

State of New Hampshire



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

*Appeal of Brian Coulombe*

*Docket #2002-D-4*

*Department of Corrections*

*Decision on Appellant's Motion for Reconsideration and Agency's Objections*

*May 7, 2002*

By letter dated April 26, 2002, Thomas Hardin, SEA Director of Field Operations, requested reconsideration of the Board's March 26, 2002, decision in the above-titled appeal. Attorney Vinson's objection to that motion was received by the Board on May 2, 2002. Having carefully considered the grounds offered in support of the Motion, as well as the Objection thereto, the Board, in accordance with Per-A 208.03 (f), voted to AFFIRM its March 26, 2002 decision DENYING Cpl. Coulombe's appeal.

The Personnel Appeals Board

/s/

\_\_\_\_\_  
Lisa A. Rule, Acting Chairperson

/s/

\_\_\_\_\_  
Robert J. Johnson, Commissioner

/s/

\_\_\_\_\_  
Philip P. Bonafide, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Thomas F. Hardin, Director of Field Operations, State Employees Association, PO  
Box 3303, Concord, NH 03302-3303  
Attorney John Vinson, NH Department of Corrections, 105 Pleasant St., Concord, NH  
03301

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### *Appeal of Brian Coulombe*

*Docket #2002-D-4*

*Department of Corrections*

*March 26, 2002*

The New Hampshire Personnel Appeals Board (Rule, Johnson and Bonafide) met on Wednesday, January 16, 2001, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board) to hear the appeal of Brian Couloinbe, an employee of the Department of Corsections. Thomas Hardiman, SEA Director of Field Operations, appeared on behalf of the appellant. Attorney John Vinson appeared on behalf of the State.

Without objection, the appeal was heard on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of the pleadings submitted by the parties prior to the hearing, notices and orders issued by the Board, the audio tape recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

#### Appellant's Exlubits:

1. Letter of warning dated August 15, 2001, from Warden Catell to Cpl. Coulombe
2. Letter of appeal dated August 23, 200, from SEA Field Representative Asbury to Warden Catell
3. Memorandum dated August 30, 2001, fi-om Capt. Cunningham to SEA Steward Withington
4. Letter of decision dated September 13, 2001, from Warden Catell to SEA Field Representative Asbury
5. Letter of appeal dated September 25, 2001, fi-om SEA Field Representative Asbury to Commissioner Stanley

6. Letter of decision dated October 31, 2001, from Warden Stanley to SEA Field Representative Asbury
7. Letter of appeal dated November 14, 2001, from SEA Field Representative Asbury to Director Manning
8. Letter of decision dated December 3, 2001, from Director Manning to SEA Field Representative Asbury

State's Exhibits

- A. Memorandum dated August 8, 2001 from Sgt. Cole to Capt Cunningham
- B. Letter dated May 29, 2001 from Sgt. Lambertson to Cpl. Coulombe
- C. Performance Summary for the period 12/4/98 to 12/30/99 issued to Brian Coulombe
- D. Performance Summary for the period 12/10/99 to 12/6/00 issued to Brian Coulombe
- E. Performance Summary for the period 12/4/00 to 12/4/01 issued to Brian Coulombe
- F. Letter of counseling dated August 22, 1999
- G. Letter of warning dated October 11, 2000, issued to Cpl. Coulombe
- H. Undated, typed note from Cpl. Coulombe to Sgt. Cole
- I. Statement Form dated 8-9-01 signed by Brian Coulombe
- J. Memorandum dated 09-25-00 from Lt. Schofield to Capt. Cunningham
- K. Memorandum dated 1-9-02 from St. Lambertson to Maj. Cunningham

The appellant argued he was late reporting to his duty station on the morning of August 7, 2002, because he lost track of the time. He indicated that he was in the middle of engraving tools when he received the call from Sgt. Gauthier and realized he was supposed to be in Education. He argued that from the standpoint of safety, securing the tools was the most important task. The appellant admitted that he shouted over the radio in his communications with Sgt. Gauthier and Sgt. Cole, but argued that it was only so that he could be heard over the background noise of the shop. He argued that he was not insubordinate and never intended any disrespect. He argued that he should not be held solely responsible for the incident since the situation had been mishandled from the outset.

Attorney Vinson argued that this was not the first instance of disrespectful or insubordinate behavior on the appellant's part. He argued that the appellant's difficulty responding to feedback and constructive criticism was well-documented in performance evaluations, counseling, and a prior letter of warning. He asked the Board to note that the Personnel Rules describe the written warning as the least severe form of discipline available to an appointing authority to correct an employee's unsatisfactory work performance or conduct. Since the warning was issued, he said,

the appellant's attitude and workplace demeanor had improved dramatically, showing how effective the warning had been in correcting the appellant's performance.

Having considered the evidence, arguments, and offers of proof made by the parties, the Board made the following findings of fact and rulings of law:

#### Findings of Fact

1. The appellant, Brian Coulombe, is employed as a Corporal at the Lates Region Facility of the New Hampshire Department of Corrections.
2. On October 18, 2000, Cpl. Coulombe acknowledged receipt of a written warning dated October 11, 2000, issued to him for failure to meet work standards, specifically for violation of Departmental PPD 2.16 in connection with his being ordered to submit an incident report. Cpl. Coulombe did not appeal the warning to this Board.
3. Cpl. Coulombe has received several performance evaluations since 1998 that show him meeting standards overall and exceeding standards in some areas. They also reflect continued concerns about the appellant's willingness to accept constructive criticism, learn from his mistakes, and communicate with others in a respectful manner.
4. Cpl. Coulombe has been counseled verbally and in writing about displaying a "negative attitude."
5. Cpl. Coulombe was expected to report to the Education unit at 8:30 a.m. on August 7, 2001, to cover for other staff so that they could assist in distribution of supplies from the canteen.
6. Sgt. Gauthier radioed Cpl. Coulombe at 8:40 a.m., telling him to report to the Education unit.
7. Cpl. Coulombe replied, "10-5. I'm engraving tools; it will be a while."
8. Sgt. Gauthier responded "10-5" indicating his receipt of the message.
9. After Sgt. Cole overheard the radio exchange, he contacted Sgt. Gauthier to tell him that the appellant knew he might be required to cover staffing in the Education unit. He also radioed Cpl. Coulombe and told him to report immediately to Education. The appellant replied, "I'm working on it."

10. After reporting to the Education unit, the appellant telephoned Sgt. Gauthier, asked Sgt. Gauthier who lied, the appellant, worked for and complained of the way Sgt. Cole had involved himself in the incident.
11. Approximately an hour and a half later, when Sgt. Cole addressed the appellant in the hallway and told him they needed to talk, the appellant replied, "I have nothing further to say," and began walking away.
12. Cpl. Coulombe did return and spoke with Sgt. Cole to establish a date and time to meet.

#### Rulings of Law

Per 1001.03 (a) (1) and (2), NH Code of Administrative Rules

"An appointing authority shall be authorized to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance or misconduct for offenses including, but not limited to:

(1) Failure to meet any work standard..."

#### Standard of Review

Per-A 207.12 (b), NH Code of Administrative Rules

"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; or
- (4) The disciplinary action was unjust in light of the facts in evidence."

#### Decision and Order

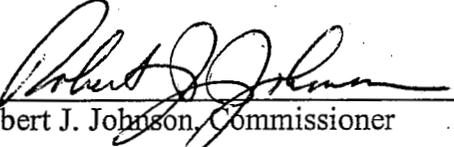
The appellant indicated that on the morning of August 7<sup>th</sup>, he made "an honest mistake" and lost track of the time, failing to report to Education as scheduled (State's Exhibit 'I'). The evidence reflects that it was not as much that "mistake," that resulted in the issuance of a written warning, but Cpl. Coulombe's reactions afterward. Instead of acknowledging an error or taking prompt steps to correct the problem, the appellant told St. Gauthier he was engraving tools and it would

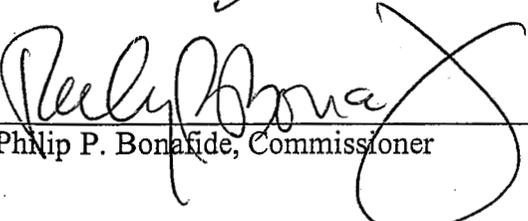
"be a while" before he got there. By his own report, when Sgt. Cole then ordered him to stop doing whatever he was doing and report to Education, he offered no explanation for the delay. He never said that he needed to secure his work area or put tools away safely. He simply said, "I'm working on it." When Sgt. Cole confronted him later that morning and told him they needed to talk, he reacted by saying there was nothing to talk about and walked away. His behavior toward Sgt. Cole was clearly disrespectful and insubordinate. In light of prior counseling, the behavior also constituted a failure to meet work standards sufficient to warrant the issuance of a written warning.

Therefore, on the evidence, arguments and offers of proof presented by the parties, the Board voted unanimously to DENY the appeal, upholding the warning as issued.

The Personnel Appeals Board

  
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Lisa A. Rule, Acting Chairperson

  
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Robert J. Johnson, Commissioner

  
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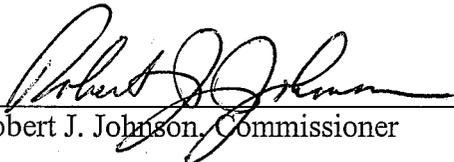
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