

# State of New Hampshire



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

## ***APPEAL OF CHARLES OGLESBY***

***DOCKET #99-D-24***

### ***NH DEPARTMENT OF REGIONAL COMMUNITY TECHNICAL COLLEGES***

#### ***Response to Appellant's Motion for Reconsideration***

***March 22, 2000***

On February 14, 2000, The New Hampshire Personnel Appeals Board received the appellant's Motion for Reconsideration of the Board's January 18, 2000 decision in the above-referenced appeal. The State's Response and Objection was received by the Board on February 28, 2000.

A motion for reconsideration must set forth fully every ground upon which it is alleged that the decision or order complained of was unlawful or unreasonable, or it must offer additional evidence that was not available at the time of the original hearing. With that standard in mind, the Board reviewed its decision, the parties' pleadings and the evidence received during the hearing on the merits.

The Board's reference in its decision to the County Attorney rather than the Nashua Police Department Prosecutor does not alter the underlying facts in evidence, that the appellant was charged with Indecent Exposure and Lewdness, that the case was scheduled for a court trial in Nashua, that the first trial was continued for a period of 12 months pending the appellant's satisfactory completion of the terms of an agreement dated 8/21/97, and that the appellant failed to carry out the terms of the agreement.

Documents offered into evidence by both parties refer to Lucille Jordan as the President of the College. Whether or not Ms. Jordan was willing to testify as a character witness for the appellant has no bearing on the material facts in evidence. The appellant was not permitted to perform the court-ordered community service at the college. Finally, the appellant's suggestion that the Board's order implies an attempt by the appellant "to hide the truth" about his conviction is simply unsupported by any of the findings.

The remainder of the appellant's arguments were raised by the appellant at the hearing, considered by the Board, and weighed in light of the evidence by the Board in reaching its decision to deny Mr. Oglesby's appeal. The appellant has failed to persuade the Board that its decision was unlawful or unreasonable on the evidence and arguments presented. Accordingly, the Board voted unanimously to DENY Mr. Oglesby's motion for reconsideration, and to affirm its decision DENYING his appeal.

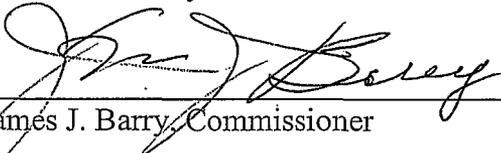
THE PERSONNEL APPEALS BOARD



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Lisa A. Rule, Acting Chair



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Robert J. Johnson, Commissioner



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James J. Barry, Commissioner

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***APPEAL OF CHARLES OGLESBY***

***DOCKET #99-D-24***

***NH DEPARTMENT OF REGIONAL COMMUNITY TECHNICAL COLLEGES***

***January 18, 2000***

The New Hampshire Personnel Appeals Board (Rule, Johnson and Barry) met on Wednesday, October 13, 1999, under the authority of RSA 21-I:58, to hear the appeal of Charles Oglesby, an employee of the New Hampshire Regional Community Technical College System. Mr. Oglesby, who was represented at the hearing by SEA Field Representative Linda Chadboume, was appealing his demotion, effective April 9, 1999, fi-om Technical Institute/College Professor to Learning Resource Specialist. Attorney General Philip Bradley of the Attorney General's Office appeared on behalf of the State.

The appeal was heard without objection by either party on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of pleadings submitted by the parties prior to the hearing, orders and notices issued by the Board, the audio tape recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

Appellant's Exhibit

- A. Letter of disciplinary demotion fi-om Lucille Jordan to Charles Oglesby dated April 9, 1999
- B. Court documents dated May 14, 1997, August 21, 1997, and July 12, 1999
- C. Letter from Commissioner Glenn DuBois to Charles Oglesby dated August 31, 1999
- D. Copy of PART Per 1001.07 of the Administrative Rules of the Division of Personnel

State's Exhibits

1. Copy of Docket No. 97-03201, Nashua District Court, including the following:
  - A. Complaint charging Charles Oglesby with commission of a Class A Misdemeanor at 2:00 p.m. on May 6, 1997 for the offense of Indecent Exposure and Lewdness, contrary to RSA 645:1
  - B. Agreement dated August 21, 1997 continuing Charles Oglesby's trial for twelve months upon certain conditions
  - C. Disposition of Complaint, Violation of Continuance, and Appeal
2. Letter from Charles Oglesby to Lucille Jordan, dated March 29, 1999
3. Letter from Charles Oglesby to Lucille Jordan, dated April 5, 1999
4. Letter from Charles Oglesby to Personnel Appeals Board, dated April 5, 1999
5. Letter from Lucille Jordan to Charles Oglesby, dated April 9, 1999
6. Letter from Charles Oglesby to Personnel Appeals Board dated April 12, 1999
7. Letter from Charles Oglesby to Lucille Jordan, dated April 13, 1999
8. Letter from Lucille Jordan to Charles Oglesby, dated May 7, 1999
9. Letter from Linda Chadbourne to Glenn DuBois, dated May 21, 1999
10. Letter from Sarah Sawyer to Linda Chadbourne, dated June 4, 1999
11. Joint Motion to Continue, Hillsborough County Superior Court, Southern District, dated July 12, 1999
12. Letter from Glenn DuBois to Linda Chadbourne, dated August 31, 1999
13. Letter from Linda Chadbourne to Mary Ann Steele, dated September 9, 1999
14. Correspondence between NHTC Claremont/Nashua and Charles Oglesby
  - A. June 20, 1997 letter from Lucille Jordan to Charles Oglesby relieving him of his adjunct teaching duties for the summer of 1997
  - B. March 26, 1999 letter from Lucille Jordan to Charles Oglesby suspending him without pay for a period of ten days
  - C. October 8, 1999 letter from Charles Oglesby to Glenn DuBois

The material facts are not in dispute:

1. On May 6, 1999, the appellant was charged with Indecent Exposure and Lewdness, Class A Misdemeanor offenses, for having "lknowingly expose[d] his genitals under circumstances in which he should have lknown were liltely to cause affront or alann, to wit: did masturbate while standing in Greeley Park," in Nashua.
2. The case was scheduled for trial shortly thereafter in Nasliua District Court.
3. The original hearing was continued while the appellant and the County Attorney tried to negotiate a settlement.
4. The incident was reported in the local newspaper, known to the local community, and known among the appellant's co-workers.
5. The appellant advised College President Lucille Jordan of the charge. On June 20, 1997 he was relieved of his summer adjunct teaching duties. Ms. Jordan recommended that he not return to campus the next fall for academic year.
6. NHCTC continued to pay the appellant's full salary and hired a substitute to take over the, classes from which he was barred.
7. On August 21, 1997, the appellant and the County Attorney negotiated an agreement in which the trial would be continued for a period of twelve months, and the parties would agree to move jointly for dismissal of the charges if the appellant completed 100 hours of community service in an adult environment and participated in an approved program of psychological counseling.
8. The Administration at the college also agreed that Mr. Oglesby would be returned to his teaching position if and when the charges against him were ultimately dismissed.
9. The appellant asltd permission to perform his community service at the college, but was apprised that because there were some 17 year old students attending classes, community service at the college was unacceptable.
10. The college accepted the court's decision and agreed to let the appellant return for the academic year, accepting his signature on the court agreement that he would complete the corrective measures ordered by the court.
11. The college found some evidence of inattention on the appellant's part, including the late grading of papers, and raised concerns about an unconfirmed report that the appellant had

asked a student to find out which Nashua police officer would be a witness against him. None of those issues were deemed critical, however, until the agency discovered that the appellant had done none of the community service or counseling, and that the court had found him guilty of a Class A misdemeanor, had fined him \$500 for failing to comply with its order, and had sentenced him to 90 days in the House of Corrections, with that sentence deferred for one year.

12. When NHCTC learned of the conviction, it suspended the appellant for ten days without pay while it investigated the reports.
13. Mr. Oglesby appealed the conviction to the Hillsborough County Superior Court.
14. With respect to his suspension and subsequent demotion, the appellant argued that his appeal vacated the earlier conviction and legally could not be used as basis for disciplinary action.
15. The appellant negotiated a new agreement with the court, obtaining another six month delay on his trial.
16. The Superior Court continued to impose the requirement for community service and counseling, agreeing that in January 2000, the charges would be dismissed if the appellant showed proof of compliance with the court's order.

Assistant Attorney General Bradley argued that the Appeals Board's hearing is administrative, that the burden of proof is not the same as in a criminal matter, and that the Community Technical College action did not depend on criminal conviction. He argued that the administrative rules allow the college to demote the appellant under the personnel rules, and later to take into consideration the court's decision in determining what further steps to take. He argued that while the findings in a criminal proceeding might be used as evidence in a civil matter, civil findings can not be used in criminal proceedings because the findings don't meet the higher standard of proof.

Assistant Attorney General Bradley argued that the college could take the findings of the criminal court into consideration when determining whether or not the appellant should have been returned to the classroom.

Assistant Attorney General Bradley argued that Per 1001.07 (a) (1) and (2) of the Rules allow the college to demote in lieu of termination and to demote pending the outcome of an investigation of alleged criminal wrongdoing in conflict with duties. He suggested that the SEA would argue that the charge and conviction of a professor exposing himself and masturbating in a public park was private conduct and had nothing to do with his performance as a professor. The college disagreed, noting its duty to the students and to the community. He argued that the college's decision was both lawful and reasonable under the provisions of the Rules of the Division of Personnel, and that the college correctly applied its public duty by suspending the appellant, demoting him, and removing him from the classroom until the appellant could prove that he had undergone the required counseling and had completed the necessary community service so that the charges against him would be dismissed.

Assistant Attorney General Bradley argued that the appellant had more than a year and a half to carry out his obligations under the terms of the Superior Court agreement, and the college had a right to expect him to comply before the appellant could be returned to his duties as a professor. Assistant Attorney General Bradley indicated that the college would review the demotion once the appellant had complied with the court-ordered sanctions.

Ms. Chadbowne argued that although Attorney Bradley had outlined some support for the State's position, labor arbitration decisions in the Menzie Dairy case and the Standard Oil Arbitration support the appellant's position that the employer may not ignore an acquittal. Ms. Chadbourne argued that the appeal arose from an employment related discipline that was predicated on allegations of non-work related conduct. She argued that the appellant had been employed for thirty years as a professor at NHCTC, and posed no risk to the students or to the reputation of the institution in the community. Ms. Chadbourne noted that the alleged misdemeanor offense occurred in or around May 1997, but that the college took no action to immediately demote the appellant. She suggested that delay in the disciplinary action for a full two years, and the absence of any similar incidents in that period of time, offered evidence that allowing the appellant to continue his duties as a professor posed virtually no risk.

Ms. Chadbourne argued that when the appellant was demoted from Professor of Social Sciences and English to Learning Resources Specialist, he suffered a significant loss of pay. She argued that Per 1001.07 cited in the letter of demotion allows an appointing authority to demote an employee pending the outcome of alleged criminal wrongdoing in conflict with the employee's duties. By contrast, she argued, the appellant's demotion occurred after the investigation had been completed, and was unsupported by any evidence of a relationship between conduct as charged and the appellant's duties.

Ms. Chadbourne noted that if the agency had any viable concerns about the appellant's relationship to students or other staff, it would not have demoted him to a position in the library where he would have even more opportunity to engage in inappropriate conduct in a private place.

Ms. Chadbourne argued that there was no inappropriate conduct with students and no evidence of damage done to the college's credibility or the appellant's ability to teach. She noted that the offense was reported in a very small article in the Nashua Telegraph that said, "Charles Oglesby, age 61, [was] charged with indecent behavior..." She argued that nothing in the newspaper article mentioned the college or the appellant's occupation or place of business. She further argued that according to the paper's own account, the appellant was doing "nothing untoward" when officers arrived on the scene.

Ms. Chadbourne argued that the only evidence against her appellant was the testimony of one witness, who had no connection with the college. She argued that the alleged incident did not occur on college property or when the appellant was supposed to be on duty. She argued that an agency may not suspend an employee simply because a student or co-worker might prospectively have a problem working with him. She argued that there had to be some nexus between the alleged offense and the duties, and that the college had failed to demonstrate a nexus that would support the demotion. Ms. Chadbourne asked the Board to find that the demotion was neither lawful nor reasonable; and to order the appellant reinstated to his position as a professor with full back pay and benefits retroactive to the original date of suspension.

Assistant Attorney General Bradley argued that the decision to demote was not based on fear of adverse publicity, but on the risk of having the appellant in the classroom, knowing that he had failed to carry out the court's order. He argued that the college would have been derelict in its duties if it had allowed him to remain in the classroom under the onus of a deferred 90 day sentence in the County House of Corrections. Assistant Attorney General Bradley argued that although the threat of adverse publicity was not the impetus to take disciplinary action, the college did receive calls about the incident. He argued that with 30 years at the college and in the community, the newspaper did not have to identify the appellant's place of business or occupation.

Assistant Attorney General Bradley argued that the appellant's "destiny [was] in his own hands" and that he simply decided not to comply with the court's order. He argued that if the appellant wished to contest the charges, he should have gone forward with the trial rather than agreeing to community service and counseling. Having made that agreement, however, he was bound by it. Assistant Attorney General Bradley stated that the college had paid the appellant for the ten-day period of suspension, and later demoted him for non-compliance with the court order. He argued that the college's decision to demote the appellant was appropriate and should be upheld.

### Rulings of Law

A. Per 1001.07 (a) of the Rules of the Division of Personnel provides for immediate demotion:

"(1) In lieu of termination; (2) Pending the outcome of an investigation of alleged criminal wrongdoing which is in conflict with the assigned duties of the employee's position."

B. RSA 21-I:58 provides, in pertinent part,

"Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal. ..."

If the personnel appeals board finds that the action complained of was taken by the appointing authority for any reason related to politics, religion, age, sex, race, color, ethnic background, marital status, or disabling condition, or on account of the person's sexual orientation, or was taken in violation of a statute or of rules adopted by the director, the employee shall be reinstated to the employee's former position or a position of like seniority, status, and pay...

In all cases, the personnel appeals board may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just."

Decision and Order

The evidence reflects that the college acted in a manner that was reasonable, compassionate, and responsive to the needs of the appellant, the students and the agency. Initially the appellant suffered no loss of compensation or status, and could have been returned to his teaching assignment essentially without incident had he simply carried out the agreement that he made voluntarily with the Court. His failure to do so created a situation where the agency had no choice but to act. The agency's decision to demote the appellant was lawful, reasonable and just.

Therefore, on all the evidence, arguments and offers of proof, the Board voted unanimously to DENY Mr. Oglesby's appeal.

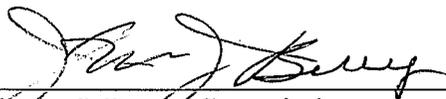
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