First, the Board noted that both the appellant and her supervisor listed a recommendation that an incumbent in her classification possess a bachelor's degree and six years of experience, two years' more experience than that required for the classification Laboratory Scientist III. The specification for Laboratory Scientist IV, however, requires a Master's degree and five years' experience. A Laboratory Scientist III, therefore, would require a combination of 8 years in experience and education, while a Laboratory Scientist IV would require 11 years total. The Board was not persuaded that the testing and analysis performed by the appellant, whether testing food or milk, would require education and experience beyond that listed in the specification for Laboratory Scientist III.

Further review of the class specifications for Laboratory Scientist III and IV, when compared with Appellant's classification questionnaire and testimony on the date of the hearing, persuaded the Board that Ms Marsh's responsibilities are more clearly defined by the "Distinguishing

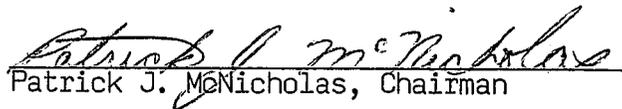
Characteristics^w and "Examples of Work^N" listed on the specification for Laboratory Scientist III. The Board did not find that Appellant was responsible for the "administrative duties directing the operation of a laboratory within a state agency..." Rather, the Board found Appellant's work better defined as "highly professional duties supervising and participating in laboratory work investigating causes of disease in humans and animals; analysis and examination of organic, chemical and physical materials and substances..."

Based upon the foregoing, the Board did not find that Appellant's responsibilities at the time of the initial position review warranted reclassification to Laboratory Scientist IV. The Board also found that the decision to allocate one position in each of the identified units of the Microbiology Section of the Public Health Laboratories was based upon an organizational and supervisory structure agreed to by the Division of Personnel and the Division of Public Health Services.

To ensure that this decision is not inconsistent with previous decisions in the Laboratory Scientist class series, the Board reviewed its orders in the appeals of Drake and Peters, and Susan Lefevre, et al. In those cases, the Board voted to implement the recommendations made by the Director of Personnel in her letter of July 22, 1988, effective the beginning of the pay period following the March 1985 request for reclassification. In the instance of Ms Marsh, Director Vogel's July 22, 1988 decision authorized the reallocation of only one Laboratory Scientist III in the Environmental Microbiology Unit to Laboratory Scientist IV, allowing the Division of Public Health Services to decide which position to reallocate. The Division chose a position other than that occupied by Ms Marsh.

Ms Marsh's request for reclassification to Laboratory Scientist IV, retroactive to March 1985, is hereby denied.

FOR THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman

cc: Stephen J. McCormack, SEA Field Representative
William Wallace, Director, Division of Public Health Services
Barbara Ingerson, Commissioner's Office of Management and Budget
Virginia A. Vogel, Director of Personnel
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