

State of New Hampshire

WPPID667



PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF ROBERT C. WARREN, Jr.
Insurance Department

January 24, 1991

Docket #89-C-8

The New Hampshire Personnel Appeals Board (Bennett, Cushman and Rule) met April 11, 1990, to hear the classification appeal of Robert C. Warren, an employee of the New Hampshire Insurance Department. Mr. Warren appeared on his own behalf. Virginia A. Vogel, Director of Personnel, represented the Division of Personnel.

Mr. Warren testified that on December 30, 1988, Insurance Commissioner Louis Bergeron had requested that Mr. Warren's position be reviewed and upgraded, indicating that he supported upgrading Mr. Warren's position to the same salary grade held by the Director of Property, Liability and Licensing Division. Prior to his request for upgrade, the appellant's position was allocated at salary grade 27, while the Director of Property, Liability and Licensing was allocated at salary grade 31. The Division of Personnel, following review of Mr. Warren's position, had recommended the position be upgraded to Administrator II, salary grade 28.

In support of his appeal, Mr. Warren suggested that four of the nine evaluation factors (State of New Hampshire, Evaluation Manual) had been improperly allocated. He stated that four specific factors were in dispute: Experience, Initiative, Errors and Supervision.

With regard to the Experience factor, Mr. Warren testified that if the State were to replace him with a candidate possessing only a Master's degree and 5 years of experience, it would run an enormous risk. Mr. Warren had earlier argued that a bachelor's degree would provide insufficient formal education for an incumbent in his position, and should be increased minimally to include several years of graduate level training. He also argued that insurance is best understood by "insiders" and as such, it would be critical for an incumbent to have extensive experience in that field. Mr. Warren therefore argued that reducing the Experience factor to the 7th degree from the 8th degree, as recommended by the Division of Personnel, would be inappropriate. He concluded that the 8th degree, requiring 7 or 8 years' experience would be the lowest acceptable level of experience for an employee in his position at entry level.

The Evaluation Manual defines "Experience" as "the amount of time spent in practical preparation in the same or related work. It is the time required by a person to satisfactorily perform the work [meaning of sufficient quality, output, and performance standards as to insure continued employment] and does not include any time of the employees spent beyond this. Technical ability and fundamental knowledge should not be included in this factor".

Bearing that definition in mind, and in consideration of the specialized training provided at the Master's level of education, the Board concurred with the Division of Personnel's assessment of the appropriate degree allocation for the Experience and Education factors. The Board found that a person possessing a Master's degree and 5 to 6 years' experience "in the same or related work" should be able to perform satisfactorily at entry level.

-Although the Board heard testimony concerning Mr. Warren's long-service with the Insurance Department, neither the appellant nor the Division of Personnel offered testimony or evidence relative to Mr. Warren's own educational background or the types of positions held by Mr. Warren in his tenure at the Insurance Department, as those credentials related to the issue of appropriate minimum qualifications for his position. The Board fully understands that a position can not be classified based on the incumbent's background. If, however, the appellant believes his own background is typical of that which an employee must possess to be successful in his position, and has some bearing upon his classification appeal, he offered no information about the specific nature and/or extent of his own experience and training for the Board's consideration. In the absence of such evidence, the Board denies Mr. Warren's request that the experience attribute be returned to the 8th degree.

The next factor which the appellant cited as being undervalued in the Division's review of his position was the Initiative attribute. Again, before considering the appropriate degree allocation, the Board reviewed the definition of this attribute in the Evaluation Manual. The Manual defines "initiative" as relating to "the job's requirements for exercise of judgment, independent action, and creative effort in originating new methods or procedures. In addition, initiative refers to resourcefulness beyond routine practices, supervision, and regulatory procedures established by statute."

In his written presentation, the appellant stated, "This demonstration, as you will note, is accomplished by examining what the incumbent has actually done to show initiative of the highest ability. Also noted are the challenges presented to this position by an industry that is constantly changing, challenges to which the incumbent must respond with the highest degree of initiative and resourcefulness."

The Board believes the appellant has confused the commonly accepted definition of "initiative" with that utilized as a standard of review for the purposes of position classification. Webster's New Collegiate Dictionary defines

initiative as "an introductory step" or "energy or aptitude displayed in initiation of action". The Board does not doubt that the appellant has displayed both energy and aptitude in the performance of his duties. Initiative for the purposes of classification, however, relates to the degree of independent judgment and creative effort inherent in the tasks associated with the work itself, not the level of energy displayed by the incumbent in approaching those tasks.

The appellant recommended that his position be allocated at the 6th or highest degree for the Initiative attribute, while the Division of Personnel maintained that the 6th degree was reserved for positions which are responsible for establishing, organizing and carrying out policy-making activities and major departmental programs, with such work seldom checked or revised by a superior. The Board did not find that Mr. Warren's duties, as described in his written arguments, classification questionnaire and sworn testimony, rise to the level of the 6th degree. The Board, therefore, denied Mr. Warren's request that this attribute be allocated at the 6th degree.

The third attribute which the appellant challenged was the Errors attribute. Again, the appellant argued that this attribute should be allocated at the 6th, or highest degree in the classification plan, stating he had interpreted the Evaluation Manual's reference to "the successful operation of a department" as actually referring to an agency or work unit. He also pointed out that if department heads are all unclassified, it is unreasonable to reserve the highest degree allocation for employees who are neither part of the classification system nor subject to the classification plan.

The Division of Personnel contended that Mr. Warren is not responsible for the operation of the Insurance Department, and is therefore his position can not be allocated at the 6th degree for the Errors attribute. Although Mr. Warren raises an interesting issue by pointing out that the "top executives" in the Insurance Department are all unclassified employees, he has not taken into consideration a comparison of his agency with the organizational structure and size of other departments in State government. The appellant's work unit is extremely small compared to other division's in State service such as the Division of Human Services (Department of Health and Human Services), the Division of Enforcement (Department of Safety), the Division of Vocational Rehabilitation (Department of Education), etc. As such, evaluation of the Errors attribute must be evaluated in consideration of both the size of the unit and nature of the work performed.

In consideration of the evidence and testimony presented, the Board found Mr. Warren's position responsibilities did not warrant allocation at the 6th degree for Errors. Accordingly, the Board voted to deny Mr. Warren's request that the Board increase this attribute, finding it to be properly allocated at no higher than the 5th degree defined as involving "...the preparation of information and data on which department heads base vital decisions. Works only under administrative supervision, work not verified."

The final attribute which the appellant argued to be in dispute was the Supervision attribute. Again, the appellant argued that "agency" should be interpreted to mean his division, not the department as a whole. As such, he contended that he had "full responsibility for the results and effectiveness" of all operations within the Division of Life, Health and Accident Insurance, and that this attribute should be rated at 80 points, the highest degree for that evaluation factor.

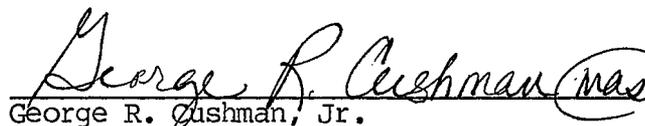
Again, the Board finds that the appellant has read the definitions for the various degree allocations under the Supervision attribute very narrowly, and has not taken into consideration the requirement that positions under review be compared to similar positions statewide, as well as to similar positions within the same agency. If the Board were to accept **Mr.** Warren's interpretation of the Evaluation Manual and classification plan, any employee responsible for the operation of a work unit would qualify for the highest degree allocation in a variety of the evaluation factors.

In consideration of the evidence and testimony presented, the Board finds **Mr.** Warren's supervisory responsibilities do not rise to the level defined by the 6th degree for that attribute. Therefore, his request that this factor be increased to the highest degree allocation is denied.

The Board declined to rule on the Division of Personnel's Requests for Findings of Fact as submitted at the close of the hearing, finding that such requests are more properly considered an elaboration on the testimony offered by the Director of Personnel. The Board voted to grant the Division of Personnel's proposed Rulings of Law. Mr. Warren's appeal, therefore, is denied.

THE PERSONNEL APPEALS BOARD


Mark J. Bennett, Acting Chairman


George R. Cushman, Jr.


Lisa A. Rule

APPEAL OF ROBERT C. WARREN, JR.
N.H. Insurance Department
Docket #89-C-8
page 5

cc: Robert C. Warren, Appellant
N.H. Insurance Department

Louis E. Bergeron, Commissioner
N.H. Insurance Department

Virginia A. Vogel, Director
Division of Personnel

Civil Bureau
Attorney General's Office