

State of New Hampshire



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

Appeal of Matthew Cooley

Docket #2004-D-001

Department of Health and Human Services/Division for Juvenile Justice Services

October 13, 2004

The New Hampshire Personnel Appeals Board (Rule, Johnson and Urban) met on Friday, November 21, 2003, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to consider pre-hearing submissions and motions filed by the parties in the above captioned appeal. After reviewing the arguments, the Board voted unanimously to DISMISS the appeal for the reasons set forth below.

By letter dated October 28, 2003, SEA Field Representative Margo Steeves requested a hearing on the appellant's behalf, arguing "At the time of the Letter [of Warning], Mr. Cooley was a permanent employee working as a Youth Counselor I (YC I) at the Division for Juvenile Justice Services, Youth Development Center (YDC), King Cottage." Ms. Steeves requested a full evidentiary hearing, arguing that the appellant would need to call "a number of witnesses...to establish that the allegations in the letter are simply wrong."

Susan Anderson, HR Administrator for the Division of Juvenile Justice Services, responded by letter dated November 6, 2003, objecting to the appellant's request for a full evidentiary hearings and requesting that the Board dismiss the appeal as moot. In support of her Motion to Dismiss, Ms. Anderson argued that the appellant voluntarily resigned his position as a Youth Counselor I on October 3, 2003 and no longer worked

for the State. She argued that because the appellant no longer worked for the State, the written warning had no effect on his future employment.

By letter dated November 14, 2003, Ms. Steeves submitted a response to the statements contained in the agency's November 6th letter as well as a formal objection to the State's November 6th Motion to Dismiss. She admitted that the appellant resigned his position on October 3, 2003 and is now employed in the private sector. However, she argued, "his resignation was not entirely voluntary..." She contended that his resignation from State service should be irrelevant, as the appellant timely filed requests for informal settlement in accordance with Per 202 of the Rules of the Division of Personnel before his resignation occurred. Therefore, she argued, "the appeal to this Board has been proper and timely pursuant to that process."

The appellant argued that the warning could have an effect on him prospectively if some "...potential employers insist on seeing pervious personnel files; the abuse appeal could be affected by this letter of warning and/or the allegations therein." (November 14, 2003, Appellant's Response to November 6, 2003 Motion to Dismiss, p. 2) The appellant further argued "the word 'employee' has at least on one occasion been interpreted by the NH Supreme Court to refer to former employees as well as present employees. See Rix vs. Kinderworks Corp. (1992)136 N.H. 548."

Without the specific language to which the appellant referred for purposes of this discussion, the Board relied instead on the NH Supreme Court's description of "employees" the Appeal of Carol Higgins-Broderson and William McCann (1990) 133 N.H. 576, 578. In its decision the Court wrote:

"In reviewing RSA 21-I:58, it is clear to us that the legislature intended to confer upon State employees a specific right of appeal to the Board based upon permanent status. Permanent employees have completed a working-test period and have been recommended for permanent appointment by the proper appointing authority.... The term 'permanent' reflects a degree of mutual commitment between employer and employee and an expectation that their relationship will be long-term. It is quite reasonable for the legislature to accord

employees holding permanent status greater opportunity to challenge personnel decisions affecting them. It is also reasonable to conclude that the legislature did not intend RSA 21-I:58 to confer upon such employees a right to challenge all personnel decisions, but only ones involving the application of a personnel rule which affects them while they hold their permanent status."

The letter of warning issued to the appellant under the authority of Chapter Per 1000 as well as the various decisions issued at each of the steps in the informal settlement process described by Chapter Per 202, clearly affected the appellant while he was still employed on a full-time basis as a "permanent employee." Having left his position voluntarily,¹ however, Mr. Cooley no longer qualifies as permanent employee whose status as an employee is affected by the warning. After carefully considering the parties' arguments in light of the Board's jurisdiction as defined by RSA 21-I:46, 57 and 58, the Board voted to DISMISS the appeal, finding that the October 28, 2003 appeal to this Board was rendered moot by the appellant's October 3, 2003 resignation from employment.

In reaching that decision, the Board notes that the appellant is not without recourse. The appellant already enjoys the protection of RSA 275:56, II in addressing the potential or prospective effect that the warning could have on his future employment.

"RSA 275:56, II --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 his resignation, the appellant did submit one or more written statements explaining his version of the disputed information along with evidence supporting his

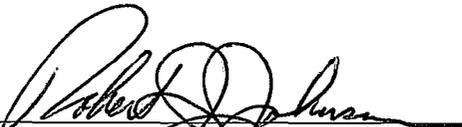
¹ The appellant's assertion that "his resignation was not entirely voluntary" (November 14, 2003, Appellant's Response to November 6, 2003 Motion to Dismiss, page 1) is irrelevant. If the appellant is alleging that he was forced to resign, he had 15 calendar days from the date of such resignation to file an appeal. No such appeal was filed. As such, that matter is not properly before the Board and has no bearing on the written warning appeal or the Board's jurisdiction to hear and decide that appeal.

version of events. If the appellant were to allow a potential employer access to his file, the State would be required to provide the appellant's statements along with a copy of the disputed warning.

Accordingly, for all the reasons set forth above, the Board voted to DISMISS the appeal.

THE PERSONNEL APPEALS BOARD

Lisa A. Rule, Acting Chairperson



Robert J. Johnson, Commissioner



Anthony B. Urban, Commissioner

cc: Director of Personnel
Margo Steeves, SEA Field Representative
Susan Anderson, HR Administrator, Division for Juvenile Justice Services

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February 10, 2005

By letter dated November 1, 2004, SEA Field Representative Margo Steeves submitted Appellant's Motion for Reconsideration of the Board's October 13, 2004 decision dismissing Matthew Cooley's appeal of a written warning. Attorney John Martin submitted the State's Objection to Motion for Reconsideration on November 8, 2004..

Having carefully considered Appellant's Motion and the State's Objection, the Board voted unanimously to AFFIRM it's original decision DISMISSING THE APPEAL for the reasons set forth in the State's Objection.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in black ink, appearing to read "Patrick H. Wood".

Patrick H. Wood, Chairman

cc: Karen A. Levchuk, Director of Personnel
Margo Steeves, SEA Field Representative
Karen Hutchins, Director of Human Resources, Department of Health and
Human Services
Attorney John Martin, Office of Program Support, Department of Health and
Human Services