

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### *APPEAL OF BRAD DROWN*

*DOCKET #01-D-3*

### *DEPARTMENT OF CORRECTIONS*

*March 20, 2002*

The New Hampshire Personnel Appeals Board (Wood, Rule and Johnson) met on Wednesday, January 30, 2002, 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) for the final hearing in the appeal of Brad Drown, an employee of the Department of Corrections. Mr. Drown, who was represented at the hearing by Attorney John Vanacore, was appealing a written warning issued to him for failure to meet work standards. Attorney John Vinson appeared on behalf of the Department of Corrections.

The appeal itself has a lengthy procedural history that is detailed in the Board's January 30, 2002 agenda for the Board's meeting that day. The record of the hearing in this matter consists of pleadings submitted by the parties, 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:

#### State's Exhibits:

1. September 25, 2000 written warning issued to Brad Drown by Joanne Fortier, Acting Director of Field Services
2. 6-page chronology of events concerning the supervision of a probationer
3. July 27, 2000 Report of the Investigation, (Investigations Bureau Case #S-2000-023)
4. Video tape of the interview with Deborah Champagne, the complainant

The Board also heard the testimony of Brad Drown, the appellant.

The State argued that the facts supporting the written warning were fairly simple. Attorney Vinson alleged that in the process of providing supervision to a probationer, Mark Monsante, the appellant became unduly familiar with the probationer's girlfriend, Deb Champagne. He said that the Department received a complaint from Ms. Champagne who alleged that the appellant had invited her out to dinner, had taken her out to lunch, had stopped by her home to see her, and had sought her out in public places, pursuing a personal relationship with her. Mr. Vinson said that after receiving the complaint, the Department initiated a formal investigation and determined that the appellant had violated Department of Corrections PPD 2:16-V-16 prohibiting employees from becoming unduly familiar with "persons under departmental control and their families."

Mr. Vinson said that the appellant denied ever having aslited Ms. Champagne out to dinner but had no recollection of whether or not he had taken her out to lunch. That inability to recollect, he argued, was proof of Mr. Drown's lack of credibility.

Mr. Vinson argued that once the investigation was opened, the appellant could testify in great detail about the meetings with Ms. Champagne that took place in the presence of witnesses. Otherwise, he said, the appellant suffered a convenient lack of recollection. Mr. Vinson said the appellant was undoubtedly embarrassed by his behavior with Ms. Champagne and knew that his conduct was a violation of policy. He said that the appellant didn't deny his conduct outright because he knew that the Department or Ms. Champagne might have proof to the contrary.

Attorney Vanacore argued that the evidence revealed how little contact there actually had been between the appellant and Ms. Champagne. He argued that the appellant's only interest in Ms. Champagne was in protecting her from Mr. Monsante when he was out of jail and obtaining evidence that would substantiate her claim that Mr. Monsante had violated his probation.

Attorney Vanacore argued that Ms. Champagne, the only witness to Mr. Drown's alleged misconduct, was a woman with five children, two ex-husbands, a continuing relationship with a probationer, a questionable background, and ample motive to set the appellant up. He noted that it was Ms. Champagne who had initiated contact with Mr. Drown and Ms. Champagne who had

requested Mr. Drown's help in dealing with Mr. Monsante. He also asked the Board to note that when Mr. Drown learned of the Champagne complaint about him, he suspected possible witness tampering. He said that Mr. Drown repeatedly asked the department to follow up on evidence that Mr. Monsante had continued contacting Ms. Champagne while he was incarcerated and may have been trying to set the appellant up to get him removed from Mr. Monsante's case.

After considering the evidence, arguments, and offers of proof, the Board made the following findings of fact and rulings of law:

#### Findings of Fact

1. Mr. Drown has been employed as a Probation/Parole Officer for approximately 17 years.
2. In the fall of 1999, Mr. Drown was assigned to supervise a probationer named Mark Monsante, who had been charged with battering his girlfriend, Deborah Champagne.
3. As a condition of his probation, Mr. Monsante was directed to have no contact with Ms. Champagne for a period of two years.
4. Mr. Drown's first contact with Ms. Champagne occurred after she was referred to his office by the City Prosecutor.
5. Ms. Champagne came to the appellant's office on September 27, 1999, telling him that she wanted Mr. Monsante arrested. She claimed that Mr. Monsante was continuing to contact her and harass her. She asked for Mr. Drown's advice and received some assistance from him in preparing a request for the court to issue a temporary restraining order.
6. In her written statement to investigators, Ms. Champagne reported that when she went to the appellant's office on September 27, 1999, she was fearful that Mr. Monsante would see her and discover that she had reported him to Probation and Parole. She said that because he was in the vicinity, she waited in the appellant's office through the lunch hour.
7. Ms. Champagne told investigators that while she was waiting, Mr. Drown invited her out to dinner. She indicated that he asked her out to dinner a second time during a meeting with him at the Black Cat Café in Laconia.
8. Mr. Drown testified that he did not invite Ms. Champagne to dinner, although the subject of dating did come up when he recommended that she change her circle of friends, that she stop

frequenting the Forever Young Bar and Grille and the Black Cat Café, and that she start dating "nice guys" like himself.

9. Mr. Drown testified that when Ms. Champagne took his comments as a request for a date, he was extremely embarrassed and he told her immediately that even if he were interested in dating her, he would not do so because he was involved in the Monsante case.
10. In every documented instance of a meeting between Ms. Champagne and Mr. Drown, the purpose of the meeting was to gather information about the Monsante case and possible violations of Mr. Monsante's probation.
11. All of Mr. Drown's contacts with Ms. Champagne occurred at or near times that were significant in terms of supervising Mr. Monsante's probation, including dates when he was restrained from contacting Ms. Champagne, arrested, released from jail, and scheduled for court hearings.
12. Ms. Champagne told investigators that she and the appellant shared personal information about one another, including the fact that the appellant was divorced and had three children.
13. In support of her claim that Mr. Drown attempted to initiate an inappropriate personal relationship with her and had become unduly familiar with her, Ms. Champagne indicated that she had received at least one phone call from the appellant's home and could hear his children in the background.
14. The appellant's three children are adults. Two of them live elsewhere with their mother and the third is away at college.
15. Mr. Drown's last personal contact with Ms. Champagne occurred on February 16, 2000, when he went to her home to inform her that Mr. Monsante had been arrested as a result of a complaint filed against him by his wife, Karen Tsantoulis.
16. The written warning issued to Mr. Drown on September 25, 2000, alleges that although he denied having invited Ms. Champagne out to dinner, he did not recall whether or not he had taken her out to lunch at the Boat House Bar and Grill and would not deny the charge.
17. The allegation above is contradictory to the statements contained in the State's investigation, including one report of an interview with Mr. Drown in which investigators wrote, "Drown continued and advised that he could not recall if he had gone to the Boat House Bar and Grill with Champagne on October 22, 1999. Drown further stated that he has eaten at the

restaurant many times while on a date, but only with someone he really likes. Drown concluded on the topic and advised that he never had lunch or dinner with Champagne at the restaurant.”

18. The investigation itself draws conclusions about the appellant's behavior that are unsupported by the evidence collected during the course of the investigation, including allegations that the appellant had repeated contacts with Ms. Champagne that were unrelated to his supervision of Mr. Monsante.

### Rulings of Law

- A. Per 1001.03. (a), Written Warning, “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...”
- B. Per-A 201.12 (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; or
  - (4) The disciplinary action was unjust in light of the facts in evidence.

## Decision and Order

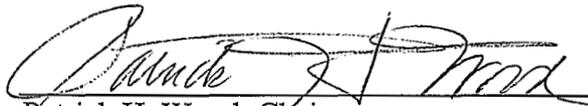
The Board believes that Mr. Drown came perilously close to creating a situation in which a written warning may have been warranted. Given his length of service and his familiarity with witnesses like Ms. Champagne, he should have exercised far greater caution when discussing with her how she might improve her relationships and her circle of friends. Although Mr. Drown characterized that conversation as "counseling," it is understandable that someone might have misconstrued it as an attempt to strike up a more personal relationship. The Board would caution the appellant in the future to be more careful in this regard. Similarly, the Board would recommend that Mr. Drown take greater care to document the frequency and the nature of his contacts with witnesses like Ms. Champagne. Doing so might reduce the risk that a witness would have the opportunity to discredit him in the performance of his duties. Nevertheless, the Board did not believe there was sufficient credible evidence to support the State's allegations that the appellant became unduly familiar with Ms. Champagne.

The Board found that the Department of Corrections' investigations unit unreasonably relied upon Ms. Champagne's statements about her contacts with the appellant in reaching its conclusions. In assessing her credibility, the investigators appeared to have ignored the issue of Ms. Champagne's possible motives to misrepresent her relationship with the appellant. Investigators also appeared to have ignored information that Mr. Drown provided that might have indicated some form of witness tampering on Mr. Monsante's part.

Mr. Drown offered credible testimony that his contacts with Ms. Champagne were related entirely to his prosecution of probation violations against Mr. Monsante and his concerns for Ms. Champagne's safety as a witness in the case. All the credible evidence reflects that when Mr. Drown contacted Ms. Champagne, it was for the purpose of gathering evidence or providing information to Ms. Champagne about Mr. Monsante's status. His explanations for meeting Ms. Champagne at the Black Cat Café or for contacting at her home were equally credible.

Mr. Vinson indicated that if Mr. Drown had simply admitted to the alleged conduct, the Department would have counseled him rather than issuing him a written warning. As Mr. Drown asserted, however, and as the Board has found, the conduct as alleged did not occur. As such, there was no reason for Mr. Drown to admit to it. Accordingly, the Board voted to GRANT the appeal, ordering the removal of the written warning from Mr. Drown's personnel file.

THE PERSONNEL APPEALS BOARD

  
Patrick H. Wood, Chairman

  
Lisa A. Rule, Commissioner

  
Robert J. Johnson, Commissioner

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