

State of New Hampshire



PERSONNEL APPEALS BOARD

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

APPEAL OF SUZANNE SMITH

Docket #93 -C-12

Department of Environmental Services

December 9, 1993

By letter dated November 4, 1993, Thomas Hardiman, SEA Director of Field Operations, filed with the Board a request for reconsideration of the Board's October 21, 1993 decision in the classification appeal of Suzanne Smith. In that request, Mr. Hardiman argued that the Board's decision was unreasonable in that it denied a request to protect Ms. Smith's salary after a downward reallocation of her position, even though the position review process was initiated under the former Rules of the Division of Personnel. Mr. Hardiman argued that "...the Board has been consistent in the past that any process started under the former Rules would be subject to the provisions of the former Rules." He has failed to cite any such decision by the Board in a matter related to position classification decisions and appeals, and has therefore failed to provide any substantive grounds upon which to claim that the Board's decision was unreasonable.

As the Board's October 21, 1993 decision stated, Ms. Smith's position classification questionnaire was forwarded to the Division of Personnel **after** the effective date of the current personnel rules, and the decision on the appropriate position allocation was made subsequent to the effective date of those rules. Ms. Smith and her supervisor signed her questionnaire one day after the effective date of the current Rules of the Division of Personnel. The decision to reclassify Ms. Smith's position was made after the effective date of the current Rules of the Division of Personnel. Therefore, the Board voted to affirm its decision that Ms. Smith's rate of pay was not protected by the former Rules of the Division of Personnel, and that the reclassification of her position was subject to the provisions of Per 303.06(b) of the Rules of the Division of Personnel (eff. 4/27/92). Accordingly, the Board voted **unanimously** to deny the appellant's request for reconsideration.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

✓-1 cc: Virginia A. Lamberton, Director of Personnel
Thomas F. Hardiman, SEA Director of Field Operations
John Dabuliewicz, Assistant Commissioner, Environmental Services

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APPEAL OF SUZANNE SMITH DOCKET #93 - C - 12 Department of Environmental Services

October 21, 1993

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, August 4, 1993, to hear the classification appeal of Suzanne Smith, an employee of the Department of Environmental Services. Ms. Smith, who was represented at the hearing by SEA Director of Field Operations Thomas Hardiman, was appealing the Personnel Director's decision to downgrade her position of Clerk IV, salary grade 11, to Senior Clerk Interviewer, salary grade 9. The Division of Personnel was represented at the hearing by Director Virginia Lamberton.

At the conclusion of the hearing, Director Lamberton submitted proposed findings of fact and rulings of law. While the Board is mindful of its obligation to respond to proposed findings of fact and rulings of law and finds them helpful in focusing the review on the material facts in dispute, detailed, compound proposed findings which do not allow the Board to focus on the issues are not helpful in reaching a decision. Accordingly, the Board will make its own findings in this case. To the extent that the proposed findings are consistent with the Board's decision, they are granted. Otherwise, they are denied.

On April 13, 1992, the Director of Personnel wrote to the Human Resource Administrator for the Department of Environmental Services requesting that incumbents in three positions (Clerk III, Clerk IV and Administrative Assistant I) complete and return Position Classification Questionnaires for review by the Division of Personnel. In support of her request, the Director indicated that one month earlier, her division had received supplemental job descriptions for the two Clerk positions which indicated they were assigned to the Water Supply and Pollution Control Division, but were supervised by the Administrative Assistant II position assigned to the Commissioner's Office. The Director also indicated that the information contained in the supplemental job descriptions raised questions about the appropriate classification of all three positions, and asked that the incumbents complete and return the questionnaires.

Ms. Smith, the Clerk IV incumbent, completed and returned her questionnaire to the Division of Personnel on May 1, 1992. A position review was undertaken, including an audit interview on May 26, 1992. Upon review of the Classification Analyst's August 7, 1992 report, the Director, in consultation with the Administrator of the Classification Section, determined that the position would be more accurately described by the specification for Clerk Transcriber Receptionist (salary grade 3). Those findings were reported to John Dabuliewicz, Assistant Commissioner of Administrative Services, on September 15, 1992.

On October 5, 1992, Mr. Dabuliewicz responded to the Division of personnel suggesting that Ms. Smith's position be classified as a Senior Clerk Interviewer. In support of that recommendation, Mr. Dabuliewicz stated that the position has frequent contact with the public, both in person and over the phone, and that the callers to the department were often loud or angry, requiring composure and tact on the part of the incumbent. Mr. Dabuliewicz also argued that Ms. Smith was responsible for training back-up personnel to work the receptionist's desk and, from time to time, had to exercise partial supervision over those employees. He also noted that Ms. Smith was responsible for directing visitors to scheduled hearings within the building, and had limited dispatching duties involving the FAST team. After considering that information, the Division of Personnel accepted the recommendation that instead of downgrading the subject position to Clerk Transcriber Receptionist (salary grade 3), the position would be downgraded to Senior Clerk Interviewer (salary grade 9).

In support of her appeal, Ms. Smith testified that she believed her downgrading was the result of a difference of opinion with a supervisor rather than any material changes in her duties. She testified that when she was promoted to the position in 1987, she was performing work at the Clerk III and Word Processor I level, and the position was reallocated to Clerk IV, salary grade 11. Director Lamberton testified that the original upgrading of Ms. Smith's position from Account Steno II, salary grade 9, to Clerk IV, salary grade 11, was based upon information from Kenneth Morrissey, and Administrator in the Department of Environmental Services, which indicated that the incumbent would be responsible for supervising the officer operations, including supervision of clerical staff, extensive record keeping duties, ordering office supplies and equipment, and directing all mailing activities. She argued that while Ms. Smith may have more duties assigned to her now than she had been asked to perform when the position was classified as a Clerk IV, the position itself was never required to perform the duties and responsibilities outlined on the class specification. She also testified that the current duty assignments do not, in fact, support classification at the level of Senior Clerk Interviewer, that downgrading to that level was approved only in light of the effect on the incumbent's situation, and that if Ms. Smith were to vacate the position, it would most likely be downgraded to the level of Clerk Transcriber/Receptionist, salary grade 3.

Under the current Rules of the Division of Personnel, incumbents in positions which are downgraded are allowed to keep their higher salary for a period of two years from the date of the downgrading. After two years, the incumbent's salary is decreased to the level of the classification. Ms. Smith argued that because of the extremely limited opportunities for promotion in her department, she would have little chance of finding a position at salary grade 11, and that the Board should take that factor into consideration in deciding her appeal. She also argued that other positions in the department allocated at salary grade 11 were not downgraded, even though they have no supervisory responsibilities.

On the appellant's behalf, Mr. Hardiman argued that when Ms. Smith transferred to the Commissioner's Office from her position in the Division of Water Supply, she was told that nothing would happen to her job, and that she acted in reasonable reliance on those representations. He further argued that the Personnel Director's request for information concerning Ms. Smith's position was made on April 12, 1992, under the former Rules of the Division of Personnel which provided wage protection for incumbents when their positions were downgraded. He contended that the Board was bound to apply the former Rules and protect the appellant's salary at its former level of salary grade 11.

The Board found that Ms. Smith's duties and responsibilities do not support classification at the level of Clerk IV, salary grade 11. She does not perform the supervisory responsibilities

which formed the basis of the original upgrading to Clerk IV, salary grade 11. The Board also found that the position classification questionnaire was forwarded to the Division of Personnel after the effective date of the current Personnel Rules, and the decision on the appropriate position allocation was made subsequent to the effective date of those rules. Therefore, there is no authority for the Board to order the Personnel Director to hold Ms. Smith harmless at her former salary level. Finally, while Ms. Smith's representations concerning the availability of promotions in her department may be accurate, they are irrelevant to the question of position classification, and therefore can not be considered in determining the appropriate allocation of this position.

Therefore, on the evidence, the Board voted to deny Ms. Smith's appeal. In so doing, the Board granted the Director's proposed requests for rulings of law.

THE PERSONNEL APPEALS BOARD

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cc: Virginia A. Lamberton, Director of Personnel
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