

# State of New Hampshire

WPPID598



## PERSONNEL APPEALS BOARD

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

APPEAL(S) OF MARY VINCENT  
New Hampshire Board of Nursing  
Docket #89-D-2  
Docket #90-D-1

Dated: September 17, 1990

At its meeting of August 29, 1990, the New Hampshire Personnel Appeals Board (McNicholas, Bennett and Johnson) reviewed Ms. Vincent's request for reconsideration of the Board's August 1, 1990 decision, denying her appeals of a letter of warning (89-D-2) and the withholding of her annual increment (90-D-1). After careful review of the record in this appeal, the Board voted unanimously to deny the motion and, in so doing, affirmed its decision upholding both the letter of warning and the withholding of the appellant's annual increment.

The appellant argues that the Board gave more weight to the testimony of one witness than that of another. First, the appellant has reached conclusions concerning the Board's deliberations in this matter which are not supported by the record. The Board makes no reference in its decision to the weight given to the testimony of any witness, other than noting that those employees or members of the Board of Nursing testifying on the appellant's behalf had no supervisory relationship to the appellant. In suggesting that the Board has some obligation to give equal weight to the testimony of any and all witnesses, the appellant would be well-served to remember that in appeals of a disciplinary nature the appellant bears the burden of proof. As such, were the Board always to consider the testimony of both parties to be of equal weight, there is little likelihood that any appellant could ever successfully meet his/her burden.

Finally, the appellant contends in her motion that the Board predicated its decision upon the information provided in the Affidavit of Doris Nay, and argues that the appellant was denied due process by having no opportunity to cross-examine the author of that document. The appellant raised this particular objection during the hearing on the merits, and although the

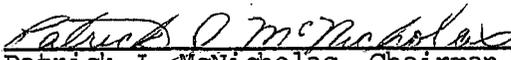
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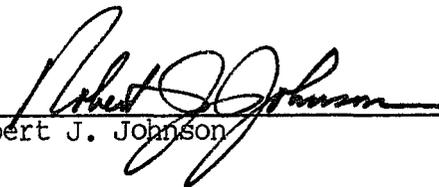
page 2

objection was over-ruled, the Board specifically noted that without opportunity for cross-examination, the affidavit's evidentiary value would be minimal. As should be apparent from a careful reading of the August 1, 1990 decision in this matter, the Board relied primarily upon the appellant's own testimony in reaching its conclusions about meetings between herself and her supervisors.

The appellant, in her motion for reconsideration, provides no grounds for reconsideration which had not previously been raised or addressed in the hearing on the merits and subsequent order of the Board. Further, the appellant has failed to demonstrate that the Board's decision was either unreasonable or unlawful.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Robert J. Johnson

\_\_\_\_\_  
Mark J. Bennett

cc: Stephen J. McCormack, SEA Field Representative  
Doris Nuttleman, Executive Director, Board of Nursing  
Virginia A. Vogel, Director of Personnel  
Civil Bureau - Office of the Attorney General

# State of New Hampshire

WPPID571



## PERSONNEL APPEALS BOARD

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

89-D-902

### APPEALS OF MARY VINCENT

Board of Nursing - Division of Public Health Services  
Letter of Warning (Docket #89-D-2)  
Withholding of Annual Increment (Docket #90-D-1)

August 1, 1990

The New Hampshire Personnel Appeals Board (McNicholas, Cushman and Bennett) met Wednesday, June 20, 1990, to hear the appeals of Mary Vincent, Administrative Secretary/Supervisor for the New Hampshire Board of Nursing. Ms. Vincent, who was represented by SEA Field Representative Stephen J. McCormack, appeared appealing a May 10, 1989 letter of warning for unsatisfactory work, and the withholding of her annual increment based on unsatisfactory work performance. The Board of Nursing was represented at the hearing by its Acting Director, Dr. Doris Nuttleman.

Appellant's job specification defines her work as "responsible office management and/or administrative duties of a secretarial or supervisory nature including work as a secretary to a commission, board or department head or in performing highly complex clerical or limited technical assignments involving the supervision of others..." The specification lists, under "Distinguishing Characteristics" and "Examples of Work":

"Performs semi-routine or diversified duties in taking and transcribing dictation, functioning as an aide to a commission, board or department head or in performing assigned specialized administrative or supervisory tasks in a variety of assigned areas."

"Errors are difficult to detect as work is not subject to immediate verification or audit; errors could cause inaccuracies in reports and records which could cause expense and/or embarrassment to the department and the state."

"Attends meetings of commissions and/or boards as the representative of a superior or for the purpose of recording the proceedings both on tape and with stenographic notes and the preparation of meeting minutes."

"Relieves an executive of administrative detail by interviewing the public, dictating routine correspondence, preparing reports, assembling budget data and performing other work as directed."

Appellant's position specification also includes as a minimum qualification:

"Extensive knowledge of Business English. Ability to take dictation and transcribe complex material at a working rate of speed. Ability to properly compose a variety of correspondence with only general instructions. Considerable knowledge of modern office practices and procedures. Ability to use a variety of office machines. Ability to direct the activities of clerical subordinates. Ability to communicate effectively both orally and in writing. Ability to establish and maintain harmonious working relationships with other employees and members of the public."

On May 10, 1989, Ms. Vincent was given a formal letter of warning for unsatisfactory work, based upon allegedly inappropriate comments made by her at a public meeting of the Board of Nursing on April 27, 1989, unacceptable minutes of that and other meetings of the Board of Nursing which she was responsible for preparing, and the inability to establish and maintain harmonious working relationships. Subsequent to issuance of the letter of warning, Ms. Vincent was notified by letter dated June 27, 1989, that her annual increment, effective August 1, 1989, was being withheld for unsatisfactory work performance "as identified in the May 10, 1989 Letter of Warning".

Sandra Knapp, a member of the Board of Nursing who is employed as the Superintendent of the Glencliff Home for the Elderly, testified that Ms. Vincent's behavior at the April 27, 1989 meeting of the Board of Nursing was inappropriate during a public meeting. She indicated the Board had discussed the quality of the board minutes prepared by Ms. Vincent. Ms. Vincent responded that she should not be held accountable for errors and/or omissions in the minutes, since Dr. Nuttleman always took the minutes to "cut and paste". At that same meeting, the Board also discussed updating and distribution of its rules and regulations, and whether or not Ms. Vincent could be assigned to that work on a full-time basis until the task was completed. According to Mrs. Knapp, Ms. Vincent responded that someone else should be given that assignment, since she had already been told that her work was not good enough.

Her conduct at that meeting was sufficiently disturbing that the Chairman of the Board and Mrs. Knapp later spoke with Doris Nay, the former Director of the Board of Nursing, discussing the need to take some disciplinary action. Discussions between the Board and Mrs. Nay culminated in the letter of warning issued to her for unsatisfactory work. When questioned by Mr. McCormack about why the matter had not been taken up directly with Ms. Vincent when the alleged inappropriate remarks were made, Mrs. Knapp responded that the Board was not willing to discuss the matter in any greater detail while convened in a public meeting.

The appellant argued that the Board had misunderstood her remarks. She was merely trying to explain the process of completing the minutes, and that the delays were due to the editing process within the Board of Nursing Office itself. She explained that the minutes were first given to the Executive Director, then to the Assistant Director for Education, and finally to the Coordinator of Nursing Practice for review and correction. She also argued that the Board itself did not want its meetings taped, and that they had never explained why they would not allow tape recordings if they believed her notes were that inaccurate or incomplete. She explained that the meetings, held once a month, lasted all day, and that while she attempted to get all the important information down in shorthand and to correctly quote the Board members, the Board members frequently wished to rephrase their remarks for the minutes after they were completed.

With regard to the allegation that she was unable to establish and maintain harmonious working relationships, the appellant stated that when she had first taken the position of Administrative Secretary/Supervisor at the Board of Nursing, the other office staff had demonstrated considerable resentment. She claimed that Ishbel Barker in particular had been very distant, and that whenever additional staff was available, regardless of the amount of work assigned to Ms. Vincent, that staff would be assigned to assist Ms. Barker instead. Ms. Vincent characterized the office as having a "serious undercurrent", arguing that Mrs. Nay had described her as arrogant and that Dr. Nuttleman's comments to her and about her were demeaning. She stated she had no previous letters of warning from the Board of Nursing, and that she had no formal evaluations of her performance in her 2 years of employment with the Board. She also insisted that there had been no previous counselling on her level of performance. She described her daily meetings with the Executive Director of the Board as "daily harassment".

The State argued that Ms. Vincent had been counselled on a number of occasions concerning the accuracy and completeness of the Board's minutes, and that on at least two occasions, she had been offered Dr. Nuttleman's assistance with preparation of the minutes. It was also suggested to her that she review the old minutes of the Board for proper form. Ms. Vincent declined the help which was offered, indicating that she was capable of doing the minutes without any additional assistance. The State also argued that Ms. Vincent had been directed to integrate the Board's files, but that the results were both incomplete and unacceptable. The appellant countered that those files were "very functional for [her] part".

Three witnesses appeared on the appellants behalf: George Gielen, Persephone Agrafiotis and Rene Vincent, the appellant's husband. Gielen and Agrafiotis both testified, and provided written statements, indicating that they had never had difficulty working with Ms. Vincent, that Ms. Vincent's work was very demanding, and that the Board, during its meetings, was not always clear

APPEALS OF MARY VINCENT

Docket #89-D-2 and Docket #90-D-1

page 4

and concise. Rene Vincent testified that his wife "thought nothing of bringing her work home" to assure that it was completed properly.

Appellant argued that if any discipline had been warranted, an oral warning would have been sufficient. She insisted she had taken the corrective action outlined in the letter of warning, and that the letter of warning was unnecessary.

Although both Ms. Agrafiotis and Mr. Gielen have worked with the appellant, neither is responsible for day to day supervision or evaluation of her work. While both insist that Ms. Vincent's work is complex, and that her workload has expanded, the work which her supervisors deemed to be unsatisfactory is clearly defined in her position specification. Neither Mr. Gielen nor Ms. Agrafiotis offered sufficient evidence to persuade the Board that she had not received counselling prior to the warning, that her comments at the Board of Nursing meeting were appropriate, or that her work in general was of sufficient quality and quantity to demonstrate that either the letter of warning or the withholding of the annual increment was improper, or unjustified.

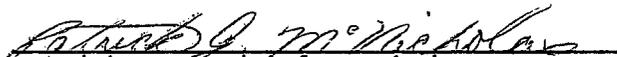
Per 308.03 (4) b, provides, "If an appointing authority feels oral warnings have been, are, or would be ineffective or insufficient in view of the attitude of the employee, and/or the nature of the offense, a written warning shall be prepared. Warnings must indicate that unless corrective action is taken the employee will be subject to discharge." In consideration of the evidence and testimony presented, the Board found that Appellant had been counselled prior to the issuance of the written warning, having met on a daily basis with Mrs. Nay and regularly with Dr. Nuttleman. The Board also found that the appellant had been made aware of inadequacies of her work during the course of regular Board of Nursing meetings. Both parties have admitted that those discussions were neither pleasant nor productive. Inasmuch as the appellant bears the burden of proof in disciplinary appeals, and that the appellant did not persuade the Board that an oral warning would have been effective or sufficient, the Board voted to uphold the warning for unsatisfactory work as justified.

Per 304.04 (b) states, "The withholding of an annual increase shall serve as a warning to the employee that his work is not of the quality and quantity expected, but not immediately of a level to warrant discharge. The employee shall be notified 30 days prior to their increment date of this action and the reason or reasons in writing, a copy of which shall be forwarded to the [division] of personnel to be inserted in the employee's record." Appellant argued that the withholding of her annual increment constituted a second discipline for the same offense. On the contrary, the Board found that the withholding of the annual increment was the result of continued unsatisfactory performance, the essence of which was defined in the May 10, 1989 letter of warning.

The incident which gave impetus to the letter of warning occurred in April. Appellant's increment was withheld in August. The Board does not find that the agency disciplined the appellant twice for the same incident, but rather that the agency took a course of progressive discipline for continued unsatisfactory work. The appellant did not demonstrate that she took immediate or sufficient corrective action following the letter of warning, or that her work had been of sufficient quality or quantity to warrant granting her an annual increment. The Board found sufficient evidence of on-going discussions between the appellant and her supervisors to believe she had ample notice that her work performance had been sufficiently marginal to justify withholding her annual increment.

As provided in Per-A 203.01 of the Rules of the Personnel Appeals Board, "The burden of proof in disciplinary appeals shall be upon the employee". Appellant failed to persuade the Board that the actions taken by the agency were inappropriate, or that the discipline imposed was not justified. Accordingly, Ms. Vincent's appeals (Docket #89-D-9 and #90-D-1) are denied.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
George R. Cushman, Jr.

  
Mark J. Bennett

August 1, 1990

cc: Stephen J. McCormack, SEA Field Representative  
Jan D. Beauchesne, Human Resource Coordinator, C.O.M.B.  
Dr. Doris Nuttleman, Acting Director, Board of Nursing  
Civil Bureau - Office of the Attorney General  
Virginia A. Vogel, Director of Personnel