

State of New Hampshire



PERSONNEL APPEALS BOARD

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Appeal of Francesca Latawiec

Docket # 02-D-5

Office of State Planning

March 26, 2002

The New Hampshire Personnel Appeals Board (Rule, Johnson and Bonafide) met on Wednesday, January 16, 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) to hear the appeal of Francesca Latawiec, an employee of the Office of State Planning. Ms. Latawiec, whose appeal was filed *pro se*, appeared at the hearing on her own behalf. Attorney Amy Mills from the Department of Justice appeared on behalf of the Office of State Planning. Also present were Jeffrey Taylor, Director of the Office of State Planning and Joanne Cassulo, the appellant's supervisor at the time that the letter of warning was issued.

Without objection, the appeal was heard on offers of proof by the parties. The record of the hearing in this matter consists of 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 Exhibits

- I. Letter of Warning dated September 21, 2001 from Jeffrey Taylor
- II. Letter dated September 24, 2001 from Francesca Latawiec
- III. Letter dated November 7, 2001 from Francesca Latawiec

- IV. Letter dated November 28,2001 from Jeffrey Taylor
- V. Letter dated August 24,2001 from Janet Boduch
- VI. Letter dated August 24,2001 from Dr. Kegel
- VII. Letter dated November 12, 2001 from Patricia Dahme
- VIII. Letter dated November 20, 2001 from Marcy Southwell
- IX. Note dated December 4, 2001 from Dr. Baier
- X. Letter dated December 7,2001 from Francesca Latawiec
- XI. Letter dated December 11, 2001 from Thomas Manning

State's Exhibits

- 1. Letter from Jeffrey Taylor to Francesca Latawiec dated April 13,2000
- 2. Letter from Jeffrey Taylor to Francesca Latawiec dated September 25,2000
- 3. Handwritten note from Joanne Cassulo to Francesca Latawiec dated November 20,2000
- 4. Leave slip from Francesca Latawiec requesting and receiving compensatory time for November 20,2000
- 5. Letter from Jeffrey Taylor to Francesca Latawiec re: Work Performance/Schedule, dated April 19,2001
- 6. Memorandum from Francesca Latawiec to Jeffrey Taylor dated April 20,2001 (1)
- 7. Memorandum from Francesca Latawiec to Jeffrey Taylor dated April 20,2001 (2)
- 8. Request for Authorization for Travel on August 13-17 2001, dated May 7,2001
- 9. E-mail from Joanne Cassulo to Francesca Latawiec re: Conference Details from Last Week, dated August 17,2001
- 10. Leave slip from Francesca Latawiec requesting and receiving compensatory time for August 20,2001
- 11. Mail Envelope Properties summary for e-mail from Joanne Cassulo to Francesca Latawiec, Subject: Conference Details from Last Week, August 17,2001
- 12. Leave slip from Francesca Latawiec requesting but not receiving sick time for August 13 and 14,2001

The appellant argued that she had been subjected to intense and unreasonable scrutiny since April 13, 2000, when Director Taylor accused her of being at work under the influence of alcohol and ordered her to obtain professional counseling for possible substance abuse. She said that she complied with that directive, obtained a professional assessment to address Director Taylor's concerns, and continued to turn in work of the highest quality in the succeeding months. Nevertheless, she argued, Mr. Taylor persisted in falsely accusing her of having a substance abuse problem. She said that eventually, the rising level of stress exacerbated health problems she had been experiencing.

The appellant argued that in April 2001, Director Taylor again suggested that she had been working under the influence of alcohol. She said that he instructed her to report to the office and check in with other members of the staff at the start of every work day, even when she was scheduled to be out of the office. She said that she had "gone out of her way" to comply with those instructions, even though it was sometimes less efficient to do so.

The appellant argued that her absence for the first two days of the Soils Monitoring Conference on August 13 and 14, 2001, was the unavoidable result of a serious, potentially life-threatening injury that she sustained in a fall at her home on Sunday, August 12. She admitted that she may have made an error in judgment by notifying the conference sponsors of her absence instead of calling the report in to her agency. However, she argued, she never intended to withhold information about her absence and never intentionally violated any order or directive that she had received from Mr. Taylor. She said that she completed the appropriate notifications and leave slips in due course under the terms of the Collective Bargaining Agreement. She asked the Board to find that the written warning was inappropriate and should be removed from her file.

The State argued that between April 2000, and September 2001, there had been four separate instances that, at a minimum, warranted counseling and corrective action. The first instance, Ms. Mills argued, occurred on April 7, 2000, when the appellant was at work in an intoxicated state. The second, she said, occurred in September 2000, when the appellant again appeared to

be in the office, unfit for duty. The last two, she said, involved incidents in November 2000 and April 19, 2001, in which the appellant claimed to have been working outside of the office but was actually at her home. Ms. Mills said that instead of taking disciplinary action in those cases, the agency had elected to counsel the appellant and direct her to take corrective action. She asked the Board to review Director Taylor's April 19, 2001, letter to the appellant in which he wrote:

"It is critical that supervisors in this office know where their employees are, and that they are prepared to carry out their assigned tasks in a professional manner.

"Effective immediately, your current flex time schedule is revoked. You are to start your work day at 8 AM and work until 4 or 4:30 PM, as is acceptable to your supervisor...

"You are to start your work day in the office in Concord. You are not authorized to work at home under any circumstances. Attendance at meetings, field work, or any other off premise activities shall only be undertaken after reporting for work in Concord, and checking in with your immediate supervisor, with Assistant Director Jim McLaughlin, or with myself."

Ms. Mills said that those instructions remained in effect during the week of August 13 – 17, 2001, when the appellant was scheduled to attend the Global Change Wet Soils Monitoring Conference headquartered in Bedford, New Hampshire. She argued that the appellant had ample opportunity to notify the agency of her injury and of her absence from the conference, but repeatedly failed to do so. Ms. Mills argued that the appellant made no effort to inform the agency of her absence from the conference or her disregard of Director Taylor's instructions until she realized the agency had questions about her whereabouts. She asked the Board to uphold the written warning.

Findings of Fact

1. Ms. Latawiec has been employed as a Principal Planner by the Office of State Planning for more than sixteen years.
2. The appellant's duties and responsibilities sometimes involve travel outside of the office for field work, off-site meetings, and conferences.

3. On the morning of April 7, 2000, Ms. Latawiec was discovered at work in what police and emergency medical personnel later described as a highly intoxicated state.
4. Director Taylor wrote to the appellant April 13, 2000, directing the appellant to seek professional counseling. In his letter, he also advised the appellant that she could be dismissed without further warning in the event of a similar incident in the future.
5. On September 25, 2000, Director Taylor wrote another counseling letter to the appellant concerning reports about her behavior at work on September 14, 2000. In his letter, he noted that the appellant's co-workers reported behaviors that indicated the appellant was intoxicated.
6. In his September 25th letter, Mr. Taylor advised the appellant that any further incident would result in her termination from employment.
7. On November 20, 2000 and April 11, 2001, the appellant misrepresented her whereabouts to her supervisor, claiming to be working at other State offices when, in fact, she was at home. She later indicated that one absence was due to illness and the other was the result of an emergency at home where she needed to wait for a furnace repairman.
8. On April 19, 2001, Director Taylor wrote to Ms. Latawiec to inform her that she would no longer be permitted to work a "flex schedule." He directed her to report to the office in Concord every day and to check in with a supervisor before traveling to any off-site work assignment or location.
9. On May 3, 2001, Ms. Latawiec requested authorization for travel from August 13, 2001 to August 17, 2001, to the Wayfarer Inn in Bedford, NH and to various field locations to attend the NH Wet Soil Monitoring Conference.
10. Apart from approval that she received to travel directly to Mascoina Lake on Tuesday, August 14th, the appellant was expected to report to the office every day to pick up a State car.
11. Ms. Latawiec did not pick up a State car on Monday, August 13th and did not inform anyone in the office that she did not need the car and would not be attending the conference that day.

12. Ms. Latawiec did not contact her office on Tuesday, August 14th to inform anyone that she would not be attending the conference that day.
13. On Wednesday, August 15th, the appellant left a message on the office answering machine indicating that she had made other travel arrangements to and from the conference and would not need the State car for the rest of the week. She neglected to report that she had not attended the conference on Monday or Tuesday.
14. The appellant did not mention falling or injuring her hip.
15. On Friday afternoon, August 17th, the appellant's supervisor Joanne Cassulo sent e-mail to her expressing concern about the appellant's failure to discuss changes in her work or travel plans or her need to use a State car during the week of the conference. Ms. Cassulo expected the appellant to see the message when she returned to work on Monday.
16. Instead of reporting for work on Monday, the appellant telephoned the office and left a message, asking Ms. Cassulo to call her at home to discuss the appellant's request to take the day off.
17. Ms. Cassulo called the appellant and approved her request for leave. During the conversation, Ms. Latawiec said that she'd had a wonderful time at the conference, never mentioning the fact that she had been absent on Monday and Tuesday.
18. When the appellant returned to the office on Tuesday, August 21st, she again told her supervisor how well the conference had gone but made no mention of the fact that she had fallen, that she had suffered any injury, or that she had missed the first two days of the conference. She submitted a leave slip requesting 7.5 hours of compensatory leave to cover her absence on Monday, August 20th.
19. At 11:21 a.m. on Tuesday, August 21st, after having submitted her leave slip for Monday, August 20th, Ms. Latawiec opened Ms. Cassulo's e-mail message from the previous Friday.
20. Approximately 20 minutes after reading the e-mail, the appellant left the office without notice or approved leave. She was absent for approximately an hour and a half,
21. The following day, Ms. Latawiec submitted a second leave slip, requesting 15 hours of sick leave for August 13th and 14th, and 1.5 hours of sick leave for a doctor's appointment

- on August 21st. On the certification section of the leave slip, she listed the reasons for leave as "Hip injury + Dr. Appt. for x-rays."
22. Ms. Latawiec later obtained a note from Dr. Kegel dated August 24,2001, describing the injury as "extensive bruising of the liip area without bony trauma."
 23. Ms. Latawiec also obtained a letter dated August 24,2001, from Janet Boduch to Joanne Cassulo indicating that on Monday, August 13,2001, Ms. Latawiec had called the conference sponsors to advise them that she was injured and unable to attend the conference.
 24. When the appellant's supervisors aslted her to explain wliy she had failed to notify them of her absence from the first two days of the conference, she said she had fallen down her cellar stairs and had lain on the cellar floor unable to reach a phone.for more than a day.
 25. She later asserted that she actually had been incapacitated for a period of 4 – 7 hours, and believed at the time that it was more important to notify the conference sponsors of her absence than it was to inform her own supervisors.
 26. Ms. Latawiec left two telephone messages and had one telephone conversation with her supervisor between Monday, August 13th and Monday, August 20th. In each instance she made reference to the conference but never mentioned her absences.

Rulings of Law

- A. Per 1001.03 (a) (1) and (2), NH Code of Administrative Rules
"An appointing authority shall be authorized to use tlie 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;
(2) Unauthorized absences from work..."
- B. Per 1001.08 (a) (8) a. and (9), NH Code of Administrative Rules
"Dismissal shall be considered the most severe form of discipline. An appointing authority shall be authorized to take the most severe form of discipline by immediately dismissing an employee without warning for offenses such as, but not necessarily limited to...
(8) Willful falsification of agency records including, but not limited to:
a. Requests for annual leave, sick leave, civil leave or military leave..." and
(9) Willful insubordination..."

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

Having considered the parties' evidence, arguments, and offers of proof, the Board voted unanimously to DENY Ms. Latawiec's appeal. The appellant's work history over the past two years included a series of incidents that caused Director Taylor to develop legitimate concerns about the appellant's ability to carry out her assigned duties. Rather than taking formal disciplinary action, Director Taylor issued counseling letters and established requirements for certain corrective action that the appellant had to take in order to avoid formal discipline. The corrective action included a requirement for her to keep supervisory personnel apprised of her schedule and her whereabouts during the work day. It also included checking in with supervisory personnel at the office in Concord at the start of every work day, even when the appellant was scheduled to work outside of the office. Those restrictions remained in effect during the week of August 13 - 17, 2001, when the appellant was scheduled to attend a conference in Bedford, New Hampshire.

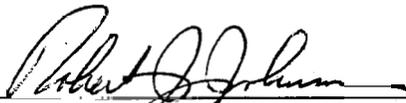
The appellant had ample opportunity to inform the agency when she had missed the first two days of the conference. She failed to do so until a week later when she was confronted with questions about her failure to come to the office to pick up the State car. When viewed in light of her complaints about being subjected to an unreasonable degree of scrutiny by the Director, the appellant's explanation for her conduct is simply not reasonable.

Having carefully considered the evidence in connection with the parties' arguments and offers of proof, the Board voted unanimously to DENY Ms. Latawiec's appeal.

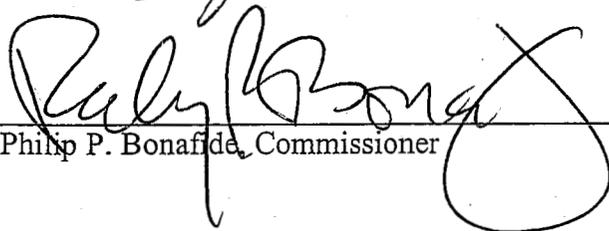
THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chairperson



Robert J. Johnson, Commissioner



Philip P. Bonafide, Commissioner

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