

State of New Hampshire



PERSONNEL APPEALS BOARD

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APPEAL OF JERISE M. MARES Department of Labor Docket #93 -D-15

October 21, 1993

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, September 15, 1993, to hear the appeal of Jerise Mares, an employee of the Department of Labor. Ms. Mares, a *pro se* appellant, was appealing a March 22, 1993 letter of warning issued to her pursuant to Per 1001.03 of the Rules of the Division of Personnel for exhibiting uncooperative behavior and using the department's computer system for storage of non-work related documents. The Department of Labor was represented at the hearing by its Commissioner, Richard Flynn.

After hearing the testimony of Kathryn Barger, Director of the Labor Department's Workers' Compensation Division, and Ms. Mares, the appellant, as well as reviewing the documents submitted by the parties in connection with this appeal, the Board made the following findings of fact:

Ms. Mares, a Secretary Stenographer II, is one of five secretarial staff assigned to the Workers' Compensation Division who share weekly file-room responsibilities. Ms. Mares, who is responsible for typing, correcting and mailing decisions written by the Division's hearings officers, was assigned to work on Thursday, March 11, 1992, in the file room. She was leaving on vacation several days later and decided stay at her work station to complete her typing assignments rather than report to the file room as assigned. Twice during the day, at 8:45 a.m. and again at 1:40 p.m., Ms. Mares' supervisor found her in the secretarial room rather than in the file room where she was supposed to be working. When Ms. Mares was asked why she was not in her assigned area for that day, she said she had work of her own to finish. She claimed she was waiting for the hearings officers to return drafts to her for correction and mailing. Ms. Mares did spend some time working in the file room, but not the entire day as scheduled. On the basis of Ms. Mares own testimony, the Board found that on prior occasions, if the hearings officers had needed her to complete work for them, they could call her out of the file room to complete a task. Therefore, the Board found it was not necessary for her to wait in her regular work area to receive the corrections for which she said she had been waiting.

On the second charge, the Board found Ms. Mares was keeping personal documents on the department's computer system, without having requested or received permission to use the system for her personal document storage. The documents which the Department offered into evidence included a list of Ms. Mares' educational credits, listing dates of course completion, course numbers, course titles, credits earned, grades and grade point averages; four pages of cocktail and mixed drink recipes; and the appellant's resume. Ms. Mares never sought or received permission to keep personal documents on the Department's computer. Ms. Mares saw no harm in keeping that information on the system if she was using her free time or a minimal amount of work time to create or update the documents. The Department objected to use of work time for personal projects. Regardless of when the documents were created or edited, the Department considered it an offense that Ms. Mares had used scarce computer data storage area for her personal documents.

In her notice of appeal, Ms. Mares stated:

"It should be noted that this particular day [March 11, 1993] was the next to last day of work prior to a scheduled vacation the following week. I felt it was my responsibility to the Department of Labor and my co-workers to have all of my work completed prior to departing for said vacation. As such, I had considered the amount of time required to complete a number of unfinished projects and had planned accordingly at the beginning of the week. ..." (See: Mares' Notice of Appeal, April 6, 1993, p. 1)

If Ms. Mares had scheduled her pre-vacation work as carefully as she alleges, she could have included her file room duty in the schedule, allowing her to complete all her assigned tasks. Had there been a *bona fide* conflict in assignments, Ms. Mares could have directed her concerns to her supervisor, either asking for instructions on how to proceed or for relief from her file room assignment until after her vacation. Instead, she elected to ignore her scheduled work assignment.

Ms. Barger testified, without contradiction, that all the secretarial personnel in the Workers' Compensation Division knew they were required to report to work in the file room one day each week. She also testified, without contradiction, that it was not uncommon for secretarial work assignments to be redistributed to adjust to changing workloads and staffing. Ms. Mares testified that she was accustomed to working independently, setting her own work priorities and scheduling her own work activities without close supervision. Ms. Mares described her decision to not report to the file room as scheduled on the morning of March 11, 1993, as a "mature, responsible decision" which was made so that her work would not be left "at loose ends".

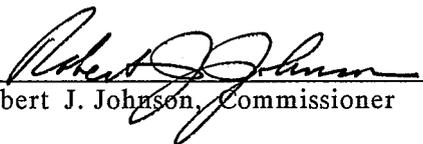
Ms. Barger also testified, without contradiction, that the secretarial personnel could be assigned to back one another up during periods of absence. In that case, there should have been no question in Ms. Mares' mind that the same practice would be applied in the instant matter. Although Ms. Mares might characterize her actions as mature and responsible, the Board finds them to be uncooperative and unresponsive to supervision.

The Board found Ms. Mares' actions to constitute uncooperative and disruptive behavior, justifying the issuance of a written warning as the least severe form of discipline authorized by the Rules of the Division of Personnel. On the evidence, the Board voted unanimously to deny Ms. Mares' appeal and uphold the letter of warning.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

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