

State of New Hampshire



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

Appeal of James Nelson

Docket #98-O-7

Department of Transportation

Monday, January 12, 1998

By order dated October 31, 1997, the New Hampshire Personnel Appeals Board (Wood, Johnson and Rule) directed the above-named appellant to file an amended appeal of his request for removal of a written warning from his personnel file.

In his original pleadings, the appellant argued that placement in his personnel file of a Notice of Suspension and Warning for violation of DOT Policy 1.01 Use of Alcohol and Drugs violated his rights to privacy under State and Federal law. The Board directed the appellant to specify in his amended appeal those State and/or Federal laws he believed the Department had violated.

On November 10, 1997, Mr. Nelson filed an amended appeal. Rather than citing a specific State or Federal law supporting his claim, he argued that the Department of Transportation would be violating DOT Procedures 1.28(b) and Article III A (1-5), as well as NH RSA 91-A(5), by maintaining a record of his suspension in his personnel file. Having reviewed the appellant's submissions, the Board finds no evidence to support that claim.

1. Personnel files are not subject to public inspection under NH RSA 91-A(5), the Right-to-Know Law, and the extent of public access to such records is set forth in PART Per 1500 of the Rules of the Division of Personnel.

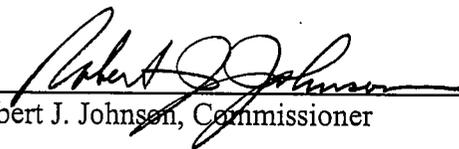
2. DOT policies submitted by the appellant with respect to maintenance of drug testing results do not require the Department to purge such records after five years. Rather, the excerpts submitted appear to establish the minimum standards for maintenance of drug testing data.
3. Establishment of the Health and Safety Officer as the individual responsible for maintaining department-wide drug testing information does not preclude the department or Division of Personnel from maintaining in the appellant's personnel record documentation of disciplinary action taken as a result of a drug or alcohol related policy violation. Indeed, the Administrative Rules of the Division of Personnel specifically authorize the appointing authority to place copies of documents pertaining to disciplinary actions in an employee's agency personnel file and such documents shall be placed in the employees permanent file at the Division of Personnel. Per 1501.03 (a)(6) and (b)(5).

For the reasons set forth above, the Board voted unanimously to deny Mr. Nelson's appeal.

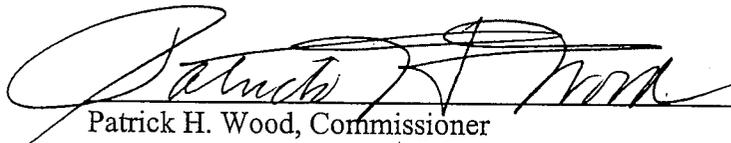
THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Commissioner



Robert J. Johnson, Commissioner



Patrick H. Wood, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Frances Buczynski, Administrator of Human Resources, Department of Transportation
James O. Morton Building, Hazen Drive, Concord, NH 03305
James S. Nelson, 163 East Bow St., Franklin NH 03235

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October 31, 1997

The New Hampshire Personnel Appeals Board (Wood, Johnson and Rule) met on Wednesday, September 17, 1997, under the authority of RSA 21-I:58, to consider the appeal of James Nelson, an employee of the Department of Transportation. Mr. Nelson, whose appeal was filed *pro se*, requested the Board to order removal of a written warning from his file. That letter, which was attached to Mr. Nelson's appeal, is an August 27, 1997, Notice of Suspension and Warning for violation of DOT Policy 1.01 Use of Alcohol and Drugs. In requesting removal of the letter from his file, the appellant neither denied the charges contained therein nor petitioned for reduction of the discipline imposed.

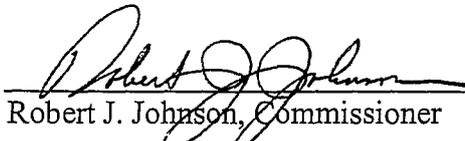
In support of his request, Mr. Nelson asserted that the document contained "a large amount of personal medical information," and therefore must be maintained in a separate file. He argued that placement of that document in his personnel file violated Per 1001.08 (10) of the Rules of the Division of Personnel, and violated his rights to privacy under State and Federal law.

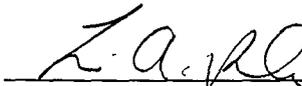
Having reviewed the letter and the applicable Personnel Rule, the Board voted to allow the appellant ten calendar days from the date of this order in which to file an amended appeal, specifying which State and Federal medical privacy laws he believes the Department violated by

placing the notice of suspension and warning in his personnel file. Failure to file such amended appeal within the time specified shall result in the immediate dismissal of Mr. Nelson's appeal.

THE PERSONNEL APPEALS BOARD


Patrick H. Wood, Commissioner


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