

State of New Hampshire

**PERSONNEL APPEALS BOARD**

State House Annex

Concord, New Hampshire 03301

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APPEAL OF ELVA BISSELL

Docket #91-P-21

New Hampshire Liquor Commission

February 27, 1992

The New Hampshire Personnel Appeals Board (McNicholas and Rule) met Monday, January 20, 1992, to hear the appeal of Elva Bissell, and employee of the New Hampshire State Liquor Commission. Ms. Bissell, who was represented by SEA Field Representative Margo Hurley, appeared appealing her non-selection for promotion to the position of Computer Operator I. George E. Liouzis, Human Resource Coordinator represented the Liquor Commission.

Ms. Hurley argued that the Liquor Commission had violated Per 302.03 of the Rules of the Division of Personnel by denying promotion to a qualified, permanent full-time employee. Mr. Liouzis argued on behalf of the Commission that Per 302.02 also limits such preference to circumstances where promotion of a permanent full-time employee is both possible and reasonable. He contended that the Liquor Commission had found the appellant to lack certain personal and professional qualifications for promotion, and that the Commission therefore was not required to give preference in this instance.

David Griffiths, Director of Management Information Systems for the Liquor Commission described the promotional vacancy as a third shift Computer Operator I position. He testified that the employee selected for promotion would be expected to spend considerable amounts of time working independently without supervision from the Senior Computer Operator. He said he did not find Ms. Bissell to be dependable, and stated he would never hire her into "data" unless she could prove that she was reliable.

Mr. Griffiths testified that when Ms. Bissell had applied for promotion to Computer Operator II several months earlier, he'd had serious reservations about her "paper qualifications". He said he had agreed to give her 2 or 3 days in the computer room to demonstrate that she possessed the skills she claimed on her application. He testified that her work had been unacceptable during the first 2 days, and that on the third day she did not report to the computer room or contact him to explain why she would be absent. He testified that when he discussed the Computer Operator I position with Ms. Bissell, he told her she would need to prove her dependability to him before he could consider promoting her. He said she never "got back to him" to try to convince him that she could be reliable.

Ms. Bissell testified that when she discussed her promotional application with Mr. Griffiths, Director of MIS, he had only asked her two questions:

1. Why did she deserve to be promoted?
2. What would qualify her for promotion over the other candidates?

Ms. Bissell alleged that Mr. Griffiths was offended because she had withdrawn her application for promotion to Computer Operator II approximately three months earlier. She said she believed that Mr. Griffiths considered the withdrawal of her prior application "a direct hit on his ego". She also testified that Mr. Griffiths had told her she was unreliable and she came away with the impression that he had already decided not to promote her even before their discussion.

Ms. Hurley argued that the appellant's withdrawal of her earlier application for promotion to Computer Operator II should not have affected her application for promotion to Computer Operator I. She argued that layoffs occurring during the period in question had adversely affected many employees' work performance. She also argued that Ms. Bissell's work errors were also attributable in large part to personal problems the appellant was having at the time, but that those problems were "all behind her now. She said that Mr. Griffiths had not mentioned performance concerns during his meeting with Ms. Bissell, and that he had left the appellant with the impression that his selection decision was already made before he met with her.

The Rules of the Division of Personnel do not require structured oral interviews for selection in this classification. Consequently, the adequacy of Ms. Bissell's "interview" with Mr. Griffiths is not dispositive of this appeal. Nonetheless, the Board strongly recommends that the Liquor Commission undertake a serious examination of its selection process.

It would appear that Mr. Griffiths scheduled a meeting with Ms. Bissell more for the purpose of confronting her with his assessment of her inadequacies than for the purpose of allowing her to demonstrate her capacity for the vacancy. Ms. Bissell went into the meeting convinced that she would not be selected for promotion and did little or nothing to persuade him that she was a suitable candidate for the vacant position.

In considering the merits of the instant appeal, the Board found the following:

Per 302.03 of the Rules of the Division of Personnel states, in pertinent part:

"(a) A vacancy shall be filled whenever possible and reasonable by promotion of a qualified permanent employee from within the department or agency

"(b) Selection for such promotion shall be based upon capacity for the vacant position, ability as evidenced by past performance, and length of service with the department.

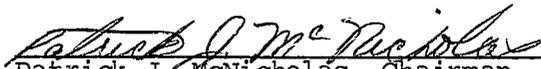
"(1) It is the prerogative of the appointing authority to give such weight to an employee's job performance as he deems appropriate when considering the employee for appointment to a vacancy.

"(2) If the appointing authority finds certain professional and personal qualifications lacking in even ostensibly qualified candidates for promotion, employees may be denied promotion."

By her own admission, Ms. Bissell had experienced personal problems which had adversely affected the quality of her work. The Board found that the agency had grounds to doubt the appellant's capacity for the vacancy based on its assessment of her past performance. Ms. Bissell failed to complete the training/testing process for a prior promotional posting, and failed to provide any notice to the Director of MIS that she did not intend to complete the process. The Board found the agency had grounds to question Ms. Bissell's reliability, particularly if she were to be promoted to a position for which there would be limited supervision. On all the evidence, the Board found it reasonable for the Liquor Commission to conclude that the appellant lacked the personal and professional qualifications for promotion.

Ms. Bissell failed to sustain her burden of persuasion by a preponderance of the evidence that it was both possible and reasonable to promote her, and that she was more qualified for promotion than the successful candidate. Accordingly, the Board voted to deny her appeal.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
George E. Liouzis, Human Resource Coordinator, N.H. State Liquor Commission
Margo Hurley, SEA Field Representative