

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### Appeal of Tracy Roukey

Docket #2011-D013

### Department of Health and Human Services

April 11, 2012

A quorum of the New Hampshire Personnel Appeals Board (Bonafide and Johnson)<sup>1</sup> met in public session on Wednesday, April 4, 2012, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeal of Tracy Roukey, an employee of the Department of Health and Human Services, Division of Children, Youth and Families. Ms. Roukey, who was represented at the hearing by SEA Grievance Representative Nicholas McGinty, was appealing her August 25, 2010, demotion from Supervisor IV to Child Protective Service Worker III, for alleged failure to properly exercise her supervisory responsibilities. Attorney Jennifer Jones appeared on behalf of the State.

The hearing in this matter was conducted 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, the audio recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

#### State's Exhibits

1. Supplemental Job Description for Child Protective Service Worker III
2. Supplemental Job Description for Supervisor IV
3. 1<sup>st</sup> Letter of Warning issued to Tracy Roukey on July 29, 2009
4. 2<sup>nd</sup> Letter of Warning issued to Tracy Roukey on July 29, 2009
5. 3<sup>rd</sup> Letter of Warning issued to Tracy Roukey on February 2, 2010
6. Performance Evaluation for Tracy Roukey March 4, 2010
7. Email message from Geraldo Pilarski to Tracy Roukey dated May 18, 2009

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<sup>1</sup> Although RSA 21-I:46, II, authorizes quorum of the Board, consisting of any two members, to conduct its business, the Board's practice has been to allow parties to object, in most instances, if a full three-member panel is unavailable. Neither party objected to having the appeal heard by a quorum of the Board.

8. Email message from Geraldo Pilarski to Tracy Roukey dated January 20, 2010
9. Email message from Geraldo Pilarski to Tracy Roukey dated January 22, 2010
10. Email message from Geraldo Pilarski to Tracy Roukey dated June 10, 2010
11. Letter from Debra Kavanagh to Tracy Roukey dated August 18, 2010, regarding grounds for demotion
12. Letter from Robert Boisvert to Tracy Roukey dated August 25, 2010, notifying Ms. Roukey of her disciplinary demotion

As a preliminary matter, Ms. Jones noted that although Ms. Roukey had never appealed warnings issued to her prior to her disciplinary demotion, the Appellant's notice of appeal and prehearing statement both stated that the Appellant disputed many of the facts and allegations contained in those warnings. Ms. Jones argued that the department had relied on the facts outlined in those warnings when it reached the decision to demote the Appellant, and that the State would be unduly prejudiced if the Board allowed the Appellant to challenge the substance of those warnings when the Appellant failed to timely file appeals at the time the warnings were issued. Ms. Jones argued that by failing to timely file an appeal of those warnings, the Appellant waived any right to appeal or challenge the factual basis for the discipline taken.

Mr. McGinty argued that although the Appellant agreed that she had three written warnings in her file, and may have waived her right to appeal those warnings, she never forfeited the right to dispute the facts and allegations contained in those warnings, particularly as the warnings were used to support the decision to demote the Appellant. Mr. McGinty argued that the Appellant never admitted to the substance of the warnings and believed that she had been meeting the work standard. Mr. McGinty argued that the Appellant's decision not to appeal the warnings was not an admission to any of the allegations that she failed to properly supervise her staff, review their work or manage their delivery of services.

Having heard the parties' arguments on the status of the Appellant's prior written warnings, the Board advised the parties that it was not going to allow the parties to litigate the substance of those warnings. Because the warnings were not appealed, they are no longer subject to review by the Board, and the Board has no authority to affirm the warnings, amend the warnings, or order their removal from the Appellant's file.

On the merits of the appeal, Mr. McGinty argued that the Nashua office, where the Appellant was assigned, had seen a substantial increase in caseloads, and that many of the workers were struggling. Mr. McGinty argued that the Appellant was dealing with a larger caseload than some of her peers, and that unfairly, the Appellant was being held responsible for two non-performing

subordinates who, even after the Appellant's demotion, continued to be poor performers. Mr. McGinty argued that the Appellant's supervisors never told her that she could issue a memo of counsel or use some form of disciplinary action to address their performance deficiencies. Mr. McGinty argued that the Appellant expected to receive more direct instruction than that which her supervisor provided, and that when the Appellant did receive directives, they were often confusing or contradictory.

Mr. McGinty argued that the Appellant was meeting the work standard, and had taken the corrective action outlined in the written warnings issued to her by meeting regularly with caseworkers to review their work, drafting plans, holding weekly meetings with staff, and sharing information with her own supervisor about what was happening in her area. Mr. McGinty argued that the agency was attempting to make the performance issue appear to be more serious than it was by issuing two written warnings about alleged performance deficiencies on the same day, rather than incorporating all those concerns into a single warning. Mr. McGinty argued that the Appellant elected not to appeal the warnings, believing that she would simply end up "rocking the boat." Mr. McGinty argued that there was no legitimate basis for the warnings or the demotion, and that the decision to demote the employee was "personal and retaliatory." In support of that argument, Mr. McGinty argued that although the Appellant had been assured at the time of her demotion that she would retain her level of compensation, her salary was actually reduced.

Ms. Jones argued that the size of the Appellant's staff and caseload were similar to staffing and caseloads for other supervisors who were successfully performing their duties. Ms. Jones argued that the Appellant had received all the tools necessary to help her be successful, but that, in spite of on-going training, mentoring, and modeling opportunities where the Appellant would sit with other supervisors while they conducted staff supervision, the Appellant demonstrated a continuing inability to set clear expectations for staff, provide guidance, audit work being performed, and hold staff accountable if they failed to carry out their assigned duties in an appropriate, effective and timely manner.

Ms. Jones argued that Child Protective Service Workers are responsible for protecting children who are at risk of abuse and neglect, and that Supervisors must hold those employees accountable. Supervisors are responsible for conducting an on-going review of the work performed by CPSWs, monitoring the assessments they perform, getting up-to-date information about what is happening in each CPSW's caseload, assisting each CPSW in developing case plans, and employing best practices to assure that children are safe. Ms. Jones argued that the Appellant failed to provide the necessary level of oversight and supervision that the staff needed. Ms. Jones argued that the Appellant failed to evaluate staff objectively, develop corrective action

plans to assist staff in meeting the requirements of their positions, or initiate disciplinary action if appropriate with staff who were not performing their jobs satisfactorily. Ms. Jones noted that the Appellant's supplemental job description clearly authorized, and required, the Appellant to recommend personnel actions, including discipline, when appropriate.

Ms. Jones argued that although the agency believed it had sufficient grounds to support the Appellant's dismissal, the agency also recognized that the Appellant was a highly skilled Child Protective Service Worker, and determined that the most appropriate level of discipline would be a demotion back to the level of Child Protective Service Worker from which the Appellant had been promoted. Ms. Jones noted that when the Appellant was demoted, the Appellant's level of compensation was lower than that she received as a Supervisor IV, but greater than it had been as a Child Protective Service Worker at the time of her promotion in January, 2007.

Having carefully considered the evidence, argument and offers of proof made by the parties, the Board made the following findings of fact and rulings of law.

#### Findings of Fact

1. In January, 2007, Ms. Roukey was promoted from a position of Child Protective Service Worker III to a position of Supervisor IV. As a Child Protective Service Worker III, as outlined in the "Scope of Work" section of the Appellant's supplemental job description, the Appellant was responsible to, "investigate and assess reports of alleged abuse/neglect of children under RSA 169-C for NH Division for Children, Youth and provide for the welfare of families and the protection of children." (DHHS Exhibit 1)
2. Upon promotion to the position of Supervisor IV, Ms. Roukey received and signed her new supplemental job description. According to that document, the Appellant's scope of work was increased, making her responsible to, "[Provide] supervision to Child Protective Service Worker staff assigned to coordinate assessment and family services to families and their children referred to the NH Division for Children, Youth and Families under RSA 196-C. Reports to the District Office Supervisor. (DHHS Exhibit 2)
3. On July 29, 2009, after a reported series of concerns over Ms. Roukey's supervisory capabilities, the Appellant received a written warning for "failure to meet the work standard, specifically for [her] failure to properly supervise and direct [her] Child Protective Service Worker (CPSW) staff so that incarcerated parents and uncooperative parents are engaged in the case planning process for their children, which is in directive [sic] violation of DCYF best case practice." The letter of warning stated, in part, "As a Supervisor IV, who has been with DCYF for over eight[sic] years, two of which have been in a supervisory role, you should

have full knowledge that is imperative that ALL parents, uncooperative or incarcerated, be engaged in the case planning process.” The warning included a seven step Improvement/Corrective Action Plan. The letter of warning was not appealed to this Board, is not now subject to removal or amendment, and remains a part of the employee’s file. (DHHS Exhibit 3)

4. A separate warning was issued to the Appellant on July 29, 2009, alleging that the Appellant failed to meet the work standard, specifically as a result of her, “failure to follow the direction of an Assistant Administrator, be appropriately available, properly supervise, and direct the Child Protective Service Worker (CPSW) staff [she supervised].” The warning alleged that the Appellant ignored specific instructions from the Assistant Administrator regarding a placement. The warning also alleged that the Appellant failed to provide appropriate supervision to subordinates, and that she failed to ensure that her subordinates were seeing “at risk” children in a timely manner. The corrective action plan outlined in the written warning gave explicit direction on steps that the Appellant needed to take to manage her staff and audit their work. The letter of warning was not appealed to this Board, is not now subject to removal or amendment, and remains a part of the employee’s file. (DHHS Exhibit 4)
5. On February 2, 2010, the Appellant received a third written warning for failure to meet the work standard, and for failure to take the corrective action outlined in the prior two written warnings. The warning included a detailed, six-point plan of corrective action that the Appellant would be required to take in order to avoid further disciplinary action up to, and including, termination of employment. The letter of warning was not appealed to this Board, is not now subject to removal or amendment, and remains a part of the employee’s file. (DHHS Exhibit 5)
6. As a Supervisor IV, the Appellant was expected to provide direct supervision to assigned Child Protective Service Workers, “to assure the provision of quality mandated child welfare services.” That supervision included responsibility to, “[Evaluate] the work performance of assigned staff to determine compliance with their job description by setting and clearly communicating expectations for staff performance related to client outcomes and program compliance as well as recommends personnel actions for subordinate employees, including step increases, promotions, disciplinary action, or performance evaluations; approves/denies requests for leave.” (DHHS Exhibit 2)
7. The Appellant’s supervisors expected her to hold her staff accountable for appropriately managing their own caseloads, and they gave the Appellant explicit directions to review all assessments conducted by her staff, get weekly updates on what was happening in their caseloads, and ensure that staff were meeting mandatory timeframes associated with investigations and risk assessments for children and families in their caseloads. After reviewing the status of cases being managed by the Appellant’s subordinates, the Appellant’s

supervisors concluded, in part, that the Appellant either was unaware of what her subordinate Child Protective Service Workers were doing, or she was tacitly condoning their failure to meet work standards in their own positions.

8. On March 3, 2010, Ms. Roukey received detailed assessment of her work performance in a "below expectations" performance evaluation completed by her supervisor, Geraldo Pilarski and countersigned by Debra Kavanagh, the Assistant Administrator. The Appellant's supervisor observed that, in spite of the Appellant's strong work ethic, commitment to the agency's mission, and strengths performing work as a Child Protective Service Worker, the Appellant had been unable to manage or supervise her staff effectively. (DHHS Exhibit #6)
9. Throughout the Appellant's tenure as a Supervisor IV, the Appellant's own supervisor provided instructions, counseling, and supervision, as well as occasional directives regarding the manner in which she was expected to supervise her staff and audit their work performance to ensure that staff members met the performance standards established for Child Protective Service Workers. Although there was a specific plan in place to ensure the Appellant's staff was functioning properly, the Appellant was unable to document that she had conducted weekly meetings with each of her staff members, that she had reviewed every assessment performed by all of her subordinates, or that she had conducted the required discussions during weekly supervision to determine what services were required, what services were being provided to children and families in each subordinate's caseload, and whether or not the children were safe.
10. The notice of demotion issued to the Appellant on August 25, 2010, describes an August 16, 2010, investigatory meeting between herself, her immediate supervisor, Geraldo Pilarki, and Assistant Administrator Debra Kavanagh, and states that the Appellant was offered an opportunity to step down from her supervisor position back into the role of a Child Protective Service Worker, but that the Appellant refused. (DHHS Exhibit 12)
11. By letter dated August 18, 2010, the Appellant was informed that the department believed there were sufficient grounds to demote her, based on the prior warnings and the Appellant's continued failure to properly manage and supervise her staff. (DHHS Exhibit 11)
12. The Appellant met with Administrator Robert Boisvert, Assistant Administrator Debra Kavanagh, and Mary Fields, the Appellant's representative, to review the evidence that the Department believed supported the Appellant's demotion from Supervisor IV to Child Protective Service Worker III. By letter dated August 25, 2010, the Appellant was informed that she was being demoted from Supervisor IV to Child Protective Service Worker III, the classification from which she had been promoted in January, 2007. (DHHS Exhibit 12)

## Rulings of Law

- A. Written warnings issued to Ms. Roukey on July 29, 2009, under the authority of Per 1002.04 (b)(1), cited the Appellant's unsatisfactory work performance in her role as a Supervisor IV resulting from her failure to provide sufficient oversight and supervision of subordinate Child Protective Service Workers.
- B. The written warning issued to Ms. Roukey on February 2, 2010, under the authority of Per 1002.04 (b)(1) and (b)(2), cited the Appellant's continuing failure to provide the required supervision of subordinate Child Protective Service Workers, and the Appellant's failure to take corrective action as directed in the prior warnings.
- C. In accordance with the provisions of Per 1002.07 (a)(2) and (a)(4) appointing authority was authorized to demote the Appellant for "failing to meet the work standard when promoted" and for failing "to carry out his or her assigned supervisory responsibilities."
- D. The Personnel Rules do not require a specific number of written warnings prior to demotion, and an appointing authority may determine the appropriate form of discipline under Per 1002.04 through Per 1002.08 after considering, "factors including, but not limited to: (a) The nature and severity of the conduct or offense in relation to the employee's position classification, responsibilities, and accountabilities, and the functions of the agency; and (b) The employee's past record of performance and discipline, including whether or not the employee has been disciplined in the past for the same or a similar offense."
- E. The Department of Health and Human Services had no independent authority to establish the Appellant's level of compensation following her demotion, as Per 901.07 (a) and (b) provide that, "(a) If an employee is voluntarily demoted or demoted in lieu of layoff, the employee shall be placed at the new grade and step closest to, but not exceeding, the employee's salary prior to the demotion. (b) If an employee is demoted for cause, the employee shall be placed at the new grade and step closest to, but less than, the employee's salary prior to the demotion."

## Decision and Order

Having carefully considered the evidence, argument and offers of proof, the Board found that the Department of Health and Human Services was authorized to demote the Appellant from Supervisor IV to Child Protective Service Worker III after issuing her several warnings for failure to carry out her duties as a supervisor, and failure to take the corrective action outlined in those warnings.

Although the Appellant argued that the demotion was "personal and retaliatory," the Appellant failed to offer evidence to support that allegation. The Appellant also failed to provide evidence to persuade the Board that she possessed the skills and abilities to meet the expectations of her position, or that she was performing effectively as a Supervisor IV.

The Appellant failed to prove, by a preponderance of the evidence, that, "(1) The disciplinary action was unlawful; (2) The appointing authority violated the rules of the division of personnel by imposing the disciplinary action under appeal; (3) The disciplinary action was unwarranted by the alleged conduct or failure to meet the work standard in light of the facts in evidence; or (4) The disciplinary action was unjust in light of the facts in evidence." [Per-A 207.12 (b)] Therefore, for all the reasons set forth above, the Board voted to DENY the Appeal of Tracy Roukey.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD

  
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