

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
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## ***APPEAL OF THOMAS SWEENEY***

***Docket #97-G7***

***Department of Environmental Services***

***June 12, 1997***

The New Hampshire Personnel Appeals Board (Bennett and Johnson) met on Wednesday, April 30, 1997, under the authority of RSA 21-I:57, to hear the appeal of Thomas Sweeney, a former employee of the Department of Environmental Services. Mr. Sweeney, who was represented at the hearing by Jean Chellis, SEA Field Representative, was appealing the Director's decision denying his request to establish August 1, 1987, as the effective date of reallocation of his position from Chief, Bureau of Solid Waste Management to Administrator II. Virginia Lamberton, Director of Personnel, appeared on behalf of the Division of Personnel. The appeal was made on offers of proof by the representatives of the parties. The record in this matter consists of the audio tape recording of the hearing, documents submitted by the parties prior to the hearing, notices and orders issued by the Board, and any pleadings and exhibits offered by the parties at the hearing.

The history of Mr. Sweeney's current appeal is long and complicated, and for purposes of clarity, it is outlined below:

Mr. Sweeney's first appeal to the Board was filed on May 3, 1989, by SEA Field Representative Stephen McCormack, who wrote that Mr. Sweeney wished to appeal the Personnel Director's January 25, 1989, decision to reclassify his position from Chief, Bureau of Solid Waste Management, Salary Grade 27 to Administrator II, salary grade 28. On May 8, 1989, the Director of Personnel filed a Motion to Dismiss, arguing that Mr. Sweeney's appeal was untimely. She wrote, in part,

“As the reconsideration decision from which this appeal arises was issued on April 7, 1989, Mr. Sweeney's appeal of same must have been filed no later than April 22, 1989, in order to satisfy the timely filing requirements of the Board's Rules. Even if the Board were to consider waiving the timely filing requirements of Per-A 202.01 (a), Mr. Sweeney admits to understanding that the decision regarding the classification of his position was final, and that he came to such conclusion on April 25, 1989. Eleven (11) additional calendar days elapsed following Mr. Sweeney's "understanding" of the decision and appeal procedures before he filed an appeal with the Board.”

On May 10, 1989, the Board issued a decision dismissing Mr. Sweeney's appeal as untimely, stating, "Both statute and administrative rule provide for appeal to the Board within fifteen calendar days of the date of the action giving rise to the appeal, not within fifteen days of an employee's understanding of the nature of the decision or requirements for appeal."

In 1996, SEA Field Representative Jean Chellis spoke to the Board's Executive Secretary, Mary Ann Steele, to ask when Mr. Sweeney's classification appeal would be heard. Ms. Steele advised Ms. Chellis that the Board had no record of a pending appeal by Mr. Sweeney. On September 17, 1996, the Board received from Ms. Chellis a copy of a letter from her, dated July 6, 1989, appealing the Personnel Director's June 21, 1989, decision concerning the effective date of Mr. Sweeney's reclassification from Chief, Bureau of Solid Waste Management to Administrator II. The Board searched its records and was unable to locate a copy of that appeal. However, understanding that the appeal may have been misdirected or misplaced, the Board scheduled the matter for hearing on April 30, 1997.

Upon receipt of the Board's notice that a hearing had been scheduled on April 30, 1997, to hear Mr. Sweeney's appeal of the effective date of reallocation, both the Department of Environmental Services and the Division of Personnel requested copies of the appeal from the Board, indicating that they were unaware of any pending appeal. On March 31, 1997, Carmen Cragg, HR

Supervisor for the Department of Environmental Services, wrote to the Board stating, "This is to inform you that Thomas Sweeney terminated from the Department of Environmental Services on 12/14/89, and that we have no record of the appeal of Ms. Sweeney other than a copy you faxed to us on March 27, 1997."

The following day, the Board received from Ms. Chellis copies of additional documents, including a May 18, 1989, request for reconsideration of the Board's original decision dismissing Mr. Sweeney's first classification appeal. Again, the Board searched its files and found no record of having received a request for reconsideration.

Having now reviewed the request for reconsideration of the Board's May 10, 1989, decision dismissing Mr. Sweeney's original reclassification appeal, the Board voted to deny that request. The appellant failed to persuade the Board that its decision dismissing Mr. Sweeney's May 3, 1989, appeal of her January 25, 1989, reclassification decision was untimely.

On the instant appeal, Ms. Chellis argued that under the statutory scheme in effect at the time, if more than 45 days elapsed between the submission of a classification questionnaire and the decision to reclassify a position, the date of change was to have been at the beginning of the first pay period immediately following the 45th day. She argued that Ms. Sweeney's completed classification questionnaire was submitted to the Division of Personnel on June 17, 1987, and that his reclassification then should have been effective on August 1, 1987. Ms. Chellis argued that a desk audit of Mr. Sweeney's position was completed in August 1987, and that although Classification and Compensation Administrator Ed McCann requested additional information from the Department of Environmental Services on October 22, 1987, he never advised the department that "their job audit request was incomplete."

Ms. Chellis also argued that until April, 1992, the Division of Personnel had no administrative rules defining what would constitute a completed request for reclassification. Therefore, she argued that Mr. Sweeney was entitled to additional compensation retroactive to August 1, 1987, and reasonable

interest on the additional moneys he would have earned between August 1, 1987 and December 14, 1989, if his position had been reallocated on the appropriate date.

Ms. Lamberton argued that when the Division of Personnel began its review of Mr. Sweeney's position, it was also reviewing a number of other administrative positions in the newly reorganized Department of Environmental Services. She argued that there was a significant amount of "back and forth" between her division and the department because of in-fighting within the Department of Environmental Services itself. She said that her division continued to receive conflicting information about the positions, and requested additional information as well as specific recommendations from the Department with respect to the appropriate titles and grades for the positions under review. She argued that until her division received complete and accurate information to compare Mr. Sweeney's position with the other administrative positions in the department, the request for reclassification was considered incomplete. She also argued that the Department initiated the request and, as such, the Division of Personnel communicated its progress and its requests for additional information to the Department. She argued that the reclassification request package was not complete until 1988, and the effective date of the change was established accordingly.

In consideration of the evidence and offers of proof, the Board voted to deny Mr. Sweeney's request for reallocation retroactive to August 1, 1987. Appellant's Exhibit A, a June 21, 1989, letter from the Director of Personnel to the Department of Environmental Services, lists the effective date of Mr. Sweeney's position reallocation as June 17, 1988. That letter also indicates that position questionnaires completed by Mr. Sweeney and two other administrative employees had been returned for "additional information." In her letter, the Director stated, in part:

"As you recall, on October 22, 1987 Classification and Compensation Administrator Ed McCann wrote to Mr. Morrissey requesting specific information in regard to a number of positions within your Department of Environmental Services... From the records maintained in my Division, no additional information was provided by your Department until April 21, 1988 when your

Commissioner, Alden H. Howard wrote to me enclosing six Position Classification Questionnaires that he indicated had been previously submitted on an individual basis but had been returned for additional information and for a comparison of Administrative positions on a department-wide basis... Upon receipt of Mr. Howard's April 21, 1988 communication, we now had Questionnaires... as well as specific recommendations on job titles and salary grades that would be appropriate for these positions."

According to the documents submitted by the appellant, his position was reallocated, effective June 17, 1988. That date appears to be consistent with reclassification at the beginning of the first pay period following the 45th day after receipt of a "completed request for reclassification."

Having considered the evidence, argument and offers of proof, the Board found that the Department of Environmental Services did not submit a completed request for reclassification until April, 1988. The Board further found that establishment of June 17, 1988, is consistent with statutory requirements for establishment of an effective date of reclassification. Accordingly, the Board voted to deny Mr. Sweeney's appeal.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



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Mark J. Bennett, Chairman



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Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301  
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