

State of New Hampshire



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

RESPONSE TO APPELLANTS' MOTION FOR RECONSIDERATION

APPEAL OF SOCIAL WORKERS

Docket #93 - C-7

93-C-907

Division of Elderly and Adult Services

June 1, 1994

By letter dated March 22, 1994, the appellants, through their SEA Field Representative Margo Hurley, filed a Motion for Reconsideration of the Board's March 3, 1994 decision in the above-captioned classification appeal. In support of that Motion, Ms. Hurley argued that the Board should have granted the appellants' motion for discovery in order to allow them to review the notes and documents which the Director might have used in reaching her decision on the appellants' request for reclassification. She suggested that because the issue affected some forty-four positions at the time of the review, it should have been considered exceptional.

The appellants have offered no new evidence or argument which would support a reversal of the Board's decision with regard to the Motion for Discovery. The fact that the decision affected forty-four positions does not make the case exceptional.

Ms. Hurley argued that the Board failed to justify its statement that the appellants bore the burden of proving that there had been sufficient change in their positions to warrant reclassification. She stated that the Rules of the Personnel Appeals Board contain no such requirement, and that the Board therefore had created an illegal burden.

The Board's rules are procedural in nature and contain only that information which addresses the appeal process. The standard for review and reallocation of positions is set forth in the Rules of the Division of Personnel. Former Per 303.03 of the Rules of the Division of Personnel, in effect at the time of the appellants' request for position review set forth the standard for periodic review of classifications:

The director shall periodically provide for a systematic investigation of all positions in the state classified service for the purpose of adjusting the allocations of all positions where the duties and responsibilities may have materially changed.

Former Per 303.04 (a) and (b) also stated:

(a) Appointing authorities shall give written notice within 60 days to the director of material changes in the duties and responsibilities of the positions occupied by their employees. If an appointing authority fails to so notify the director, the employee may file a written request with the director that his position be studied.

(b) 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.

A similar standard exists in the current Rules of the Division of Personnel under Per 303.02 "Completed Request" (for reclassification):

"An explanation of the reason or reasons for the request, including what precipitated the permanent change in the duties of the position to necessitate the review..."

"A position classification questionnaire indicating the change or changes in the employee's duties which require a reallocation or reclassification of the position from one classification to another..."

Ms. Hurley argued that "the Board's rules and RSA 21-I:46 allow for appeals of the Director's decisions; therefore the Director's analysis or conclusions can be incorrect and can be challenged." Although Ms. Hurley has mistakenly relied on the general provisions of RSA 21-I:46, rather than the more specific provisions of RSA 21-I:57, in describing an employee's or an agency's right to appeal a classification decision of the Director, she is right in noting that the statutes provide a mechanism for challenging those decisions. RSA 21-I:57 sets forth the process for appealing the Director's classification decisions and seeking correction of same:

RSA 21-I:57 Allocation Review. The employee or the department head, or both, affected by the allocation of a position in a classification plan shall have an opportunity to request a review of that allocation in accordance with rules adopted by the director under RSA 541-A, provided such request is made within 15 days of the allocation. If a review is requested by an employee, the director shall contact the employee's department head to determine how the employee's responsibilities and duties relate to the responsibilities and duties of similar positions throughout the state. The employee or department head, or both, shall have the right to appeal the director's decision to the personnel appeals board in accordance with rules adopted by the board under RSA 541-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.

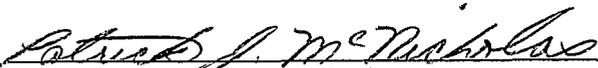
Neither RSA 21-I:46 nor RSA 21-I:57 implies that a right to challenge a decision of the Director modifies the burden of proof in either the review of a position classification, or the appeal of that decision. The appellants have failed to offer any persuasive evidence or argument which would support a finding that the burden in this matter has been improperly assigned to the appellants who are requesting the reallocation, or that their evidence was sufficient to prove that their positions were improperly classified.

T
i

The Motion, as submitted, fails to offer any new evidence or argument which would warrant reconsidering the decision to deny this appeal. The Board apologizes for incorrectly attributing Mr. Day's testimony to Ms. Day. However, incorrect attribution does not alter the underlying facts of the case, or necessitate reconsideration of the decision.

The Board voted unanimously to deny the Motion for Reconsideration. In so doing, the Board also voted to affirm its decision denying the reclassification appeal.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett, Commissioner


Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Margo Hurley, SEA Field Representative
Dr. Harry Bird, Commissioner, Department of Health and Human Services
Sandra Platt, Administrator, Health and Human Services

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261
APPEAL OF SOCIAL WORKERS
Docket #93 - C - 7
Division of Elderly and Adult Services

March 3, 1994

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Johnson) met Wednesday, March 10, 1993, to hear the classification appeal of Social Workers from the Department of Health and Human Services, Division of Elderly and Adult Services. The appellants were represented at the hearing by SEA Field Representative Margo Hurley. Personnel Director Virginia Lamberton appeared on behalf of the New Hampshire Division of Personnel.

Before taking up the merits of the appeal, the appellants requested a formal ruling on their Motion for Discovery, the substance of which is contained in Division Director Chevrefil's February 5, 1992 letter to Personnel Director Lamberton. The appellants requested:

- a. All interview notes and written material prepared as part of the job audits and interviews with thirteen social workers and eight supervisors.
- b. All notes completed and compiled by the three Division of Personnel Analysts which were utilized by the Director of Personnel in her 1/9/92 decision.
- c. Copies of all job materials submitted at the time of the classification review, from 1981 through 1983, and copies of all 1991 job information which was used for comparison, including copies of all questionnaires which list the duties and responsibilities of those positions for both the 1981 through 1983 and 1991 requests.
- d. Copies of the supplemental job descriptions for all social workers in all agencies including but not limited to social worker positions at the Youth Services Center, the Department of Corrections, the Office of Economic Services and the New Hampshire Hospital.
- e. Copies of all materials submitted by former social workers in the Division for Children and Youth Services which were compared to the materials submitted in the reclassification request submitted by the Division of Elderly and Adult Services in 1991.
- f. Copies of all analyses demonstrating that the protective work performed by the Division of Elderly and Adult Services Social Workers is different from that done by Child Protective Service Workers.
- g. A copy of the Division's analysis of the 1990 Adult Protection Program Annual Report Summary of the Division of Elderly and Adult Services which the Division of Personnel used to substantiate its findings, as well as a copy of the analysis of the 1990 Annual Report on the Adult Protection Program.
- h. All notes and documentation which relate to the scoring of the evaluation factors which support a finding that the social workers in the Division of Elderly and Adult Services are properly allocated at the current salary grade levels and class titles, as well as a copy of the evaluation factors and related analysis pertaining to the evaluation of the Child

Protective Service Workers.

The Board voted to deny the motion. Per-A 204.02(b) of the Rules of the Personnel Appeals Board provides that either party may request that the Board order formal discovery, including requests for admissions, requests for production, interrogatories and depositions in exceptional cases. The appellants have failed to set forth any compelling reasons to believe that this appeal should be considered an exceptional case.

The Director's letter of January 9, 1992 to Dr. Bird, Commissioner of Health and Human Services, outlines the rationale for her classification decision. The appellants bear the burden of proving that there have been sufficient changes in their duties to warrant reallocation or reclassification of their positions. The Board's rules do not require the Director of Personnel to prove that her analysis or conclusions are correct. Rather, it is the appellants' responsibility to demonstrate there were sufficient material changes in the work they perform to warrant reallocation or reclassification.

In their original request for reclassification of the Elderly and Adult Social Workers, Director Chevrefils requeste'd that the class series be reallocated as follows:

Social Worker Trainee	From s.g. 13 to s.g. 17
Social Worker I	From s.g. 15 to s.g. 17
Social Worker II	From s.g. 17 to s.g. 19
Social Worker III	From s.g. 18 to s.g. 19
Social Worker Consultant	From s.g. 19 to s.g. 21

In essence, the reclassification requested would have resulted in establishment of a three-tiered class series including Social Worker I, salary grade 17, Social Worker II, salary grade 19, and Social Worker III, salary grade 21. In its submissions on behalf of the appellants, the State Employees' Association suggested that the positions should be reallocated as follows:

Social Worker Trainee	From s.g. 13 to s.g. 15
Social Worker I	From s.g. 15 to s.g. 17
Social Worker II	From s.g. 17 to s.g. 19
Social Worker III	From s.g. 18 to s.g. 21
Social Worker Consultant	From s.g. 19 to s.g. 22

In the proposed degree/point allocations suggested by the State Employees' Association, all positions in the class series would receive the same number of points for the factors of Knowledge, Impact, Working Conditions, Physical Demands and Complexity. They suggest that the differences in the positions are in the areas of Skill, Supervision, Communications and Independent Action. In supporting documentation submitted by Director Chevrefils as part of the reclassification appeal, Director Chevrefils argued that there should be changes in the evaluation factors of Working Conditions, Complexity, Communication and Independent Action.

In her decision dated January 9, 1992, the Director denied the request for reallocation of any of the positions. She noted that because of the similarity in many of the job functions, there probably should not be as many levels of Social Worker as exist in the current class series, but said she would continue to approve of the current series because it provided the incumbents with a career ladder.

The Board noted with some concern that apart from minor variations in supervisory responsibility, the various appellants who spoke before the Board indicated that they perform remarkably similar functions. Absent specific information which supports the proposition that there should be levels of Social Workers ranging from trainee to consultant, the Board is extremely hesitant to endorse the proposition of a "career ladder" solely for the purpose of addressing additional education or experience which the incumbents may possess. Classification is the process of assessing the requirements of a position, rather than the skill of an incumbent. There are few classifications in State service which will permit an incumbent to advance by virtue of receiving additional education or experience when there is not a similar increase in job responsibility or function.

For instance, the Board is hard-pressed to understand why positions of Social Worker III through Social Worker Consultant are rated higher in the "Skill" factor than Social Worker I positions. Based on the information which was provided by the appellants in their position classification questionnaires, there appears to be little to support a finding that any members of the class, with the possible exception of Social Worker Consultants, require skill in "...developing formats and procedures for special applications OR in investigating and reviewing the use of equipment and data for a specialized function."

Working Conditions

The appellants' argued that the "Working Conditions" factor should be increased for all positions in the class series to level 4, which is defined as follows:

Requires performing regular job functions in an adverse working environment containing a combination of disagreeable elements which impact significantly upon the employee's capacity for completing work assignments. This level includes work related accidents or assault.

The positions are currently allocated at level 3, which is defined as follows:

Requires performing regular job functions in an environment which includes exposure to continuous physical elements or a number of disagreeable working conditions with frequent exposure to minor injuries or health hazards.

The appellants argued that they may spend as much as 90% of their time in the field and that they never know what to expect when entering a client's home. They cited possible exposure to AIDS, TB and hepatitis, and that many of their clients have been deinstitutionalized and present a variety of medical and psychological conditions which put the social workers at risk. They argued that there is also a high level of alcohol abuse among the elderly, contributing to the risk which the social workers face on a daily basis.

On inquiry from the Board, Ms. Day, a Social Worker in the Conway District Office, testified that she would estimate that 20% of her time is spent in the office, and 80% in the field. She testified that approximately 50% of the clients in her caseload presented "disagreeable conditions". Her description of the working conditions was considered fairly representative of the class as a whole.

Having considered the testimony of the appellants, the Board found that the current allocation of this factor adequately addresses the appellants' working conditions. There appears to be no dispute that the appellants are subject to disagreeable elements with exposure to certain

injuries and health hazards. The Board was not persuaded that the degree of exposure was sufficient to warrant reallocating this factor to the fourth level.

Complexity

The Evaluation Manual defines "Complexity" as the combination of specific job functions in relation to the overall structure and purpose of the job. The 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. The social workers have suggested that all positions in the class series should be allocated at level 4, which is defined as follows:

Requires coordinating a combination of diverse job functions in order to integrate professional and technical agency goals. This level also requires considerable judgment to implement a sequence of operations or actions.

In the materials submitted by the State Employees' Association in support of increasing the "Complexity" factor, the appellants cite the case of "Mrs. V." After briefly describing the problems presented by this client, they state, "Mrs. V's case is illustrative of the DEAS Social Worker's need to coordinate a combination of diverse job functions while exercising considerable professional judgment and technical knowledge."

The examples provided by the appellants, however, are more supportive of allocating the "Complexity" factor at the third degree:

Requires a combination of job functions [*easy ones such as paying bills to much more difficult ones such as instituting a guardianship proceeding in order to assure safety] to establish facts ["assessing the adequacy of the client's support network in light of medical assessments, available resources and eligibility for services], to draw daily operational conclusions, or to solve practical problems ["establishing a successful case plan]. This level also requires providing a variety of alternative solutions where only limited standardization exists [*to have clients living in safe conditions with the least possible interruption from state government as required by the Adult Protection Act]. (*See Appellants' March 10, 1993 submission)

The Board has no doubt that judgment, professional training and technical knowledge are necessary for social workers to perform their job functions. However, the Board is not persuaded that the diversity of the tasks performed warrant an allocation of all positions in the classification to the fourth level.

Communications

The appellants have suggested that Social Worker III and Social Worker Consultant positions should be allocated at level 5 which is defined as follows:

Requires reviewing summaries and reports and **making** management level decisions to solve problems or to achieve work objectives as well as articulating and expressing those solutions and goals. This level also requires formal presentations of solutions and goals to employees and the general public to increase the responsiveness of the agency toward the demands of its client system.

In support of that argument, the appellants argued that they review numerous medical reports and summaries on individual cases, and that they articulate the practices, services, solutions and goals of individual case plans to health care providers, law enforcement officials, neighbors, service and housing providers. They also argued that they make formal presentations concerning AIDS to employees of service providers and members of the general public.

The factor "Communications" means "...the nature and effectiveness of the interpersonal contacts of the position. This factor measures the requirements of the position to articulate and express the goals of the agency. The Technical Assistance Manual further defines the "Communication" factor as follows:

The Communication factor rates the amount of verbal and written expression needed to represent the goals and objectives of the agency to the general public. This factor focuses on personal contacts, measuring how much responsibility is required to convey or interpret information. When rating the Communication factor the level of communication increases from conveying information important to the daily functioning of the agency to representing the agency's agenda before state policy makers.

With that description in mind, the Board was not persuaded that the contacts described by the appellants represented "Communication" at the level sought by the appellants. The Board found that the positions for which an increase was sought are properly allocated at level 3, which entails explaining facts, interpreting situations, or advising individuals of alternative or appropriate courses of action, as well as interviewing or eliciting information from state employees or members of the general public.

Independent Action

The appellants have suggested that Social Worker III and Social Worker Consultant positions should be allocated at level 4, which is defined as follows:

Requires objective assessment in analyzing and developing new work methods and procedures subject to periodic review and in making decisions according to established technical, professional, or administrative standards.

As the appellants pointed out in their submission, "Independent Action" means the amount of decision making, initiative and responsive effort required in originating new or more efficient work methods and procedures. This factor measures the type, frequency and priority of well-defined alternatives and the extent to which instructions or policies guide action in selecting and applying strategies to enhance service delivery of the agency.

Again, the appellants have applied the definition of the factor to individual case management procedures, not the over-all service delivery system of the agency. The work methods and procedures subject to periodic review are more appropriately defined as the administrative standards, rules and operating procedures of the agency. The Board was not persuaded that the Social Worker III or Social Worker Consultant incumbents have any authority to develop new administrative standards, rules or operating procedures, although they clearly need to understand and apply those procedures in applying them to individual cases.

The Board found that those positions for which an increase was proposed are properly allocated

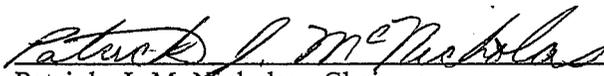
at level 3 of the factor, which is defined as follows:

Requires a range of choice in applying a number of technical or administrative policies under general direction and making routine decisions or in recommending modifications in work procedures for approval by the supervisor.

After considering the materials presented by the appellants in support of their reclassification appeal, the Board did not find that there were substantial or material changes in the positions warranting reclassification or reallocation. While the Board applauds the work performed by the appellants, the Board did not find that the work was substantially different than that which was described in their 1981 reclassification requests. As one of the appellants noted in her testimony, the world in general has become more complex. That complexity, however, affects all segments of the population and the workforce. In and of itself, an increasingly complex world does not provide sufficient justification for reallocating an entire class of positions within the framework of government. Similarly, legislation which increases the number of persons who are responsible for reporting possible abuse or neglect of the elderly and a growing caseload does not alter the essential elements of case management.

Accordingly, the Board voted unanimously to deny the appeal. To the extent that the Personnel Director's requests for findings of fact and rulings of law are consistent with the decision above, they are granted. To the extent that they are inconsistent, they are denied.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett, Commissioner


Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Margo Hurley, SEA Field Representative
Dr. Harry Bird, Commissioner, Department of Health and Human Services
Sandra Platt, Administrator, Health and Human Services