

State of New Hampshire



PERSONNEL APPEALS BOARD
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Appeal of Nicole Collins

Docket #2016-D-003

Department of Health and Human Services

June 8, 2016

The New Hampshire Personnel Appeals Board met in public session on Wednesday, March 23, 2016, 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 Nicole Collins, the Appellant. The following commissioners sat for this hearing: Charla Stevens, Esq., Chair, Norman Patenaude, Esq., Vice-Chair, Christopher Nicolopoulos, Esq., Commissioner and David Goldstein, Commissioner. Ms. Collins, who was represented at the hearing by Sean Bolton, SEA Grievance Representative, appealed the Letter of Warning she received on October 23, 2015, in her capacity as an Administrative Supervisor of the Seacoast District Office. Robert Berry, Esq., appeared on behalf of the State.

The record of the hearing in this matter consists of pleadings filed by the parties prior to the date of the hearing, notices and orders issued by the Board, the audio recording of the hearing on the merits of the appeal, documents admitted into evidence and post hearing memorandums.

Pursuant to Per-A 207.02 (4), the Board heard the appeal by way of offers of proof without objection from either party.

ISSUES OF LAW:

Per 1002.04 (b) (1)

Per 1002.04 (b) (6)

BACKGROUND

The Appellant began her employment as an Administrative Supervisor at the Department of Health and Human Services on September 28, 2012 and is the Administrative Supervisor at the Seacoast District Office. The Appellant was informed in June 2015 that supervisors had to review twenty (20) cases every month as part of the Food Stamp Corrective Action Plan. The number of cases to be reviewed by the Appellant each month increased to thirty (30) in August 2015. The State alleged that the Appellant failed to meet this work standard and the Appellant argued that the employer only examined tangible numbers and did not consider all of the other responsibilities that come along with being an Administrative Supervisor.

The Appellant was authorized to work overtime for the sole purpose of case reviews. The Appellant worked sixteen (16) hours of overtime between August 10, 2015 and September 17, 2015 and used one (1) hour to complete one (1) case review. The State alleged that the remaining overtime hours were not authorized as the Appellant did not utilize the hours to conduct case reviews. The Appellant argued that she was authorized to use overtime to complete other supervisory tasks other than case reviews and was only first informed via e-mail on August 20, 2015 that overtime was to be utilized for case reviews only. The Appellant also alleged that many of the overtime hours were case-review related and any that were not case-review related were approved.

After carefully considering the parties' testimony, evidence, arguments and post hearing memorandums, the Board made the following findings of fact and rulings of law:

FINDINGS OF FACT

UNAUTHORIZED OVERTIME:

1. The Appellant began her employment as an Administrative Supervisor at the Department of Health and Human Services on September 28, 2012. The Appellant was the Administrative Supervisor for the Seacoast District Office. (See State's Exhibit #2 pg. 1)
2. On October 23, 2015 the Appellant was issued a Letter of Warning for including, but not limited to, failure to meet any work standard and for working unauthorized overtime, in accordance with the New Hampshire Code of Administrative Rules 1002.04 (b) (1) and 1002.04 (b) (6). (State's Exhibit #2 pg. 1)
3. Melody Braley, Chief of Program Operations, Division of Client Services, held a meeting on July 30, 2015 with all Division of Client Services Administrative Supervisors to discuss the food stamp error rate. At that meeting, Ms. Braley advised all supervisors, including the Appellant, that overtime was only to be utilized to conduct case reviews. (State's Exhibit #2 pg. 2)
4. Ms. Braley sent out an e-mail to staff, including the Appellant, on July 31, 2015 to reiterate that overtime was to be used for case reviews only. The e-mail states, in relevant part, "The overtime monies should *only* be used to conduct case reviews." (State's Exhibit #2 pg. 49)
5. On August 20, 2015 Karen Spires, Regional Manager, Division of Client Services, sent the Appellant an e-mail regarding overtime. The e-mail states, in relevant part, "I reached out to Mel regarding overtime. Overtime is to be used for case reviews. Please be sure that you do not submit o/t unless it is for the purpose of conducting case reviews. Once your reviews are completed we can assess the need for o/t to process FS pendings." (State's Exhibit #2 pg. 50)

6. Between August 10, 2015 and September 17, 2015 the Appellant worked sixteen (16) hours of overtime. Of the sixteen (16) hours of overtime, the Appellant performed one (1) case review on August 19, 2015 for one (1) hour. The overtime worked during this period of time was not approved for any other work other than case reviews. (State's Exhibit #2 pg. 2)
7. A typical case review should take approximately ten (10) to fifteen (15) minutes. (the Record)

FAILURE TO MEET ANY WORK STANDARD:

8. The Division of Client Services supervisors were instructed, as part of its corrective action plan regarding the food stamp error rate, to review a certain number of cases each month to ensure accuracy.
9. The Appellant was informed that she needed to review twenty (20) cases in June 2015 and was expected to review the same number of cases in July 2015. A typical review of a case should take approximately ten (10) to fifteen (15) minutes. Ms. Spires sent an e-mail to the Appellant on July 1, 2015 that reads, in relevant part, "For the month of June 2015, as part of the statewide CAP [Corrective Action Plan], the expectation was clearly conveyed that each supervisor would review a minimum of 20 cases for one FSS [Family Services Specialist]. This did not occur in Seacoast. On June 1, 2015, I sent out the below email that you were cc'd on: Each month, as part of the State Corrective Action Plan, the supervisors will review all face to face redes and same ftf intakes for an experienced FSS. This month you have been selected. Please remember not to confirm any of your redes or face to face Food Stamp Intakes this month." (the Record and State's Exhibit#2 pg. 59)
10. During the month of June 2015, the Appellant completed five (5) of the required twenty (20) reviews and completed fourteen (14) case reviews in the month of July 2015.(State's Exhibit #45 &46)

11. The number of case reviews to be performed by supervisors increased to thirty (30) in the month of August 2015. As a result, an e-mail was sent by Ms. Braley on July 31, 2015 to staff, including the Appellant, which reads in relevant part, "the overtime monies should *only* be used to conduct case reviews." This directive was reiterated in an e-mail from Ms. Spires to the Appellant on August 20, 2015 which reads, in relevant part, "I reached out to Mel regarding overtime. Overtime is to be used for case reviews. Please be sure that you do not submit o/t unless it is for the purpose of conducting case reviews" (State's Exhibit #2 pg. 49 & 50)

12. During the month of August 2015 the Appellant conducted two (2) case reviews and did not conduct any case reviews in September 2015. (State's Exhibit #2 pg. 47 and the Record)

13. During the month of August 2015 and September 2015 the Appellant worked sixteen (16) hours of overtime but only conducted one case review for one (1) hour during these overtime hours. (the Record)

RULINGS OF LAW:

- A. Per 1002.04 (b) (1) an appointing authority may issue a written warning to an employee for unsatisfactory work performance or conduct including, but not limited to, the following:
Failure to meet any work standard

- B. Per 1002.04 (b) (6) an appointing authority may issue a written warning to an employee for unsatisfactory work performance or conduct including, but not limited to, the following:
Working unauthorized overtime

- C. Per-A 207.01 (b) in appeals involving disciplinary action, removal for non-disciplinary reasons, involuntary transfer, non-selection to a vacancy, or the interpretation and application of a rule adopted by the director of personnel, the appointing authority shall have the burden of producing evidence supporting the action under appeal

D. Per-A 207.12 (b) In disciplinary appeals, including termination, disciplinary demotion, suspension without pay, withholding of an employee's annual increment or issuance of a written warning, the board shall determine if the appellant proves 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, and (4) the disciplinary action was unjust in light of the facts in evidence.

DISCUSSION and ORDER

The Appellant asserted that at the administrative supervisor's meeting, held on July 30, 2015, she specifically inquired if overtime could be utilized for dashboard monitoring and that the employer answered in the affirmative. The State, however, argued that Ms. Braley specifically instructed all supervisors, including the Appellant, that overtime was only to be used to conduct case reviews. The Appellant also argued that the first time she was notified, after the July 30, 2015 meeting, that overtime was only to be used for case reviews was August 20, 2015 by way of e-mail from Ms. Spires. Ms. Braley, however, followed up her July 30, 2015 directive with an e-mail to supervisors, including the Appellant, on July 31, 2015 reiterating that overtime was only to be used for case reviews. To emphasize her point she italicized the word "*only*" in the part of the e-mail that reads "the overtime monies should *only* be used to conduct case reviews". In addition, Ms. Spires also sent an e-mail to the Appellant on August 20, 2015 indicating that she had a discussion with Ms. Braley about the use of overtime and Ms. Braley stated once again that overtime was to be utilized for case reviews only. The Board finds the assertions by Ms. Braley and Ms. Spires to be credible, especially considering the e-mails produced as evidence corroborate their assertions that overtime was only to be used for case reviews.

After the third time the Appellant was informed that overtime was to be utilized for case reviews only, she continued to work overtime without completing any case reviews. From August 25,

overtime but did not complete one (1) case review. As stated above, it was approximated that it takes only ten (10) to fifteen (15) minutes to complete one (1) case review. As such, the Board concludes that the Appellant did work unauthorized overtime as it was made clear that overtime was to be utilized for case reviews only.

It was brought to the attention of the Appellant in June 2015 that there was a concern about the errors relating to the State Food Stamp Program. As a result, the Appellant was informed that she needed to review twenty (20) cases in June and the same in July. The Appellant reviewed five (5) cases in June and fourteen (14) cases in July. In August 2015, the number of cases to be reviewed increased to thirty (30). The Appellant was authorized to use overtime for the sole purpose of reviewing cases to ensure that she was able to meet the work standard. The Appellant, however, failed to comply as she reviewed only two (2) cases in August 2015. The Appellant was aware of these expectations but failed to meet them even though she was allowed to work overtime in order to be in compliance. In fact, the Appellant did work overtime but still did not meet the work expectations. From August 10, 2015 through September 17, 2015 the Appellant worked a total of sixteen (16) hours of overtime. It is estimated that a case review takes approximately ten (10) to fifteen (15) minutes or less. Taking into consideration the amount of time to review each case, the Board believes the Appellant should have been able to review more than one (1) case in sixteen (16) hours.

The Appellant argues that the Letter of Warning (the Letter) was improperly issued, in part, because the employer applied the wrong section of Per 1002.04 (Written Warning). She asserts that the Letter also references attendance issues, failure to adhere to directives, and failure to follow policies and procedures, and the Letter does not properly claim to be issued under one or more of these sections. Although the Board agrees that the Letter could have been clearer, the Letter did include the sections relating to Working unauthorized overtime and Failure to meet any work standard which provided sufficient notice to the Appellant.

For all the reasons set forth above, the Board voted unanimously to uphold the written warning issued to Nicole Collins on October 23, 2015, and to DENY her appeal.

For all the reasons set forth above, the Board voted unanimously to uphold the written warning issued to Nicole Collins on October 23, 2015, and to DENY her appeal.

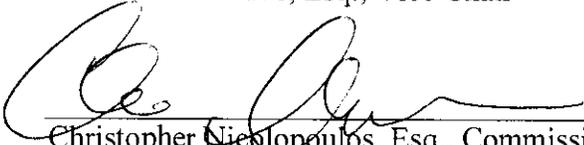
THE PERSONNEL APPEALS BOARD



Charla Stevens, Esq., Chair



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