

State of New Hampshire



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

APPEAL OF THOMAS MCCABE

Docket 99-C-19

Department of Safety, Bureau of Marine Patrol

January 19, 2000

The New Hampshire Personnel Appeals Board¹ (Wood, Johnson and Rule) met Wednesday, September 8, 1999, under the authority of RSA 21-I:57, to hear the classification appeal of Captain Thomas McCabe, an employee of the Department of Safety, Bureau of Marine Patrol. The appellant was appealing the Director's March 30, 1999 decision denying the agency's request to increase the salary grade for the position of Marine Patrol Captain from salary grade 22 to salary grade 25. The appellant was represented at the hearing by SEA Field Representative, Jean Chellis. The State was represented by Virginia Lainberton, Director for the Division of Personnel. The appeal was heard on offers of proof by the representatives of the parties.

The record of the hearing in this matter consists of pleadings submitted by the parties prior to the hearing, the audio tape recording of the hearing on the merits, notices and orders issued by the Board, and documents admitted into evidence at the hearing as follows:

¹ At the outset of the hearing, Commissioner Wood advised the parties that he has known Thomas McCabe, Supervisor of the Marine Patrol Section, for a number of years. He did not feel there was a conflict of interest, but he offered to recuse himself. Neither party objected to Mr. Wood remaining on the panel.

Appellant's Exhibits

1. The March 30, 1999 letter to Claude Ouellette from Director Lamberton regarding her decision on the position review of Marine Patrol Captain
2. The position classification questionnaire completed by Captain McCabe in May of 1998
3. The class specification for Marine Patrol Captain
4. The class specification for Supervisor of Navigation
5. The 1983 memorandum from Supervisor of Classification, Ed McCann, to Director of Safety Services Robert Danos accepting a suggestion to change the title of Supervisor of Navigation to Chief, Marine Patrol Section
6. The supplemental job description for Marine Patrol Captain approved by Director Lamberton on March 29, 1999
7. The December 29, 1998 memorandum from Captain McCabe to Marian Stanton outlining the legislative changes since 1983 which have affected the operation of the Marine Patrol Bureau and his supervision thereof
8. Information regarding public hearings held by Captain McCabe, his resultant recommendations, and subsequent action by the Department of Safety

State's Exhibits

- A. Memo dated June 4, 1998 from Claude Ouellette to Director Lamberton
- B. Memo dated October 8, 1998 from David Barrett to Director Lamberton
- C. Position Classification Questionnaire for position #10676, Marine Patrol Captain
- D. Proposed supplemental job description for positions #10676
- E. Organization chart for Division of Safety Services
- F. Decision letter to Claude Ouellette dated March 30, 1999
- G. Letter of appeal dated April 14, 1999
- H. May 4, 1999 letter to Virginia Lamberton from Jean Chellis
- I. Class specification for Marine Patrol Captain
- J. Current and proposed Point Factors for Marine Patrol Captain

Ms. Chellis argued that even though the Director did not find sufficient change in the level of the job responsibilities to warrant an increase in salary grade, the appellant believes the change in his job responsibilities warrants an increase in the following classification evaluation attributes, and asked the Board to render a decision on each factor where an increase is requested. The table below depicts the current and proposed point allocations.

MARINE PATROL CAPTAIN	CURRENT ALLOCATION	PROPOSED ALLOCATION
SALARY GRADE	22	25

FACTOR	LEVEL	POINTS	LEVEL	POINTS
SKILL	4	65	4	65
KNOWLEDGE	3	60	4	85
IMPACT	4	40	5	70
SUPERVISION/MANAGEMENT	4	40	5	60
WORKING CONDITIONS	2	10	2	10
PHYSICAL DEMANDS	2	50	2	10
COMMUNICATION	5	55	5	55
COMPLEXITY	4	80	5	110
INDEPENDENT ACTION	5	75	5	75
TOTAL EVALUATION POINTS		435		540

Director Lamberton argued that although there had been changes in boating regulations, an increase in boating traffic, and a resulting increase in enforcement activity, the changes did not represent material changes in the duties and responsibilities of the position to warrant its reallocation. She noted that the position is currently allocated at the same level as that of Corrections Captain, and that it would be inappropriate to have Marine Patrol allocated at a higher salary grade.

Having reviewed the evidence, argument and offers of proof, and after having compared the description of the Marine Patrol Captain's duties and responsibilities to those outlined in the class specifications on the Division of Personnel Web Site for State Police Captain, Conservation Officer Captain and Corrections Captain, the Board made the following findings of fact and rulings of law:

FINDINGS OF FACT

1. The specification for Marine Patrol Captain requires an applicant to possess a Bachelor's degree in law enforcement, criminal justice, police science or business administration and five years of experience in law enforcement, one year of which must have been in a supervisory capacity and one year in boating operations. The specification also requires police officer certification issued by the New Hampshire Police Standards and Training Council. The specification includes equivalency statements for both education and experience totaling 9 years of education or experience or any combination thereof.
2. The class specification for Conservation Officer Captain requires an applicant to possess a Bachelor's degree in conservation, forestry, fish and game management, or law enforcement and five years of experience as a Conservation Officer, three of which must have been at the level of Conservation Officer Lieutenant totaling 9 years of education and experience. The specification also requires the applicant to be certified as a full-time law enforcement officer by the New Hampshire Police Standards and Training Council. Approved work experience may be substituted for formal education. Education, however, can not be exchanged for experience.
3. The class specification for Corrections Captain requires an applicant to possess an Associate's degree from a recognized college or technical institute with major study in criminology, psychology, sociology, criminal justice, police science, or penology, and four years' experience as a Corrections Officer or equivalent experience such as law enforcement, police work or military experience in penology or law enforcement, at least three years of which shall have been supervisory in nature; totaling 6 years of education and experience. Two additional years of supervisory experience may be substituted for two years of required formal college education.
4. The class specification for State Police Captain requires an applicant to possess a Bachelor's degree, preferably in criminal justice or the equivalent, currently hold the rank of Lieutenant, have six years of experience as a State Police Trooper, and possess police officer certification issued by the New Hampshire Police Standards and Training Council or be in possession of a police officer certification from a recognized jurisdiction. The specification requires a total of 10 years of education and experience, and it permits approved work experience to be substituted for formal education. Education, however, may not be exchanged for experience.
5. The position of Marine Patrol Captain is rated at rated at levels 4 and 3 respectively for the factors of Skill and Knowledge.

6. Positions of Conservation Officer Captain are rated at level 4 for the factors of Skill and Knowledge.
7. Positions of Corrections Captain are rated at levels 4 and 3 respectively for the Skill and Knowledge factors.
8. Positions of State Police Captain are rated at levels 5 and 4 respectively for the Skill and Knowledge factors.
9. A comparison of the class specifications for each of the above-listed classifications shows a greater similarity in the requirement for education and experience between positions of Marine Patrol Captain and Conservation Officer Captain, supporting the proposition that they should be rated equally for the factors of Skill and Knowledge.
10. The Technical Assistance Manual defines "Impact" as, "...the manner in which the basic purpose and job functions of a position interact with and respond to the overall needs of the agency. This factor measures the probability for and consequences of error in relation to the achievement of agency goals and objectives, including the responsibility for planning and developing agency programs, implementing operational procedures and providing services to specific client populations."
11. The Board found that the appellant's role in describing, "...the profile of an ideal Marine Patrol Officer," "...coordinating and reviewing staff recommendations for administrative and operational changes," or "implementing bureau administrative and operational activities," as described in his written notice of appeal are best defined by the current allocation at level 4 for Impact. The Board did not find that those activities entailed, "...major aspects of long-range agency objectives by planning short- and long-term organizational goals, reviewing recommendations for procedural changes, and developing or revising program policies" in terms of the agency as a whole, and therefore did not rise to level 5 for the Impact factor.
12. The appellant's position is currently rated at level 4 for Supervision and Management, that "Requires direct supervision of programs or of employees doing work which differs from the supervisor, including disciplining employees, solving personnel problems, recommending hiring and terminating employees, and developing work methods..."
13. In his classification questionnaire, the appellant described his responsibility for supervising classified personnel as, "...prepare and review training schedules for seasonal Marine Patrol personnel; review requests and make recommendations for permanent personnel to attend programs of other law enforcement and career advancement agencies." He also indicated that he, "...prepare[s] policies on equipment and its use; promulgate[s] enforcement policies of Marine Patrol; review[s] and

supervise[s] requests for navigational aides, no rafting areas, speed limitation and power boat restrictions on lakes and ponds; hold[s] public hearings on the above and make[s] recommendations to the Director after weighing evidence and preparing policies on equipment and its use, promulgating enforcement policies of Marine Patrol.” The Board found that the appellant's responsibility for supervising Marine Patrol personnel and "screening and approving policies" within the overall structure of the Department of Safety did not rise to the level of work described by level 5 for the Supervision factor.

14. The appellant's position is currently rated at level 4 for the factor Complexity, that the Technical Assistance Manual defines as, "...the combination of specific job functions in relation to the overall structure and purpose of the job. This factor measures the diversity of the tasks performed, the application of fundamental principles to solve specific problems, and the level of judgment required to apply knowledge acquired through training and experience."
15. The position is properly rated at the 4th level. The evidence does not support reallocation of this factor to level 5 that entails, "...evaluating a combination of wide-ranging job functions to determine work procedures, to solve problems, and to reach conclusions by applying analytical, technical or scientific thinking..." when assessed in light of the specific job functions in relation to the overall structure and purpose of the job.
16. The evidence reflects that the appellant's job functions are generally administrative in nature. Neither the usual and customary physical demands of the position nor the conditions under which the appellant performs his regular duties would warrant allocation above level 1 for either the factors of Physical Demands or Working Conditions. However, there was insufficient evidence directly on point to warrant a finding by the Board that either factor should be reallocated.
17. A 25 point increase in the "Knowledge" factor would increase the total points allocated to the position from 435 to 460, resulting in a reallocation from salary grade 22 to salary grade 23.

Rulings of Law

- A. If the board determines that an individual is not properly classified in accordance with the classification plan or the director's rules, it shall issue an order requiring the director to make a correction. [RSA 21-I:57]
- B. The position classification plan, which is exempt from rulemaking under RSA 21-I:43, II(a), shall be the plan as defined in this rule. [Per 301.01(a)]

- C. The standard for allocating the position of every employee in the classified service shall be the position classification plan, which is prepared and revised by the director under RSA 21-I:42, II. [Per 301.01(b)]
- D. The position classification plan shall consist of the following:(1) A complete set of published class specifications established under Per 301.02 grouped alphabetically by class title; and (2) The evaluation plan and point factors used to write class specifications and classify positions, which is listed in the technical assistance manual. [Per 301.01(c)]
- E. The request for a classification determination shall include at least the following: (1) A copy of the description annotated to reflect the proposed changes; and (2) A written statement which includes an explanation of how the proposed change is related to corresponding changes in the agency's goals, objectives, structure, and organizational chart. [Per 301.031 (m)]

Decision and Order

The Board, after reviewing the evidence and the oral presentations, and based on the findings and rulings set forth above, found that the position of Marine Patrol Captain should be reallocated from salary grade 22 to salary grade 23.

THE PERSONNEL APPEALS BOARD



Patrick H. Wood, Chairman

Lisa A. Rule, Commissioner



Robert J. Johnson, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol Street, Concord NH 03301
Jean Chellis, SEA Field Representative, PO Box 3303, Concord NH 03302-3303
Claude Ouellette, Human Resources Administrator, Dept. of Safety, 10 Hazen Dr., Concord, NH 03305