

State of New Hampshire

PERSONNEL APPEALS BOARD
Edward J. Haseltine, Chairman
Gerald Allard
Loretta Platt



EXECUTIVE SECRETARY
Mary Ann Steele

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

APPEAL OF MYRON WHITNEY - Letter of Warning

February 9, 1988

At its meeting of February 9, 1987, the Personnel Appeals Board¹ Commissioners Cushman and Platt sitting, reviewed cases pending before the Board¹ including the August 11, 1987 letter of warning appeal filed by the State Employees¹ Association on behalf of Myron Whitney, an employee of the Department of Revenue Administration.

The State Employees' Association¹ on August 17, 1987, telephoned the Board's secretary to ask that the appeal be held in abeyance pending further discussion with the appellant. By letter dated August 18, 1987, the Board instructed the appellant to notify the Board of what further action was anticipated in the appeal.

Having received no further notification from the appellant since August of 1987, of the status of the appeal¹ the Board voted unanimously to dismiss the matter.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE
Executive Secretary

cc: Everett Taylor¹ Commissioner
Dept. of Revenue Administration

Stephen J. McCormack, SEA Field Representative

Virginia A. Vogel
Director of Personnel

State of New Hampshire



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APPEAL OF MYRON WHITNEY

Request for Reconsideration

November 29, 1988

At its September 27, 1988 meeting, the Personnel Appeals Board, Commissioners Cushman and Platt sitting, reviewed the Motion for Reconsideration filed in the above-captioned appeal. The Board voted to deny that Motion, finding that the June 3, 1987 hearing was irrelevant in determining whether the appellant's May 29, 1987 letter rejected the appointing authority's offer. The appellant cannot subsequently change his position and unilaterally revive the offer.

The Motion for Reconsideration is therefore denied.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE
Executive Secretary

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cc: Stephen J. McCormack
SEA Field Representative

Stanley Arnold, Commissioner
Department of Revenue Administration

Virginia A. Vogel
Director of Personnel

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APPEAL OF MYRON WHITNEY

August 1, 1988

By letter dated August 11, 1987, the State Employees' Association filed with the Personnel Appeals Board a letter of warning appeal on behalf of Myron Whitney, an employee of the Department of Revenue Administration. Prior to filing his appeal with the Board, the appellant had pursued appeal of the April 13, 1987 letter of warning pursuant to the provisions of Per 306.04 of the Rules of the Division of Personnel. Those steps to appeal culminated in a July 31, 1987 decision by the Director of Personnel declining a request for a hearing at the Director's level. Personnel Director Vogel, in her letter of July 31, 1987 to SEA Field Representative Stephen McCormack, stated that she had assisted Mr. Whitney's supervisor in preparing the letter of warning, believing that there was sufficient evidence of unsatisfactory performance to justify issuance of a formal written letter of warning.

On August 17, 1987, the State Employees' Association contacted the Board's executive secretary by telephone to ask that Mr. Whitney's appeal be held in abeyance "pending further discussion with the appellant." The Board granted a continuance and so informed the appellant in a letter dated August 18, 1987, to Mr. McCormack. The Board further asked that Mr. McCormack advise the Board "at the earliest possible date" of any further action anticipated in the appeal. Having received no formal notice or correspondence from the appellant or his representative, the Board issued a decision on February 9, 1988, unanimously voting to dismiss the appeal.

By letter dated February 24, 1988, the State Employees' Association filed a request for reconsideration of that decision. Additionally, the appellant's representative stated, "Following a discussion with Mr. Myron Whitney, he has instructed me to notify the Personnel Appeals Board that he only wishes the Board to please review all applicable correspondence and then issue a declaratory ruling relative to the cited Letter of Warning."

At its meeting of April 12, 1988, the Personnel Appeals Board, Commissioners Cushman and Platt sitting, voted to review the matter.¹ The Board

¹ Because this appeal does not require an interpretation by the Board of its rules, it does not require the issuance of a declaratory ruling. The Board therefore voted to grant the appellant's request for review, construing it as a request made pursuant to Per-A 202.04. (Disposition of an Appeal without a Hearing.)

reviewed the record, including correspondence forwarded to the Board by both parties to the appeal. Based upon that review, the Board made the following findings of fact and rulings of law.

On April 13, 1987, Myron Whitney received a letter of warning for unsatisfactory performance and behavior. He appealed that letter and as a result of hearings held by the Department of Revenue Administration, a May 22, 1987 memorandum from Barbara T. Reid, the appellant's supervisor, was sent to the State Employees' Association outlining a proposed settlement in Mr. Whitney's appeal. That proposal included an offer to remove the cited letter of warning from Mr. Whitney's file after a period of 6 months if there were "no justifiable complaint regarding Mr. Whitney's behavior or performance." The appellant now contends that the offer to withdraw the letter remains in effect.

On May 29, 1987, SEA Field Representative Stephen McCormack wrote to Arthur Danie, Assistant Commissioner of the Department of Revenue Administration stating, "In a letter dated May 22, 1987, and received on May 26, 1987, it is stated that the course of action outlined in the letter was equitable to Mr. Whitney. Mr. Whitney has stated to me that the course of action is not acceptable. Thus, this letter is sent to you per the guidelines of the Personnel Rules. A hearing is requested at a mutually convenient time."

In his letter to the Board dated February 24, 1988, the appellant stated, "Since the initial appeal of the cited Letter of Warning there has been no written reference made to withdrawing the initial 6 month offer to remove the Letter of Warning, permanently, from Mr. Whitney's personnel file."

Based upon its review of the above noted correspondence and of Mr. Whitney's file, the Board found that Mr. Whitney rejected the Department of Revenue Administration's offer of settlement when he informed his representative that the proposed agreement was unacceptable and that he wished to appeal issuance of the letter of warning. An offer is terminated by rejection and cannot thereafter be accepted. Any words or acts of the offeree indicating that he declines the offer amounts to a rejection. See 17 Am. Jur. 2A, Contracts S 39 (1964). Thus, the Department's proposal of May 22, 1987, was rejected by Mr. McCormack's letter of May 29, 1987. Having been rejected, the Department's offer terminated and Mr. Whitney was thereafter powerless to accept it.

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For the foregoing reasons, the Board voted to uphold the issuance of the original letter of warning and deny the appeal.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE, Executive Secretary

cc: Myron Whitney

Everett V. Taylor, Commissioner

Steve McCormack, SEA Field Representative

Virginia A. Vogel