

State of New Hampshire



PERSONNEL APPEALS BOARD

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Appeal of Susan Lovegreen

Department of Health and Human Services

Docket #2002-D-6

May 6, 2002

The New Hampshire Personnel Appeals Board (Rule, Johnson, and Urban) met on Wednesday, March 27, 2002, to hear the appeal of Susan Lovegreen, an employee of the Department of Health and Human Services. Ms. Lovegreen, who was represented at the hearing by Attorney Thomas Cooper, was appealing a written warning issued to her on June 11, 2001, for failure to complete a priority project assigned by her supervisor, and for exhibiting loud, negative and inappropriate behavior in the work place. Attorney John Martin appeared on behalf of the State.

In accordance with Chapter Per-A 200 of the NH Code of Administrative Rules, the appeal was heard on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, and a number of documents admitted into evidence. Attorney Cooper asked the Board to exclude the first nine of the State's eleven numbered exhibits, arguing that many reached too far back in time and even those that were more current had no bearing on the events cited in the written warning. He argued that the State appeared to be "piling on," reaching back as many as twelve years, in order to produce enough evidence to persuade the Board that the warning might be warranted.

Attorney Martin objected, arguing that all the exhibits are relevant. He said that the Board historically has admitted this type of evidence for two limited purposes: to show a pattern of

behavior and to show that problems had been identified and the employee had been given an opportunity to improve before discipline was imposed. He said that under a scheme of progressive discipline, discipline should not be the first step unless the behavior is so egregious that immediate action is necessary. He argued that the exhibits would show that there had been notice without discipline. He said that the warning under appeal addresses inappropriate behavior in the workplace and failure to complete work projects in a timely fashion. He said that the exhibits offered by the State simply show that the problems identified in the current warning also existed in other work sites, with different tasks, with other co-workers, and with other supervisors.

The Board acted to exclude State's Exhibits 1 – 4 and to admit the remaining exhibits as follows:

State's Exhibits:

5. A Performance Summary dated March 6, 1998
6. A Counseling Memo dated September 10, 1998
7. A Performance Summary dated March 6, 1999
8. A Performance Summary dated May 8, 2000
9. A Notation of Counseling Session dated January 26, 2001
10. A Letter of Warning dated June 11, 2001 that is the subject of this appeal
11. A Supplemental Job Description for the position of Technical Support Specialist I

Appellant's Exhibits:

- A. The June 11, 2001 Written Warning issued to the appellant
- B. A June 25, 2001 letter from SEA Field Representative Don Taylor to Kimberly Taylor-Miller appealing the June 11, 2001 Written Warning
- C. An August 6, 2001 letter from SEA Field Representative Don Taylor to Richard C. Bailey appealing the June 11, 2001 Written Warning
- D. An October 9, 2001 letter from SEA Field Representative Don Taylor to Commissioner Donald Shumway appealing the June 11, 2001 Written Warning
- E. A November 13, 2001 letter from Stephen R. David to Donald Taylor denying the appeal of Ms. Lovegreen's June 11, 2001 Written Warning

F. A December 3, 2001 letter from Thomas F. Manning to Ms. Lovegreen denying her appeal of the June 11, 2001 Written Warning

Mr. Martin said that on April 6, 2001, Kim Taylor-Miller, the appellant's immediate supervisor, directed the appellant to complete an address matrix as part of an updated statewide departmental guide to show the correct addresses, program titles and services offered at each of the Health and Human Services office locations statewide. Some of the work on the project had already been completed when it was assigned to the appellant, and she was instructed to verify that information to ensure that it was accurate. He said that the appellant received an old listing of department sites to cross-reference with the new sites, and she was told to update the address matrix and add new sections including "site type codes." He said that although she was told that the project must be completed by April 16, 2001, and that the project was high priority, the project was not completed on time.

Mr. Martin said that on April 24, 2001, Ms. Taylor-Miller sent a memo to the appellant asking for an update. The appellant replied on April 25, 2001, describing how she was proceeding with the project. Ms. Taylor-Miller told the appellant that the methodology she described was duplicating efforts and the appellant was wasting time.

On May 3, 2001, Mr. Martin said, Ms. Taylor-Miller upgraded the status of the project to the highest priority so that it should have taken precedence over any other project with a lower priority. On May 4, 2001, the appellant told her supervisor that she would be unable to complete the project. On May 6, 2001, Ms. Taylor-Miller reiterated the project objectives and the steps the appellant needed to take to complete it.

Eight days later, Ms. Taylor-Miller requested an update, but the appellant did not respond. On May 15, 2001, Marie Ott, the Manager of Desktop Services also requested an update on the project. Ms. Lovegreen indicated that she had done no work on the project so there was no update. Ms. Lovegreen also rejected the agency's offer to allow her to work overtime or adjust her schedule to work with Ms. Taylor-Miller to complete the project. Mr. Martin said that on

May 15, 2001, the project was assigned to one of the appellant's co-workers and was completed two days later on May 17, 2001.

Mr. Martin argued that Ms. Lovegreen's assignments and those of her co-worker who assumed responsibility for the address matrix project had exactly the same kinds of duties. He said during the period in question, they were both responsible for "working the bucket," taking work orders from system users throughout the department, as well as working on special projects. He said that the employees alternated weeks working the bucket as a way to make the jobs less routine and increase their experience and skills overall. He noted that the workload varies, and argued that Ms. Lovegreen could have worked on the matrix during her "down time." He said that if she had adjusted her schedule or worked with her supervisors to adjust her time, she easily could have finished the matrix within the thirty-nine days that her supervisors gave her to complete the project. He noted that during that period, the appellant had a full two weeks when she was not "working the bucket" and could have spent her down time working on the address matrix project. The co-worker who eventually received the assignment, he said, was able to complete the job in only two additional days.

Mr. Martin noted that failure to complete work assignments was a persistent problem for the employee and had been noted in annual performance summaries and a letter of counsel identified in State's Exhibits 5 – 9. He said that the appellant had been described as below expectations in quantity of work, dependability, and initiative, and had received a counseling memo in 1998 addressing the appellant's difficulties in prioritizing daily tasks and projects.

Mr. Martin said that the appellant also was cited for inappropriate behavior in the workplace. In one instance, he said, the appellant was trying to reach another employee on a priority call. He said that when she didn't get through and the employee failed to answer her pager as the appellant expected, she began yelling loudly enough that she was heard by Marie Ott, Julie Fister, and Kim Taylor-Miller. Shortly thereafter, he said, when she was able to reach that employee, she was angry, rude, and loud.

Mr. Martin said that on May 10, 2001, Ms. Taylor-Miller sent an e-mail to the appellant expressing concerns that the appellant wasn't following procedures for calls. He said that the appellant got up and yelled at her supervisor, saying that she was following-through on tickets or work orders. He said that the appellant's behavior toward her supervisor in that incident was inappropriate, hostile and borderline threatening. Mr. Martin said that these behaviors had been addressed previously in State's Exhibit 9, a January 26, 2001 notation of counseling. That memo, he said, indicated that unless the appellant took corrective action by stopping her use of inappropriate or negative behavior, formal discipline would follow. Mr. Martin argued that State employees all have bad days, but that there are boundaries. He argued that yelling, posturing, and verbal abuse are not acceptable and that such behavior warrants the department's decision to take formal disciplinary action.

Mr. Martin argued that the Performance Summaries issued to the appellant carefully portray her in terms of both her strengths and weaknesses. He said that she is a valuable employee and the State would not want to lose her. Nevertheless, he said, her supervisors need her to understand their concerns, recognize the fact that there are problems, and take the necessary steps to correct those problems. He said that if she takes those steps, there should not be a reason for future disciplinary action.

Attorney Cooper argued that the State had failed to paint an accurate picture of the appellant's workload during the time that she was assigned the address matrix project as well as when she was accused of conduct warranting a written warning. He argued it was unrealistic to expect the appellant to complete the address matrix project in light of the volume of calls that she was receiving and service calls she was required to complete. He said that it was completely unrealistic to expect an employee to complete such a project under those constraints.

Attorney Cooper noted that Ms. Lovegreen's supervisors had assigned her to "work the bucket" and should have known that on the day she was allegedly loud or rude to her co-workers, she had received forty-five new work tickets and was still in the process of responding to a backlog of more than a hundred and twenty calls. He argued that although her behavior may have reflected her frustration, it was not so egregious as to warrant a written warning.

Attorney Cooper asked the Board to understand that every ticket an employee receives while “working the bucket” represents a job that must be done. He said that when a computer goes down, people “just freak out,” creating a high-pressure, stressful working environment. He noted that it was not the customers, those people submitting the work tickets, who had complained about the appellant’s behavior.

Attorney Cooper asked the Board to consider that on May 15, 2001, despite the fact that the appellant allegedly had an outburst of temper, the Department decided to increase her time on “the firing line.” Instead of working the bucket every other week, having the weeks between to develop the rest of her skills as LAN coordinator, the Department decided the appellant could work the bucket every day of every week from then on. Attorney Cooper noted that there were no consumer complaints at the time, nor had there been complaints previously. He argued that when you’re dealing with customers out in the field, the customer is the ultimate evaluator of the kind of job you’re doing. He argued that the customers must have been satisfied with the appellant’s performance, otherwise she would not have been assigned to “work the bucket” on a continuous basis.

Finally, Attorney Cooper asked the Board to note that there was a substantial delay between the May 8th incident, which the State mistakenly cited as occurring on May 10th, and the actual issuance of the written warning on June 10, 2001. He argued that delay was one of the issues raised throughout the process of informal settlement and appeal, and he argued that if the question of the appellant’s behavior with her co-worker was so significant that it warranted formal disciplinary action, it should not have taken some thirty days to bring to her attention the specific nature of the charges. He suggested that the agency was concerned about some harsh words that were exchanged, but knew that it would not be enough to support a written warning. He said that the Department’s complaints about the address matrix was an example of “piling on,” raising a sufficient number of issues that cumulatively might appear to support a warning.

Although the parties have offered very different characterizations of the events leading up to the issuance of the written warning currently under appeal, the material facts themselves are not in dispute.

Findings of Fact

1. Ms. Lovegreen is employed by the Department of Health and Human Services as a Technical Support Specialist to perform service and provide technical support for the Department's Local Area Network.
2. On April 6, 2001, in addition to her regular duties, the appellant was assigned to complete an update of an address and services matrix for HHS offices statewide.
3. Despite several adjustments to the project deadline to allow the appellant additional time to complete the work, the appellant was unable to complete the project as directed.
4. Ms. Lovegreen had been counseled in the past and had been advised through notations in her annual performance evaluations that improvement was required in the areas of prioritizing daily tasks and completing assigned projects on time.
5. Ms. Lovegreen's failure to complete the project, particularly after the deadline was extended, constituted failure to meet the work standard.
6. The appellant attributed her behavior with fellow staff members and with her supervisor on or about May 10, 2001, to frustration over the demands of her job. She asserted that "May 10, 2001 was simply a bad day" for her and "she reacted as any frustrated employee might react" [Appellant's Exhibit B].
7. Ms. Lovegreen had been counseled in the past and had been advised through notations in her annual performance evaluations that improvement was required in the area of communications.
8. Ms. Lovegreen's interaction with fellow staff and with her supervisor constituted failure to meet the work standard.

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)(1)]

- B. “Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal. ... In all cases, the personnel appeals board may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just.” [RSA 21-I:58, I]

Per-A 207.12 (b) Standard of Review

(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 Personnel Rules describe the written warning as the least severe form of discipline available to an appointing authority to correct an employee’s unsatisfactory performance or behavior. The evidence reflects that the appellant had been counseled and had been apprised through annual performance evaluations that she needed to show improvement in prioritization of tasks,

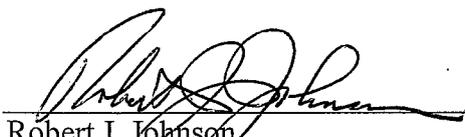
completion of assigned projects, and communications with her co-workers. In this instance, the evidence reflects that Ms. Lovegreen failed to complete a priority project within the time allotted for completion of the task. The evidence also reflects that Ms. Lovegreen communicated with staff and her supervisor in a manner that was inappropriate and unprofessional. Both of these offenses constitute failure to meet the work standard and are sufficient to justify the issuance of a written warning as the least severe form of discipline.

Therefore, having considered the documentary evidence and having considered carefully the parties' oral arguments and offers of proof, the Board voted unanimously to DENY Ms. Lovegreen's appeal and to uphold the written warning issued to her for failure to meet the work standard.

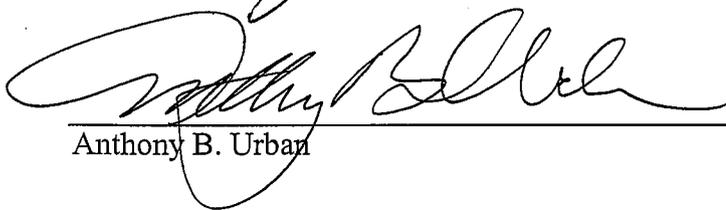
THE PERSONNEL APPEALS BOARD



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