

# State of New Hampshire



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

## ***APPEAL OF TIMOTHY HALLAM, SR.***

***Docket #2004-D-014***

***Personnel Appeals Board Decision on State's Motion for Reconsideration  
And Appellant's Objection to Motion for Reconsideration***

***November 10, 2005***

By letter dated June 22, 2005, Attorney John Vinson filed a Motion for Reconsideration of the Board's May 25, 2005, decision granting the Appeal of Timothy Hallam concerning his appeal of a written warning issued to him by the Department of Corrections on October 20, 2003. On July 5, 2005, SEA Field Representative Thomas McCabe submitted Appellant's Objection to Motion for Reconsideration.

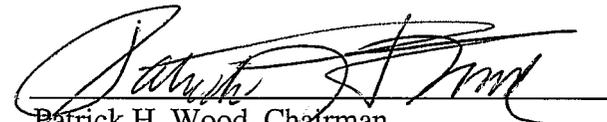
In accordance with Per-A 208.03 (b) of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board), a motion for reconsideration must "...set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." In reviewing the Motion, the Board found that the arguments raised by the State in support of the request for reconsideration are essentially the same arguments raised by the State in pleadings submitted prior to the hearing as well and in arguments offered during the hearing on the merits of the appeal. Having reviewed those arguments, as well as the arguments raised by the Appellant in his Objection, the Board found that the State has not shown good cause why the Board should now reconsider its decision and reverse or modify its May 25, 2005, decision granting Sergeant Hallam's appeal.

In accordance with Per-A 207.12 (b) of the NH Code of Administrative Rules, in order to prevail in his appeal to this Board, the Appellant needed to prove by a preponderance of

the evidence that his written warning was unlawful, that it violated the Rules of the Division of Personnel, that it was unwarranted by his conduct, or that it was unjust in light of the facts in evidence. In deciding to grant the appeal, the Board did not ignore the evidence, as the State alleges, but gave all of the evidence the weight that it deserved in relation to the record as a whole. As the Board's May 25, 2005 decision indicates, the appellant made an uncontroverted offer of proof that the steps he took when informing prison officials about a possible escape were the same procedures he had utilized prior to June 2003. He would have had no reason to believe that a different standard would be applied in this instance.

Therefore, in accordance with Per-A 208.03(e), and for the reasons set forth in Appellant's Objection, the Board voted unanimously to DENY the Department of Corrections' Motion for Reconsideration.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD

  
Patrick H. Wood, Chairman

  
Robert J. Johnson, Commissioner

  
Philip P. Bonafide, Commissioner

cc: Karen A. Levchuk, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Attorney John Vinson, NH Department of Corrections, 105 Pleasant St., Concord,  
NH 03301  
Thomas McCabe, SEA Field Representative, State Employees Association, PO  
Box 3303, Concord, NH 03302-3303

# State of New Hampshire



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25 Capitol Street  
Concord, New Hampshire 03301  
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Appeal of Timothy Hallam – Docket #2004-D-14

Department of Corrections

May 25, 2005

The New Hampshire Personnel Appeals Board (Wood, Johnson, Bonafide and Reagan)<sup>1</sup> met on Wednesday, May 18, 2005, 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 Timothy Hallam, an employee of the NH Department of Corrections. Sergeant Hallam was appealing an October 20, 2003 written warning issued to him for failure to meet any work standard. Specifically, the warning alleged violation of PPD 2.16 for offenses including Dereliction of Duty, and Failure to Report or Act Upon an Infraction of Rules Committed by a Person Under Departmental Control. Attorney John Vinson appeared on behalf of the Department of Corrections. SEA Field Representative Thomas J. McCabe, Jr., appeared on behalf of the appellant.

In accordance with Per-A 207.02 (b) of the NH Code of Administrative Rules, the Board heard the appeal on offers of proof by the representatives of the parties. Sergeant Hallam was permitted to make his own offer of proof, and respond to the Board's questions.

The record of the hearing in this matter consists of the appellant's notice of appeal, the audio tape recording of the hearing on the merits of the appeal, notices and orders issued by the Board, and documents admitted into evidence as follows<sup>2</sup>:

## State's Exhibits

- A. Executive Summary Results of Investigation
- B. Interview Report, New Hampshire State Police, dated June 27, 2003

<sup>1</sup> The Board, with the consent of the parties, sat *en banc*

<sup>2</sup> All documents were admitted into evidence without objection.

### Appellant's Exhibits

1. Notification of Investigation issued to Sergeant Hallam dated June 25, 2003
2. NH Department of Corrections Policy and Procedure Directive 2.16
3. October 20, 2003, Letter of Warning to Sergeant Hallam from Jane Coplan, Warden at the NH State Prison
4. October 30, 2003, letter from SEA Field Representative McCabe, appealing the October 20, 2003, letter of warning
5. October 31, 2003, letter from Major Dan Shaw noting a change in the findings of an "original report" of the June 4, 2003 escape
6. November 3, 2003, letter from SEA Field Representative McCabe, requesting discovery relative to the investigation of Sergeant Hallam
7. January 7, 2004, letter from SEA Field Representative McCabe appealing Warden Coplan's written warning issued to Sergeant Hallam
8. February 9, 2004, letter from Acting Commissioner Dolecal denying the request to remove the written warning from Sergeant Hallam's file
9. February 12, 2004, letter from SEA Field Representative McCabe to Personnel Director Joseph D'Alessandro requesting removal of the written warning from Sergeant Hallam's file
10. Final report of the Department of Corrections Oversight Committee dated March 16, 2004

The underlying facts are not in dispute.

1. On June 3, 2003, the appellant received information from a reliable confidential informant that several inmates were planning an escape from the NH State Prison for Men.
2. The appellant immediately informed DOC Investigator Clayton LeGault that he had received critical information from a confidential informant, and arranged for Investigator LeGault to hear the report firsthand from the informant, Inmate King.
3. Three witnesses, including the appellant, heard the inmate advise Investigator LeGault during their meeting on June 3, 2003, that several inmates were planning to escape within the next 24-48 hours from the yard at the Building Trades Program.
4. The appellant and another second-shift Corrections Officer offered to sit in the tree line just beyond the fence at the Building Trades Program area in order to "catch the bad guys" involved in the escape attempt. Investigator LeGault told the officers that that probably

would not be necessary. He told the appellant that he would speak with him again the following day

5. Apart from his discussion with Investigator LeGault, the appellant did not notify any of the other officers above him in the chain of command of the threatened escape, nor did he submit a written report.
6. Investigator LeGault did not notify other prison authorities of the potential escape.
7. On June 4, 2003, three inmates did escape through a hole they had cut in the fence that surrounded the yard behind the Building Trades Program.
8. The appellant learned of the escape when he reported for duty on June 4, 2003.

The appellant made an uncontroverted offer of proof that before June, 2003, it had been his practice to communicate directly with Investigations when he received intelligence from confidential informants about illegal activities involving staff and inmates within the prison. Over the course of three to four months before the escape, the appellant had received credible information from Inmate King about the flow of drugs and other contraband into the prison. He reasonably believed Inmate King's information about a possible prison escape was credible.

In order to protect the informant's identity, instead of relaying the information to his supervisor via written reports, the appellant made oral reports directly to the staff in the Investigations Unit. Once those reports were made, the appellant was considered "out of the loop," and the investigators would produce whatever written reports were required. No one in the Investigations Unit discouraged that practice or suggested that it in any way violated the Department's Rules and Guidance. The appellant's June 3, 2003, report to Investigator LeGault was consistent with this practice.

Department of Corrections PPD 2.16, V. 11, "Failure to Report or Act Upon an Infraction of Rules Committed by a Person under Departmental Control," states: "Any employee who observes or has knowledge of an infraction by a person under departmental control and who willfully or through negligence fails to take appropriate corrective action and/or fails to submit a required report of the infraction to a responsible superior is in violation of this policy."

The evidence reflects that Sergeant Hallam made an oral report of the impending escape to Investigator LeGault, and facilitated a meeting between Inmate King and Investigator LeGault so that Investigations could receive the report firsthand. Although the section of the Policy and Procedure

Directive cited in the letter of warning may imply that written reports are expected, it is not clear that written reports are required in all cases. The PPD also does not require an employee to submit such reports to his or her immediate supervisor, or a supervisor in the employee's individual chain of command. Rather, the regulation requires reporting to "a responsible superior." Given that Investigator LeGault's salary grade is higher than the appellant's, and that Investigations reports directly to the Commissioner's Office, the Board considers it reasonable for Sergeant Hallam to have treated Investigator LeGault as a "responsible superior" within the Department's reporting structure for purposes of compliance with PPD 2.16 V. 11.

Department of Corrections PPD 2.16 V. A. 5. states, "Employees are derelict in their duties when they willfully or negligently fail to perform them, or when they perform them in a culpably inefficient manner. A duty may be imposed by regulation, lawful order, policy statement, or custom."

Neither the documentary evidence nor the parties' offers of proof support the State's claim that the appellant was derelict in his duties. On the contrary, the evidence reflects that the appellant had legitimate concerns about the safety of his confidential informant. In order to protect him, he did what he had done in the past by making an oral report of unusual activity to the Investigations Unit. He took what he considered appropriate corrective action by setting up a meeting between Inmate King and Investigator LeGault immediately after learning of the possible escape. He also offered a plan to foil the escape. Investigator LeGault told the appellant he did not think the appellant's suggested plan would be necessary.

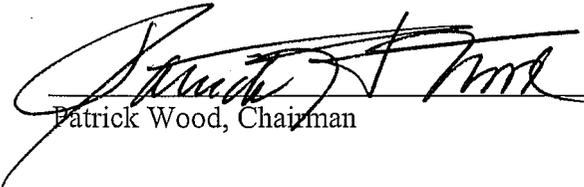
Having carefully considered each of the parties' evidence, arguments and offers of proof, the Board found that the appellant acted in good faith and took what he believed to be appropriate action in receiving and relaying information to the Investigations Unit about a possible escape from the men's prison. The Department of Corrections should consider reviewing its Policy and Procedure Directives as well as its post orders to ensure that the language is clear and unambiguous. When the Department expects employees to submit written reports, the PPD should say so. If employees are expected to make reports through their direct chain of command, the PPD should state that specifically rather than directing the employees to report to a "responsible superior."

The Board voted unanimously to direct the Department of Corrections to remove the written warning from Sergeant Hallam's file and replace it with a letter of counsel. That letter should outline

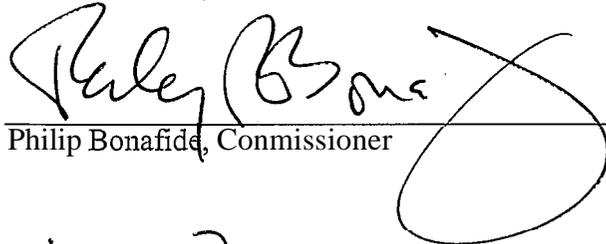
specifically those steps the Department would have expected the appellant take, and will expect in the future, in order comply with the Department's regulations in reporting the information he obtained from a confidential informant without compromising the informant's safety.

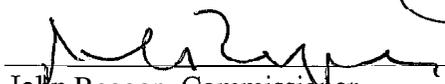
For all the reasons set forth above, the Board voted unanimously to GRANT the appeal.

THE NH PERSONNEL APPEALS BOARD

  
Patrick Wood, Chairman

Robert Johnson, Commissioner

  
Philip Bonafide, Commissioner

  
John Reagan, Commissioner

cc: Karen Levchuk, Director, Division of Personnel  
Thomas McCabe, Jr., Field Representative, State Employees Association  
John Vinson, Corsections Counsel, NH Department of Corrections  
Lisa Currier, HR Administrator, NH Department of Corrections