

State of New Hampshire

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PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF LINDA MC CRACKEN
Docket #91-D-16
Response to Appellant's Motion for Rehearing
and
State's Objection to Motion for Rehearing

March 19, 1992

On February 3, 1992, Thomas F. Hardiman filed a Motion for Rehearing on behalf of Linda McCracken relative to the Board's January 16, 1992 decision denying her appeal of a letter of warning. New Hampshire Hospital's Objection was filed on February 7, 1992, by Mark Chittum, Director of Personnel and Financial Services.

Having reviewed both the Motion for Rehearing and the Objection in conjunction with the Board's January 16, 1992 Order, the Board voted unanimously to deny the Motion for Rehearing.

THE PERSONNEL APPEALS BOARD

Handwritten signature of Lisa A. Rule in cursive.

Lisa A. Rule, Acting Chairman

Handwritten signature of Robert J. Johnson in cursive.

Robert J. Johnson

Handwritten signature of Karen S. McGinley in cursive.

Karen S. McGinley

cc: Virginia A. Vogel, Director of Personnel
Mark Chittum, Personnel and Payroll Administrator, N. H. Hospital
Thomas F. Hardiman, SEA Director of Operations

State of New Hampshire

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PERSONNEL APPEALS BOARD

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Concord, New Hampshire 03301
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APPEAL OF LINDA McCracken Docket #91-D-16 New Hampshire Hospital

January 16, 1992

The New Hampshire Personnel Appeals Board (Rule, Johnson and McGinley) met Wednesday, December 18, 1991, to hear Linda McCracken's appeal of a December 20, 1990 letter of warning issued to her for unsatisfactory work. Ms. McCracken was represented at the hearing by Thomas Hardiman, SEA Director of Operations. Mark Chittum, Personnel and Payroll Administrator appeared on behalf of New Hampshire Hospital.

Ms. McCracken is employed by New Hampshire Hospital in Staff Development as the Librarian and is responsible for supervising the only other employee in that unit, a Library Technician. Ms. McCracken's immediate supervisor is June Dubreuil, Director of Staff Development at New Hampshire Hospital.

The appellant received a first warning for unsatisfactory work by letter dated October 29, 1990.¹ According to the appellant, training was one of the areas of concern addressed by that warning.

"Pursuant to the instructions Ms. McCracken received, subsequent to the letter of warning dated October 29, 1990, she did conduct training. If Ms. McCracken's supervisor had concerns regarding how the training was conducted, then she (June Dubreuil) needed to discuss those concerns with Ms. McCracken. Ms. McCracken alleges that Ms. Dubreuil did not initially discuss the alleged concerns. Instead, Ms. Dubreuil gave Ms. McCracken a second letter of warning, dated December 20, 1990, for not conducting the training as instructed." (See: McCracken notice of appeal, June 20, 1991, p. 1)

1/ Ms. McCracken's first warning was not appealed to this Board. Reference is made to that warning solely for the purpose of determining the propriety of a second warning for the same offense for allegedly failing to take the corrective action required by the first warning.

Ms Dubreuil, Director of Staff Development testified that of all the work units in her department, the library is the only unit in which the employees were not cross-trained. She testified that Ms McCracken had had two periods of extended sick leave during the previous two years and that because the Library Technician had not been cross-trained in the more basic aspects of library operation, services to Hospital staff had been severely hampered. She testified that during Ms McCracken's last absence, no one was able to confirm the status of library materials on order, to order new materials, or to assist in locating materials received which had not already been catalogued or shelved by the appellant.

Ms Dubreuil testified that her initial requests that Ms McCracken provide cross-training for the Library Technician were made informally. She testified that Ms McCracken did not comply with those requests, and that on October 29, 1990, she issued a letter of warning to the appellant for unsatisfactory work. In that warning, she gave Ms McCracken specific instructions on the number of hours of cross-training she was to provide to the Library Technician, and directed her to produce a plan of action no later than November 14, 1990. Ms Dubreuil testified that McCracken's response dated November 18, 1990 did not address the issue of training. That topic was discussed at the next library staff meeting two days later.

In describing Ms McCracken's attitude toward cross-training, Ms Durbieul testified that the appellant appeared unwilling to "share her knowledge" and seemed to prefer being the only person who knew "how things worked" in the library, therefore making herself "almost indispensable". She said that after the first warning and follow-up sessions, Ms McCracken did initiate training, but that the training she provided was inadequate. She testified that Ms McCracken had been directed to schedule training at least two hours per week and was to keep a training log.

Ms Dubreuil testified that during the four week period prior to issuance of the December 20, 1990 letter of warning, Ms McCracken provided only two hours and forty minutes of training for the Library Technician, rather than the eight hours which should have been completed. Additionally, she testified that the training which the appellant did provide consisted of nothing more than an over-view of some of the Librarian's duties, rather than actual instruction on ordering materials, and tracking library materials on the Lotus computer system as had been required of her.

Ms McCracken, who holds a Master's degree in Library Science specializing in academic and medical libraries testified that she had extreme reservations about providing extensive training to a technician. She explained briefly the difference between her duties as a professional librarian and those of the technician, a position which she considered essentially clerical in nature.

She testified that she had provided training to the Library Technician, Ms. Mimnaugh on an informal basis throughout her employment with New Hampshire Hospital. She said that she formalized and kept records of the training she provided after receiving her first letter of warning for unsatisfactory work.

Ms. McCracken testified that prior to issuing the second letter of warning, Ms. Dubrieul had never directed her to train the technician in actually performing the librarian's duties, but instead had asked her to give the Library Technician an over-view of the various library functions. She said that after she and Ms. Dubrieul had reviewed a list of the librarian's duties, Ms. Dubrieul selected "acquisitions" as the first training priority.

In terms of ordering library materials, Ms. McCracken testified that she had explained to Ms. Mimnaugh in general terms how library acquisitions were performed, and was assured by Ms. Mimnaugh that she understood the process. She said she then suspended the training because Ms. Dubrieul was away on vacation and had never advised her what aspect of library operations she was expected to address next. She said that because the library is busy and enormously understaffed, expecting her to devote two hours a week to training in addition to the time required to prepare for training was excessive and unreasonable. She also testified that the library technician had repeatedly complained that the information was too complex.

The Reverend June McCall, New Hampshire Hospital Chaplain testified that she used the services of the library extensively. She said Ms. McCracken had always treated her in a courteous and professional manner, and that she frequently referred interns to McCracken for assistance in securing professional reference materials from the library. She testified that Ms. McCracken had demonstrated an "awareness of areas of professional interest" and was good about notifying McCall when professional journals arrived which might be of interest to her. Ms. McCall testified that she relied on the appellant's expertise in selecting reference materials, and that whenever the appellant was not available, she would wait for McCracken to return to work rather than requesting materials from the Library Technician.

In closing arguments, the appellant contended that New Hampshire Hospital had improperly directed the appellant to provide training to a subordinate employee in duties or responsibilities which were outside that employee's class specification. In support of that position, the appellant referred the Board to its decision in the Appeal of Robert Leclair (Docket #89-0-2, P.A.B. Decision, February 26, 1990).

In the Appeal of Robert Leclair, the employee had been temporarily assigned, and agreed to perform, all the duties and responsibilities of a promotional position. The appellant lacked the education and experience to be certified as meeting the minimum qualifications for that position, and was never offered

a temporary promotion. When the employee later sought compensation at the higher salary grade, his request was denied. On appeal, the Board found that despite the appellant's inability to meet the minimum qualifications for promotion, he had in fact satisfactorily performed all the duties and responsibilities of the promotional position for a period of time. Accordingly, the Board ordered that the appellant be compensated at the higher salary grade for that period.

Additionally, the Board found the following:

"A state employee who does not meet the minimum qualifications for a position may not be temporarily appointed to that position, except as provided expressly in the Rules of the Division of Personnel." (See: Appeal of Robert Leclair, Docket 189-0-2, P.A.B. Decision, February 26, 1989, page 6)

In the instant appeal, the Board did not find that the Library Technician had ever been asked to perform all the duties of the Librarian position, or that there had ever been a request for compensation at the higher rate of pay. Further, having reviewed the class specifications for both Librarian and Library Technician, the Board did not find it unreasonable that Ms McCracken was directed to train the Library Technician in ordering, preparing, maintaining, tracking or retrieving materials for patrons of the facility.

The appellant also argued that even if the warning were justified on its face, Ms McCracken had not been allowed enough time following the first letter of warning to take corrective action and avoid further discipline. For that reason, the appellant argued that the warning must be deemed improper. In support of that contention, the appellant referred the Board to the New Hampshire Supreme Court's opinion in the Appeal of Elaine Fugere (June 7, 1991).

Again, the Board found the circumstances of the instant appeal to be significantly different from those presented in the Fugere appeal. The Board did not find the Court's opinion in that case to be dispositive of Ms McCracken's appeal of her second letter of warning.

In Fugere the Court held that the letters of warning which eventually resulted in her discharge from employment were legally insufficient in that they failed to specify explicitly the corrective action required to prevent termination. Further, the Court found that the three warnings were written on consecutive working days and therefore failed to provide a reasonable opportunity for the appellant to respond. Specifically, the Court stated:

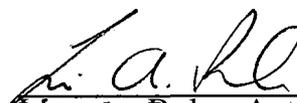
"...[A]n employer such as NHTI cannot pretend to comply with the letter or spirit of the personnel rules by sending warning letters in such close succession that one is not received before the next is sent. ... We hold that warning letters must be sent in such a way as to provide reasonable time for the employee to respond."

Ms. McCracken's first letter of warning was issued to her on October 29, 1990. The warning directed her to file a plan of action to address the issues presented in that letter no later than November 14, 1990. McCracken's response dated November 18, 1990, four days after the deadline, did not adequately address the issue of training. Consequently, that aspect of the work plan became a subject of discussion at a library staff meeting two days later.

The second letter of warning was dated December 20, 1990, nearly two full months after the first warning, and more than a month after the appellant's submission of a proposed plan of action. The appellant's supervisor considered the plan deficient and met with her immediately thereafter to amend it. Ms. McCracken had at least four weeks to demonstrate that corrective action had been taken. The timing of the second letter of warning and the opportunity to take corrective action therefore bear little resemblance to the circumstances presented in the Fugere case.

On all the evidence, the Board voted unanimously to deny Ms. McCracken's appeal, finding that she failed to meet her burden of proving that the second letter of warning for unsatisfactory work was improper.

THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chairman



Robert J. Johnson



Karen S. McGinley

cc: Virginia A. Vogel, Director of Personnel
Mark Chittum, Payroll and Personnel Administrator, N.H. Hospital
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