

# State of New Hampshire



## PERSONNEL APPEALS BOARD

25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

### *Appeal of Dorothy Chicaderis*

*Docket #2007-D-007*

*Department of Health and Human Services*

*January 23, 2008*

By letter dated June 12, 2007, Dorothy Chicaderis, an employee of the Department of Health and Human Services, and her representative, Arthur Chicaderis filed a request for a hearing to appeal a written warning issued to Ms. Chicaderis on December 27, 2006, and revised and reissued on January 26, 2007. Included with the request were copies of correspondence detailing the steps in the appellant's requests for informal settlement prior to her appeal to the Board, including Personnel Director Karen Hutchins' Step IV response dated May 29, 2007. The Appellant requested that the Board provide the following relief:

1. Reverse the action in dispute by removing the warning from all files in the appellant's agency and at the Division of Personnel;
2. Bar the agency from taking additional disciplinary action relating to the assignment to write any part of the AOD (Alcohol and Other Drug) Plan;
3. Bar the agency from making any similar assignment relating to the AOD plan;  
and
4. Bar the agency from requiring the appellant to provide any future research and/or writing assignment related to a follow-up implementation plan for the goals included in the AOD Plan.

On August 8, 2007, the Board notified the parties that it had scheduled the matter for a hearing on the merits of the appeal on August 29, 2007, and that the appeal would be heard on offers of proof. By letter dated August 16, 2007, the appellant requested postponement, indicating that she was scheduled to be out of state on the scheduled hearing date. The Board granted that request.

By letter dated October 3, 2007, Attorney Lynne S. Mitchell submitted the State's Motion to Dismiss, indicating that Ms. Chicaderis had retired from State service on or about September 1, 2007 and was no longer a permanent employee. She argued that Ms. Chicaderis' appeal therefore should be considered moot.

The appellant's representative responded by letter dated October 22, 2007, arguing that, "the letter of warning dated May 11, 2007, is not the subject of Docket #2007-D-007," and that the State's Motion was therefore "factually inaccurate and incorrect, fatally defective as a matter of procedure and law, and, thus, invalid and moot." He asked the Board to deny the State's motion and hear the appeal.

Although the State's Motion misidentifies the letter of warning under appeal, that misidentification does not in any way prejudice the appellant, nor does it provide a basis upon which to decide the motion. Therefore, in deciding the Motion, the Board considered a number of factors including the following:

First, the underlying facts are not in dispute:

1. On January 29, 2007, the appellant received a written warning from Joseph P. Hardin, Director of the Office of Alcohol and Drug Policy, for "failure to meet the work standard and failure to take corrective action as directed." Director Harding indicated that the appellant failed to submit to him "a two to three page background narrative on the scope and magnitude of Alcohol and Drug Problems in New Hampshire..."

2. Ms. Chicaderis refused to carry out a work assignment given to her by her supervisor.
  - a. Ms. Chicaderis "...declined to do the specific assignment of writing an overview and/or introduction to the Plan..." because she believed that the assignment "...exceeds the scope of my job requirements..." meaning it was not a "legitimate assignment and directive..." [Notice of Appeal, page 3]
  - b. Ms. Chicaderis objected to performing work that she believed to be covered by the scope of services in a sole source contract awarded to an outside contractor. "Even if a work standard or job classification requirement had been cited, the assignment giving rise to the LOW is inappropriate and, I believe, unethical, since it would require a state employee to become a *de facto* subcontractor to a Contractor whose plain legal obligation clearly includes writing an overview of the problem and an introduction to the Plan..."
  - c. Ms. Chicaderis admitted, "I never disputed that I certainly could and most likely would have written part or all of any similar state plan as a legitimate part of my work duties had this contract not existed and been mismanaged... the very existence of this *sole source* contract... renders the work assignment invalid..." [Notice of Appeal page 5]
  - d. Ms. Chicaderis and the agency disagree on the appropriate interpretation of the terms and conditions of the sole source agreement between the Department of Health and Human Services and Wendy Frosh dba Healthcare Management Strategies.
3. Ms. Chicaderis retired from State service on or about September 1, 2007

Next, most of the Appellant's proposed remedy would go beyond the Board's authority. While RSA 21-I:58 gives the Board authority to amend or modify any decision of the appointing authority and make such other order as it deems just, the Board has no legal authority to direct how agencies will assign work in the future. As such, three of the four

requests could not be granted, even if the Board were to decide the appeal in Ms. Chicaderis' favor.

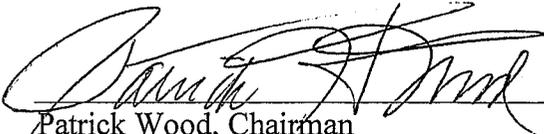
With respect to the appellant's request to remove the warning from her file at the agency and at the Division of Personnel, the Board found that the appeal was rendered moot by the Appellant's retirement from State service. RSA 21-I:58, I, provides that, "Any permanent employee who is affected by any 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..." Having retired from State service, Ms. Chicaderis no longer qualifies as a "permanent employee," and the existence of one or more written warnings have no effect on her current "status as an employee."

In reaching that conclusion, the Board notes that the appellant is not without recourse. The appellant already enjoys the protection of RSA 275:56, II, which provides, in pertinent part, "If, upon inspection of his personnel file, an employee disagrees with any of the information contained in such file, and the employee and employer cannot agree upon removal or correction of such information, then the employee may submit a written statement explaining his version of the information together with evidence supporting such version. Such statement shall be maintained as part of the employee's personnel file and shall be included in any transmittal of the file to a third party and shall be included in any disclosure of the contested information made to a third party."

Prior to her retirement from State service, the appellant did request informal settlement and appealed the written warning issued to her in January 2006. Throughout that process, the appellant submitted one or more written statements explaining her version of events leading up to and following the issuance of the written warning. Those documents are now part of the file and clearly identify any contested information.

For all the reasons set forth above, the Board voted unanimously to DISMISS the appeal, which was rendered moot by the appellant's voluntary separation from service.

THE PERSONNEL APPEALS BOARD

  
Patrick Wood, Chairman

  
Robert Johnson, Commissioner

  
Joseph Casey, Commissioner

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Dorothy and Arthur Chicaderis, 16 Fisher St., Concord NH 03301-4614  
Lynne S. Mitchell, Legal Coordinator, Department of Health and Human  
Services, Operations Support, 129 Pleasant St., Concord, NH 03301