

State of New Hampshire



PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
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1988

Appeal of Bridget Whalen

December 28, 1988

On November 22, 1988, the Personnel Appeals Board, Commissioners Cushman, Brickett and Platt sitting, heard the matter of Bridget Whalen. Ms. Whalen, an employee of the Division of Public Health Services, had filed a "Motion to Enforce Order and Agreement" with the Appeals Board. Ms. Whalen was represented by SEA Field Representative Stephen McCormack. Virginia Vogel, Director of Personnel, appeared on behalf of the Division of Personnel.

After reviewing all of the evidence presented, the Board made the following findings and rulings. At some time prior to August 31, 1988, Ms. Whalen received a letter of warning for an unspecified reason. She appealed that action and on August 31, 1988, she was informed by Deputy Commissioner Arnold Coda that he had been designated by Commissioner Mary Mongan to be the hearing officer for her appeal. At the hearing, Deputy Commissioner Coda executed an agreement with the appellant in which the Division of Public Health Services was to seek reclassification of Ms. Whalen's position and to withdraw the letter of warning in exchange for Ms. Whalen's agreement "to perform the duties of the positions of Word Processor Operator I and Executive Secretary." This agreement was dated September 9, 1988 and copies were sent to numerous parties including Commissioner Mongan.

On October 17, 1988, Commissioner Mongan wrote to Ms. Whalen informing her that the Division of Personnel had denied the request to waive the one year rule for position reviews¹, and the request to remove the letter of warning from Ms. Whalen's file. Ms. Whalen, through her representative, then filed the Motion to Enforce Order and Agreement. The motion raised two issues: first, whether the letter of warning should be removed and second, whether the one-year rule concerning position reviews must be waived.

After considering the foregoing findings, the Board concluded that Mr. Coda was the duly authorized hearing officer acting as Commissioner Mongan's designee. No evidence was presented that indicated that the appellant or her representative knew that he was not authorized to enter into an agreement

¹

Per 306.05 addressing hearings of classification and evaluation appeals provides for a one-year minimum waiting period between issuance of a decision on a reclassification request and request (appeal) from the employee for another review of that position.

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resolving the appeal.² Therefore, absent any illegality in the agreement, the Board found that the agreement was enforceable. Because the letter of warning was issued by the appointing authority, the Board found that the appointing authority could agree to withdraw it.³ While the Director of Personnel could advise either party on the proposed action, she could not overrule such action unless it violated personnel rules. Having received no evidence that the withdrawal of the letter of warning would violate personnel rules, the Board voted to order that the agreement to withdraw that letter be enforced.

The second term of the settlement agreement required that "the Division of Public Health Services seek reclassification of the work position involved. ." (Emphasis added.) Such a review was sought. The Director of the Division of Personnel declined to waive the one year rule for position evaluations. Such action was within the Director's discretion, as she must insure that the Rules of the Division of Personnel are uniformly applied throughout State agencies. In seeking the position review, the Division of Public Health Services fulfilled its responsibility under the settlement agreement. (Moreover, even if the agreement provided that Public Health would order the Director to waive her rules, Public Health would have no authority to do so.)

For the foregoing reasons, the Board concluded that the letter of warning should be removed from the appellant's file. Upon removal of that letter of warning, the Board concluded that the appointing authority would have complied with the terms of the settlement agreement.

2

Although Director Vogel testified that she had been informed that Deputy Commissioner Coda was simply to hold the hearing, receive the evidence and report back to Commissioner Mongan, neither Commissioner Mongan nor Deputy Commissioner Coda attended the Appeals Board hearing to explain their positions

3

In cases which are already under appeal to the Appeals Board, such agreements are submitted to the Board for its approval. This matter had not yet reached that level.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE, Executive Secretary

cc: Stephen J. McCormack, SEA Field Representative
Virginia A. Vogel, Director of Personnel
Commissioner M. Mary Mongan, Health and Human Services
Barbara Ingerson, Human Resource Coordinator, Division of Public Health