

State of New Hampshire



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

94-D-14

APPEAL OF RHODY OLGATI **Department of Health and Human Services** **Division of Elderly and Adult Services**

December 15, 1994

The New Hampshire Personnel Appeals Board (Bennett, Rule and McGinley) met Wednesday, October 19, 1994, to hear the appeal of Rhody Olgati, a Social Worker III in the Littleton District Office of the Department of Health and Human Services, Division of Elderly and Adult Services. Mr. Olgati, who appeared *pro se*, was appealing a November 1, 1993 letter of warning issued to him for allegedly using obscene language, exhibiting disruptive behavior and exhibiting physically or verbally abusive behavior in the work place. Sandra Platt, Administrator, appeared on behalf of the Department of Health and Human Services.

The appeal was submitted by the parties on offers of proof and documentary evidence submitted by them for review by the Board. The record consists of the audio tape recording of the proceedings, the documents submitted by the appellant¹, and the letter of warning issued to the appellant. The Board voted to exclude the State's Exhibits #2 and #3, a Performance Summary for the Period of July 1, 1993 through May 27, 1994, and a Letter of Counselling dated August 2, 1994, because they were issued to the appellant after the date of the warning.

In brief, the incident giving rise to the warning was described by the State as follows. At approximately 8:30 a.m. on October 7, 1993, Bonnie Stinchfield, a secretary in the Littleton District Office, attempted to give the appellant a protective intake report. Before she had finished relaying verbal instructions from the office supervisor, Mr. Olgati yelled at Ms. Stinchfield, using several vulgar or obscene phrases, telling her not to give him any more messages. Ms. Stinchfield tapped the appellant on top of the head with the file she had in her hand and told him to straighten out and listen to her. When Ms. Stinchfield then asked what Mr. Olgati wanted her to do with the file, he responded, "I'll tell you what to do with it!". Ms. Stinchfield left the appellant's desk, and the appellant made some remark about staff in the office being "assholes".

Mr. Olgati stated that he was frustrated by the amount of work he had received in comparison to the other Social Workers in the Office. He said that Ms. Stinchfield had come into the office that day in a bad mood, having argued that morning with her spouse. He said that when he raised his voice, he was not actually yelling at her. He alleged that Ms. Stinchfield did not tap

¹ Mr. Olgati's exhibits include a 3-page document entitled "Elderly and Adult Services 3620 and 3621 Log" which contains the names of alleged victims, the date of report, the social worker assigned the case, the case number and the finding (founded or unfounded). This portion of the record shall be sealed unless and until such time that a court of competent jurisdiction might order production of that exhibit.

him on the head with the papers she was carrying, but actually struck him. He reported to his supervisor, Anthony Rodrigues, that Ms. Stinchfield had assaulted him, that he had sustained neck injuries when he tried to avoid being hit, and that his supervisor had failed to investigate the reported "assault" in spite of repeated requests from the appellant to take some action.

Mr. Olgiati expressed his belief that the office is an appropriate place for professionals to vent their frustrations. In general he admitted to the verbal exchange with Ms. Stinchfield. He said that he knew when to observe a more professional demeanor, stating that he never would have had such an exchange outside of the office or with one of his peers.

In both his written and oral presentation, Mr. Olgiati alleged that the warning was inappropriate for the following reasons:

1. That obscene language is common and is often used by social workers to "vent frustration".
2. That no one in his office had ever been disciplined for using obscene language.
3. That the appellant never received notice stating that the use of obscene language would lead to discipline.
4. That he did not engage in "disruptive behavior" and was never told to quiet down and stop yelling.
5. That his behavior was not verbally abusive.
6. That in response to his complaint about receiving additional work, he was "assaulted" by his secretary who struck him over the head with a file.
7. That the "rules, orders and penalties" are not applied evenly to all employees.
8. That the discipline imposed was excessive in light of the alleged infraction.
9. That the incident was handled inappropriately by the new supervisor and may have been the supervisor's way of showing the appellant "who was boss".
10. That the appellant had seen none of the "evidence" used to support issuance of the letter of warning.

Among the documents offered into evidence by the appellant was a letter of support signed by nine of the appellant's co-workers praising his interaction with other Social Workers and noting that his behavior and verbalization was no different from most of the other employees in the office. He also submitted a favorable performance evaluation completed by his previous supervisor which showed the appellant meeting expectations in all of the evaluation categories.

Ms. Platt agreed that Mr. Olgiati performs his professional tasks in an acceptable manner and is considered a good social worker. However, she said that his conduct in the October 7, 1993 incident was unacceptable and warranted a written warning. Ms. Platt argued that the Rules of the Division of Personnel classify a written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance. She reviewed the nature of the incident at the Littleton District Office, and suggested that frustration was not an acceptable excuse for the kind of behavior exhibited by the appellant during the incident in question.

On the evidence submitted by the appellant himself, the Board found that the charges of using obscene language and exhibiting disruptive behavior were founded. In his written request for informal settlement to Supervisor Anthony Rodrigues, dated November 15, 1993, the appellant described the October 7, 1993 incident as follows:

"...I was approached by the DEAS Secretary, Bonnie Stinchfield. Mrs. Stinchfield presented me with a protective intake report which was assigned to me by

supervisor Rodrigues. I was upset about receiving yet another protective, and verbally complained. My complaint was in no way directed toward Mrs. Stinchfield, and, therefore, I deny 'exhibiting...verbally abusive behavior in the workplace,' and certainly deny 'exhibiting physically...abusive behavior in the workplace.' My actions were based on the fact that I felt that I had already been assigned a great deal more protectives than the other two DEAS Social Workers working in the Littleton DO..."

"Needless to say, I was stunned and shocked after I was struck by Mrs. Stinchfield. As she walked back to her desk I recall stating 'This place is filled with assholes'."

In describing the incident to the Board, Mr. Olgiati appeared to minimize the seriousness of his outburst by explaining how frustrated he was with his supervisor's inexperience in dealing with the elderly population, and the fact that his supervisor was frequently unavailable in the office. He insisted that obscene language was common in the office. He admitted to using language similar to that contained in the warning letter, but insisted that it was not so serious as to warrant formal discipline. He complained that as the senior Social Worker III in the office, he received the majority of the difficult referrals. He indicated that when he received the referral on the morning of October 7, 1993, from Ms. Stinchfield, his reaction to her was simply a way of "venting frustration" at the job, and that Ms. Stinchfield over-reacted because of her own mood. He attempted to differentiate between raising his voice or using vulgar language with a secretary and the professional manner in which he was known to conduct himself when speaking with his "peers".

The Board found that the appellant's behavior was unacceptable, that he did use obscene language, and that his outburst was disruptive. Per 1001.03 (a) (5) and (6) authorize an appointing authority to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance for offenses including, but not limited to" ... using obscene language; Exhibiting uncooperative or disruptive behavior."

In spite of Mr. Olgiati's assertion that no one in his office had ever been disciplined for using obscene language and that he himself never received notice that the use of obscene language would lead to discipline, the Board was not persuaded to remove the warning from his file. While Mr. Olgiati may not have been familiar with the exact text of the Personnel Rules, they do provide constructive notice of the types of offenses which may give rise to discipline. His ignorance of the specific provisions of the rules provide no excuse for violating the provisions contained therein.

Similarly, the Board found that the agency's alleged failure to produce copies of "evidence" supporting the warning was inconsequential. The letter of warning itself contains detailed information about the incident giving rise to the appeal. The State offered no additional evidence at the hearing on the merits, therefore, there is no basis upon which to find that the appellant was denied due process in attempting to resolve the warning through the procedures for informal settlement of disputes.

Mr. Olgiati certainly understood that yelling at or using obscene language with his peers was inappropriate. An employee with Mr. Olgiati's education and experience certainly should have understood that similar behavior was at least as inappropriate, if not more so, with a subordinate. The Board was not persuaded to accept Mr. Olgiati's rationalization that his behavior should not be judged so harshly because he was "the son of a stonecutter", and

behaviors are "different in the North Country".

The Board voted to sustain the warning for using obscene language and exhibiting uncooperative and disruptive behavior. However, given the nature of the exchange between Mr. Olgiati and Ms. Stinchfield, the Board found there was insufficient evidence to support the charge that Mr. Olgiati had exhibited verbally or physically abusive behavior.

The State did not make substantial offers of proof contradicting Mr. Olgiati's claim that obscene language is common in the Littleton District Office. Therefore, the Board found it was possible that use of obscene language in the Littleton District Office could be as widespread as Mr. Olgiati asserted. Common usage of such language does not excuse Mr. Olgiati's behavior, or diminish the agency's authority to discipline an employee who violates the Personnel Rules by using obscene language and disrupting the work place. However, the Board believes it has some bearing upon the severity of the discipline imposed. Therefore, the Board determined that justice would best be served by limiting the effective period of the warning while allowing that warning to remain on file. Accordingly, the Board voted to limit the effectiveness of the warning to a period of one year for the purposes of additional disciplinary action, although the letter shall remain on file in Mr. Olgiati's personnel file, and may be used as a reference for continued corrective action on the appellant's behalf.

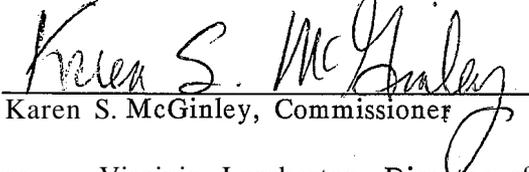
THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Lisa A. Rule, Commissioner



Karen S. McGinley, Commissioner

cc: Virginia Lamberton, Director of Personnel
Rhody Olgiati, Social Worker, Division of Elderly & Adult Services
Littleton District Office, Lisbon Rd., P.O. Box 260, Littleton, NH 03561-0260
Sandra Platt, Administrator, Commissioner's Office of Administration and Finance
Department of Health and Human Services, 6 Hazen Drive, Concord, NH 03301