

state of *New Hampshire*



**PERSONNEL APPEALS BOARD**

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*Appeal of Charles Cournoyer*

*Docket #02-D-14*

*New Hampshire Hospital*

July 29, 2002

The New Hampshire Personnel Appeals Board (Wood, Rule, and Johnson) met on Wednesday, May 22, 2002, 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 Charles Cournoyer, an employee of New Hampshire Hospital. Mr. Cournoyer was represented at the hearing by Thomas Hardiman, SEA Director of Field Operations. Marie Lang, Human Resources Administrator, appeared on behalf of the State. Mr. Cournoyer was appealing a letter of warning issued to him on December 5, 2001 for allegedly making an unprofessional display of anger at a customer. The appellant denied the allegations, arguing that while he was upset and may have spoken loudly to the individual, he was not "screaming" or acting unprofessionally as the employer alleged.

Without objection, the hearing was conducted on offers of proof by the representatives of the parties.<sup>1</sup> The record of the hearing in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, and documents identified by the parties and admitted into evidence as follows:

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<sup>1</sup> The Board also heard directly from Mr. Maldonado, the supervisor who issued the written warning, and Mr. Cournoyer, the appellant, so that they could clarify for the Board some of the information being offered by their representatives.

Appellant's Exhibits:

1. February 27,2002 Letter from Thomas F. Manning
2. February 22,2002 Appeal from Jean Chellis to Thomas F. Manning
3. February 13,2002 Letter from Stephen R. Davis
4. January 10, 2002 Letter from Jean Chellis to Commissioner Donald L. Shumway
5. January 7, 2002 Letter from Superintendent Chester G. Batchelder, CHE
6. December 14, 2002 Appeal from Jean Chellis to Superintendent Chester G. Batchelder, CHE
7. December 13,2001 Letter from Luis N. Maldonado
8. December 7,2001 Appeal from Jean Chellis to Luis N. Maldonado
9. December 5,2001 Letter of Warning issued to Charles Cournoyer
10. Maintenance Work Request – November 27,2001
11. New Hampshire Hospital, Safety Management, "Right to Know"
12. New Hampshire Hospital Employee Notice of Accidental Injury or Occupational Illness<sup>2</sup>  
–November 23,1999
13. Opening Statement

State's Exhibits:

1. December 15,2002 letter of warning with attachments as follows:
  - 1) email from Bonnie L. Reed dated 11/28/2001
  - 2) hand written note dated 12/3/01 from Robert Sears
  - 3) hand written note date stamped 12-4-2001 MAINT.OFFICE, from Ron Sayles
  - 4) New Hampshire Hospital Training Records dated 11/30/2001 titled Continuing Education for Cournoyer, Charles

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<sup>2</sup> The State objected to Appellant's Exhibit 12, arguing that New Hampshire Hospital had no record of ever receiving a copy of the Notice of Accidental Injury or Occupational Illness being offered into evidence and had never been informed by the appellant that he believed he suffered from any hearing loss. The appellant admitted that he had not informed the employer directly of any problems with hearing loss, and said that the exhibit was being offered for the purpose of attesting to the fact that he does suffer from minor hearing problems. The Board accepted the exhibit and admitted it into the record with the understanding that the information had not been provided to the employer any time prior to the appeal and therefore had not been subjected to scrutiny, examination, and challenge by the employer.

- 5) Notation of Counseling dated 2/2/01 to Charles Cournoyer from Cyrus Wheeler, Foreman
2. February 15, 2002 letter of counsel issued to Mr. Cournoyer
3. March 21, 1001 letter of counsel to Mr. Cournoyer from Mr. Maldonado
4. New Hampshire Hospital Customer Service Guidelines

The appellant argued that he never yelled or behaved unprofessionally in his encounter with Mr. Sayles. He argued that if New Hampshire Hospital had simply followed its own procedures and had given him proper notice of the presence of asbestos in the area where he was assigned to work, he could have addressed the issue with his supervisor. Instead, he argued, the Hospital and the contractor failed to give him appropriate notice or make him aware of asbestos in the office. The appellant argued that he was understandably upset when he learned that there was asbestos present. He admitted that his exchange with Mr. Sayles was animated and loud. Nevertheless, he argued, he did not react in anger and should not be disciplined for asserting his right to be protected in the workplace.

Ms. Lang argued that while the appellant's technical skills are commendable, he continues to demonstrate difficulty keeping his temper under control and adhering to the agency's Customer Service Guidelines. Ms. Lang said that the agency's customer service standards are well-known, and employees receive training in order to develop their customer service skills. She said that in addition to in-house training, the appellant had successfully completed the State's Certified Public Supervisor program, reinforcing the requirement for employees to communicate effectively while maintaining a customer service perspective. Ms. Lang argued that all of the witnesses to the incident with Mr. Sayles identified the appellant's behavior as loud and unprofessional. She said that while the appellant's concerns about asbestos are justified, his reaction to those concerns was inappropriate and unprofessional. She asked the Board to find that the appellant's conduct warranted a written warning, the least severe form of discipline an employer may utilize in correcting an employee's unsatisfactory work or conduct.

After carefully reviewing the documentary evidence and after considering the parties' arguments and uncontroverted offers of proof, the Board made the following findings of fact and rulings of law:

Findings of Fact:

1. The appellant, Charles Cournoyer is employed by the Maintenance Department at New Hainpshire Hospital as an electrician.
2. New Hainpshire Hospital acluzowledges the appellant's technical competence but has raised concerns with the appellant about his "customer service" skills and his ability to communicate respectfully with others in a conflict situation.
3. The appellant was formally counseled in February, 2001, about his communication style and was reminded of the requirement for him to be respectful of others in the workplace.
4. Through its "Safety Management" programs and practices, New Hampshire Hospital assures its employers of their right to "Be notified by posting of the long and short term health hazards of all hazardous substances that [einplooyees] may come in contact with. (Found in [their] N. H. Hospital Safety Manual under HAZ-MAT/MSDS section)." (Appellant's Exhibit 11).
5. As a result of asbestos being found in the Philbrook School (which is on New Hampshire Hospital grounds) the building contractor providing abatement services also provided training to New Hampshire Hospital employees about what to do if they discovered asbestos.
6. The appellant attended a 2-hour training session on "Asbestos Awareness" on June 1, 2001.
7. Employees were informed that if they found material that they believed to contain asbestos, and if that material had to be disturbed in order for a worlc assignment to be completed, the employee(s) should notify the supervisor who could, in turn, mange to have tlie material tested. If tests disclosed that the inaterial did not contain asbestos, the worlc assignment could be completed; otlierwise, work in that location would be suspended until the asbestos could be removed or encapsulated by other personnel.
8. Removal and encapsulation techniques for asbestos handling were not included in the training.

9. The obligation to post the long and short term health hazards of all hazardous substances with which employees may come in contact does not impose an obligation upon the Hospital to place signs or notices in every individual location at which asbestos has been detected.
10. On or about November 26, 2001, workers discovered an intact piece of fabric they believed to contain asbestos behind a radiator in an office in the Tobey Building. Workers covered it with polyethylene and taped around the area with duct tape.
11. On November 27, 2001, the appellant received a work order directing him to "assist contractor in removing a section of strip wiring across front of radiator" on the third floor of the Tobey Building.
12. When the appellant arrived at the Tobey Building on November 28<sup>th</sup> to work on the wiring, he had to cut the power to the outlet being removed. The appellant was aware that he also was cutting power to the air monitoring device that had been installed in the office where he would be working.
13. In the course of completing the task, the appellant moved the radiator cover, releasing and coming into contact with a significant amount of dust.
14. After the appellant had finished the assignment, a male nurse assigned to that office space informed the appellant that earlier they had found asbestos in the room. The asbestos consisted of an intact piece of asbestos fabric that had been used to cover the radiator.
15. The appellant was angry that he had received no notice that asbestos had been discovered in the work area. When the appellant found the contractor, Ron Sayles, in the lobby of the building, he confronted him, demanding to know when the asbestos was discovered and why he hadn't been told about it.
16. The appellant's confrontation with Mr. Sayles was loud enough to draw the attention of Bonnie Reed, who was in her office at the time of the incident.
17. Ms. Reed described her reaction to the incident in an e-mail that she sent to the appellant's supervisor at 11:41 that morning (Appellant's Exhibit 1, attachment 1).
18. Ms. Reed wrote that she heard the appellant yelling at Mr. Sayles, demanding information about when the asbestos was discovered and asking who was responsible for not telling him that there was asbestos in the work area.

19. Robert Sears, another Maintenance Department employee, was about four or five feet behind the appellant in the hallway when the incident occurred.
20. In a signed statement dated December 3, 2001, describing the same incident, Mr. Sears wrote that he witnessed the appellant "flipping out" and "yelling and pointing at Ron," telling him "he didn't appreciate not being told about the asbestos."
21. On or about December 4, 2001, Mr. Sayles provided a statement to the Maintenance Office describing the appellant as "very belligerent, loud ...offensive" and "unprofessional."
22. The appellant admitted that he was extremely upset and said that, "if he feels passionately about something his voice does tend to rise a few decibels higher than normal" (Appellant's Exhibit 2).
23. The three witnesses all agreed that the appellant was yelling.
24. The appellant's conduct constituted a violation of New Hampshire Hospital's Customer Service Guidelines.

#### Rulings of Law

- A. "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..." [Per 1001.03 (a)] NH Code of Administrative Rules]
- B. "In all cases, the burden of proof shall be upon the party making the appeal. The appointing authority shall have the burden of production." [Per-A 207.01 NH Code of Administrative Rules]

#### Standard of Review

"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." [Per-A 207.12 (b) NH Code of Administrative Rules].

Decision and Order:

The appellant admitted that he was upset when he was advised that asbestos had been found in the area where he was assigned to work, and that no one had warned him about it beforehand. While the Board agrees that New Hampshire Hospital could have done a better job informing him of the situation, the Board did not find that the Hospital violated its own procedures or the appellant's rights by failing to provide notice to him personally as the appellant has alleged.

The appellant had participated in contractor-sponsored training in recognizing, handling, and reporting material suspected of containing asbestos. The appellant was aware of his rights under New Hampshire Hospital's Safety Management "Right to Know" policy [SEA Exhibit 11] as well as his responsibility to report concerns to his supervisor. The appellant also was aware of the Hospital's Customer Service Guidelines, and his responsibility to maintain a respectful and professional demeanor with others in the workplace.

When the appellant learned that asbestos had been discovered at the work site, he could have and should have addressed his concerns with safety management staff or with his own supervisor. Instead, the appellant chose to confront the contractor directly, complaining that he hadn't received proper notification and demanding to know who was at fault. The appellant insisted that he maintained an appropriate, professional demeanor throughout his conversation with Mr. Sayles, asserting that although he may have been loud, he never yelled at Mr. Sayles. The appellant explained that his normal speaking voice is louder than the average person's, and it becomes even louder whenever he speaks "passionately" about something.

Eyewitnesses, however, did not describe the appellant as speaking loudly or passionately but as "yelling at" the contractor, Mr. Sayles. Two of the witnesses were employees of the Hospital. Neither witness had a reason to exaggerate or misrepresent the facts. Both would have been sufficiently familiar with the appellant to distinguish between his normal tone of voice and what they later described as the appellant yelling. One of the witnesses characterized the appellant's conduct as an "outburst;" the other stated that the appellant was yelling, pointing his finger at Mr. Sayles, and "flipping out." The appellant was understandably concerned about the presence of asbestos in the area. Those concerns, however, did not exempt him from the agency's Customer Service Guidelines or excuse him from the requirement to treat others in the workplace with courtesy and respect.

Therefore, having carefully considered the evidence, arguments and offers of proof, the Board voted unanimously to uphold the written warning and to DENY Mr. Cournoyer's appeal.

THE PERSONNEL APPEALS BOARD

15/  
Patrick H. Wood, Chairman

  
Lisa A. Rule, Commissioner

  
Robert J. Johnson, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301  
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