

# State of New Hampshire



## PERSONNEL APPEALS BOARD

25 Capitol Street  
Concord, New Hampshire 03301  
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### Appeal of Justine Guay – Docket #2010-L-053

Department of Health and Human Services

March 23, 2011

By letter dated November 10, 2009, SEA Grievance Representative Nicholas McGinty filed an appeal on behalf of Justine Guay, a former employee of the Department of Health and Human Services, who was appealing her October 29, 2009, lay-off from a position of Child Support Officer. In the notice of appeal and in subsequent pleadings, the Appellant argued that before accepting employment with the Department of Health and Human Services, she had substantial prior service in the judicial branch of New Hampshire State government which should have been included in the determination of the Appellant's seniority date for purposes of layoff. At a prehearing conference convened by the Board on February 3, 2010, SEA General Counsel Michael Reynolds spoke on behalf of the Appellant. Senior Assistant Attorney General Michael Brown and Attorney Jennifer Jones appeared on behalf of the Department of Health and Human Services.

Attorney Reynolds argued that the personnel rules in general refer to classified state service, as separately described in the definitions, but that Per 1101.02 (c) describes seniority as the length of continuous full-time service with the state from the last date of full-time service with the state. Attorney Reynolds asserted that at the time of hiring into the classified system, Ms. Guay was told that her appointment was considered a promotion, and she was advised that her seniority was going to continue. Attorney Reynolds argued that although Per 101 of the rules refers to "classified state service," the layoff rule only refers to continuous State service rather than continuous service in the classified system in determining seniority for purposes of layoff. He argued that Ms. Guay was a classified State employee at the time of her layoff and was entitled to receive credit, under the language of Per 1101.02 (c) for her time as a judicial branch employee in establishing her seniority date.

Attorney Brown argued that the executive branch is quite different from the judicial branch, and that historically there has been frustration amongst the different branches of State government concerning transfers, seniority and whether or not employees could take their accumulated leave time with them if they moved between the executive, legislative and judicial branches of government. Attorney Brown noted that there was a piece of legislation making its way through the system dealing with judicial branch employees and what benefits they might be able to bring with them if they left the judicial branch and took a position in the executive branch. Attorney Brown noted that the executive branch found it difficult to recruit from the judicial branch because those employees were not allowed to bring seniority or leave with them when they moved between the judicial and executive branches. Attorney Brown argued that the personnel rules are applicable to executive branch employees only and have no

application to the judicial branch absent legislation that would establish rights to carry certain benefits between the various branches of State government.

The Board asked the parties to file memoranda, outlining their positions on the issue of seniority in the classified system, before a hearing on the merits of the appeal might be scheduled. The parties agreed that the issue could be decided on the pleadings, as there was no dispute concerning the material facts related to Ms. Guay's employment history. Attorney Jones asked that the State be allowed to file a response to the Appellant's pleadings rather than making its submission simultaneously. The Board agreed and asked the Appellant to file a memorandum no later than March 3, 2010. The State was allowed fourteen days to respond. SEA Grievance Representative Nicholas McGinty submitted the Appellant's written arguments by memo dated March 3, 2010. The Board did not receive a response from the State. As a result, the decision and order below is based on the facts as presented by the Appellant, oral argument presented by the parties at the February 3, 2010, prehearing conference, and written arguments submitted by the Appellant on March 3, 2010.

As noted above, the material facts in this case are not in dispute.

1. Ms. Guay was employed by the judicial branch between March 6, 1987 and January 3, 2008, and began her employment as a classified employee in the executive branch on January 4, 2008.
2. By letter dated October 15, 2009, Ms. Guay was informed that due to insufficient funding resulting in a change in the organization due to a reduction of the workforce, it was necessary to lay her off from her position of Child Support Officer effective October 29, 2009.
3. If Ms. Guay had been allowed to count her prior employment in the judicial system as "state service" for purposes of a layoff, she may have had sufficient seniority credit to avoid being laid off in October, 2009.

Administrative rule Per 101.01(a) states, "The purpose of these [personnel] rules shall be to implement RSA 21-I:42-58 and to establish a statewide system of personnel administration based on merit principles, sound management techniques, and regular training and education programs, in such a manner as to ensure: (a) The establishment of a state system of personnel administration based on merit principles and accepted methods for the recruitment, appointment, compensation, promotion, transfer, layoff, removal and discipline of classified state employees and for regular training programs..."

RSA 21-I:43, II, states, "The director of personnel shall adopt rules, pursuant to RSA 541-A, which shall apply to employees in the classified service of the state..." including rules related to layoff.

Administrative rule Per 102.53 defines "Seniority date" as "...the last date an employee entered state classified service on a full-time basis, adjusted for periods of uncompensated absences for educational or personal reasons and prior qualifying military experience, and is used for determining personnel actions related to layoff." (Emphasis added.)

Per 1101.02 (c) states, "Seniority for the purpose of layoff shall be the length of continuous full-time service with the state from the last date of hire to full-time service on the basis of years, months, and days of service including military leave pursuant to Per 701.02 except that any days, months, or years of leave without pay for educational or personal reasons shall not be counted."

The Appellant argues that because Per 1101.02 (c) refers to "state service" rather than "classified state service," all work performed for any branch of State government must be included in the computation of seniority. The Board does not agree. Per 1101.02 (c) states that seniority credit will be calculated in terms of years, months and days. Per 102.53 specifies which years, months and days will be counted and considered "State service" for purposes of establishing a seniority date. Per 102.53 clearly defines "seniority date" as "the last date an employee entered state classified service on a full-time basis, adjusted for periods of uncompensated absences for educational or personal reasons and prior qualifying military experience, and is used for determining personnel actions related to layoff." A plain reading of the definition can not be ignored.

For the reasons set forth above, the Board voted unanimously to DENY Ms. Guay's appeal, finding that Ms. Guay was not entitled to credit for her service in the judicial branch for purposes of establishing her seniority date as a classified state employee, and that the Department of Health and Human Services was correct in establishing her seniority date for purposes of layoff as January 4, 2008.

THE NH PERSONNEL APPEALS BOARD

/s/ Patrick Wood

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Patrick Wood, Chair

/s/ Philip Bonafide

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Philip Bonafide, Vice-Chair

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Robert Johnson, Commissioner

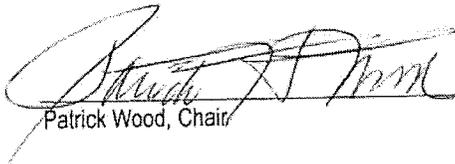
cc: Karen Hutchins, Director of Personnel  
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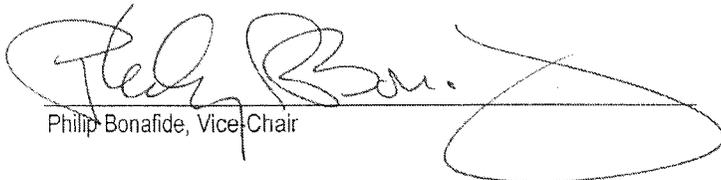
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