State of New Hampshire

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

APPEAL OF KEVIN YOUNG

Docket #98-O-4

Department of Agriculture

Response to Appellant's Motion for Reconsideration

Monday, January 12, 1998

By letter dated November 6, 1997, SEA Field Representative Jean Chellis requested reconsideration of the Board's October 31, 1997, decision denying Mr. Young's appeal for the removal of a notice of suspension with pay from his personnel file. Ms. Chellis alleged that, contrary to the Board's findings, she had filed an appeal with Agriculture Commissioner Taylor by letter dated November 1, 1996, and that such appeal had never been withdrawn. She also alleged that during the March 5, 1997, hearing on Mr. Young's appeal of a written warning (Docket #97-D-8), she had specifically requested removal of the notice of suspension from Mr. Young's file. She argued that the notice of suspension did not appear in Mr. Young's Division of Personnel file until after it had been removed from the Department of Agriculture files, and that because the notice of unpaid suspension is not a computerized form as described by Per 1501.03(b), it must be removed from the appellant's permanent record.

In general, a request for reconsideration must either allege that the Board has made an error of law or must present additional facts that were not available at the original hearing. In order to request a rehearing, the party dissatisfied with the Board's order must set forth all grounds upon which it is alleged that the Board's decision is unlawful or unreasonable.

Having considered the appellant's motion in connection with its October 31, 1997, the Board found the following:

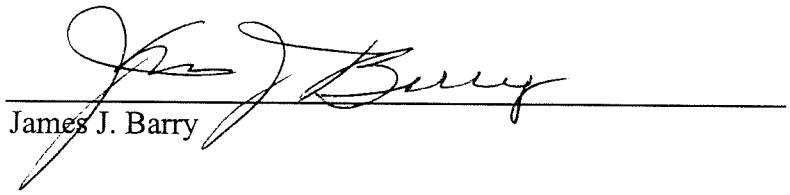
1. The November 1, 1996, appeal letter addressed to Commissioner Taylor was not offered as evidence at Mr. Young's September 7, 1997, hearing, nor was it included in the personnel file submitted by Director Lamberton at the Board's request. The Board's October 31, 1997, decision accurately reflected the evidence that was before the Board when its decision was issued on October 31, 1997.
2. When Mr. Young appealed the Personnel Director's refusal to remove the notice of paid suspension from his file, the appellant exercised the rights asserted in Ms. Chellis' November 1, 1996, letter to Commissioner Taylor.
3. The appellant may have "...assumed the letter of suspension was removed from all 'personnel files'," when the Board issued its June 11, 1997. However, the Board's decision imposes no such requirement, referring solely to the removal of the written warning.
4. The appellant argued that, "the requested remedy of removal of the suspension letter was not directly granted, but it certainly was not denied." If the appellant was uncertain of or dissatisfied with the extent of the relief granted in the Board's June 11, 1997, decision, he had 30 days in which to file a motion for rehearing. No such motion was filed.
5. The fact that the Division of Personnel file containing Mr. Young's notice of paid suspension was not updated in a timely fashion has no bearing upon the issue of whether or not that document should be retained by the Division of Personnel as part of the appellant's permanent record.
6. The documents admitted into evidence include a computerized Personnel Action Form dated 10/31/96, signed by the Director on 11/1/96, authorizing Mr. Young's suspension with pay. The "comments section" contains a notation to "See attached letter to explain." Rather than providing details supporting the paid suspension in the form of an attached letter, the agency simply could have listed the allegations on the form itself. As such, the Board continues to find that inclusion of the letter as an attachment to the Personnel Action Form is consistent with the provisions of Per 1501.03.

The appellant failed to persuade the Board that its decision was either unlawful or unreasonable, that the Board committed an error of law, or that there are new facts which would warrant a further hearing. Therefore, for the reasons set forth above, the Board voted unanimously to deny the appellant's Motion for Reconsideration and to affirm its October 31, 1997, decision denying Mr. Young's appeal.

THE PERSONNEL APPEALS BOARD

Lisa A. Rule, Acting Chair

Robert J. Johnson



James J. Barry

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol Street, Concord, NH 03301
Jean Chellis, SEA Field Representative, PO Box 3303, Concord, NH 03302-3303
Stephen H. Taylor, Commissioner of Agriculture, 25 Capitol St., Concord, NH 03301

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Department of Agriculture

October 31, 1997

The New Hampshire Personnel Appeals Board (Rule, Johnson and Barry) met on Wednesday, September 10, 1997, under the authority of RSA 21-I:58, to hear the appeal of Kevin Young, an employee of the New Hampshire Department of Agriculture. Mr. Young, who was represented at the hearing by SEA Field Representative Jean Chellis, had requested the Board to remove from his personnel file a notice of suspension with pay pending the outcome of an investigation. Virginia A. Lamberton, Director of Personnel, appeared on behalf of the State.

Ms. Chellis argued that on June 11, 1997, the Personnel Appeals Board had issued a decision granting Mr. Young's earlier appeal of a letter of warning, finding that there was insufficient evidence to support a warning under the Optional Dismissal provisions of the Personnel Rules. She argued that if the Board ordered removal of the warning, it was only reasonable to assume that the Board would also require the Director to remove from Mr. Young's file any other documents associated with the disciplinary action.

Director Lamberton argued that the letter advising Mr. Young of his suspension with pay pending the outcome of an investigation was a necessary part of the file, and that it was attached to the Personnel Action authorizing Mr. Young to continue receiving compensation although he was not at work during the investigation. Both parties agreed that the Board's decision, describing the allegations against Mr. Young, the suspension with pay pending the outcome of an investigation, and the Board's findings with respect to the allegation were a part of the permanent record.

TDD Access: Relay NH 1-800-735-2964

At the conclusion of the hearing, Director Lamberton agreed to provide a copy of Mr. Young's personnel file for the Board to review. Having now concluded its review, the Board finds that the notice of suspension with pay shall remain in Mr. Young's file as part of his record of employment. The letter is not disciplinary in nature. It simply supports a payroll authorization for the period in question.

The Board notes with some interest that the letter to which Mr. Young has objected states, "Under provisions of Per 202.02 you have the right to appeal this suspension with pay." There is no record of Mr. Young having appealed that suspension. Accordingly, the Board finds that maintaining a record of it in his personnel file as part of his permanent record is an appropriate application of Per 1501.03 of the Rules of the Division of Personnel.

THE PERSONNEL APPEALS BOARD

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