

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
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## ***APPEAL OF SUZANNE CABLE***

***Docket #99-P-1***

***Department of Health and Human Services***

***October 15, 1998***

The New Hampshire Personnel Appeals Board (Wood, Johnson and Barry) met on Wednesday, September 16, 1998, under the authority of RSA 21-I:58, to hear the appeal of Suzanne Cable, an employee of the Department of Health and Human Services. Ms. Cable, who was represented at the hearing by SEA Field Representative Kate McGovern, was appealing her non-selection to the position of Secretary II in the Berlin District Office. Sandra Platt, Manager of Human Resources, appeared on behalf of the Department.

The appeal was heard on offers of proof by the representatives of the parties, without objection by either party. The record in this matter consists of the audio tape recording of the hearing, notices and orders issued by the Board, and pleadings, with exhibits attached, submitted by the parties as follows:

### State's Exhibits

1. Supplemental Job Description for Position #12755 Secretary II
2. Application of Suzanne Cable
3. Letter of non-selection sent by Frank Clay to Suzanne Cable on April 14, 1998, stating the reason for non-selection
4. Letter sent by Linda Chadbourne to Frank Clay dated April 28, 1998 requesting a more detailed reason for non-selection
5. Class specification for Secretary II

Appellant's Exhibits

1. Attachments to the July 30, 1998, letter of appeal consisting of:

Letter dated July 16, 1998 from Stephen Davis to Linda Chadbourne responding to a request for informal settlement at Step III

June 17, 1998, letter from Linda Chadbourne to Commissioner Morton re: Suzanne Cable

June 8, 1998, letter from Sandra Platt to Linda Chadbourne re: Suzanne Cable

May 8, 1998, letter from Linda Chadbourne to Sandra Platt re: Suzanne Cable

April 28, 1998, letter from Linda Chadbourne to Frank Clay re: Suzanne Cable

May 4, 1998, letter from Frank Clay to Linda Chadbourne re: Suzanne Cable

The undisputed facts of the appeal are as follows:

1. Ms. Cable, who currently works in the Health and Human Services Littleton District Office, responded to a March 9, 1998, job posting for the position of Secretary II, position #12755, Labor Grade 8, assigned to the Office of Family Services, Division of Family Assistance, in the Berlin District Office.
2. Although the position for which she applied had a lower salary grade than the position she currently occupies, Ms. Cable was willing to work for a lower salary grade in order to return to work in Berlin, NH, and reduce her commute to and from work.
3. Frank Clay, Manager of Administration, interviewed Ms. Cable for the vacancy, and discussed her work history with supervisory personnel who were familiar with Ms. Cable's work performance.
4. The interview took place in the Conway District Office where Sarah Cable, who is married to the appellant's ex-husband, is employed. Appellant was afraid that Sarah Cable might negatively influence Mr. Clay's selection decision.

5. Mr. Clay advised the appellant by letter dated April 14, 1998, that she had not been selected for the position, stating, "Unfortunately, your experiences do not match what I am looking for in this position."
6. By letter dated April 28, 1998, SEA Field Representative Linda Chadbourne filed a request for informal settlement on Ms. Cable's behalf and asked for an opportunity to discuss in detail the basis for the non-selection decision.
7. Mr. Clay indicated in his May 4, 1998, reply that his decision was based on "...a combination of the candidate's interview, work history and work references." He asserted that Ms. Cable did not demonstrate the desired work traits and skills, and that her verbal answers during the interview were, "...short, vague, and non-specific in content." He wrote that, "...her inter-personal skills appeared weak," an observation confirmed, he said, by work references. He also noted that there were concerns about her attendance, particularly in a District Office with a limited support staff.
8. Ms. Cable believed that any problems with her attendance could be resolved by transferring her back to the Berlin District Office. She also believed that the agency should take responsibility for providing additional training if they thought her computer skills were weak. She continued to believe that Sarah Cable had some negative influence on the selection process.
9. Ms. Cable and Ms. Chadbourne met with Sandra Platt, Health and Human Services Manager of Human Resources, at a May 27, 1998, Step II informal settlement meeting. Ms. Cable expressed her concern that Mr. Clay had relied on co-worker statements, not supervisory references, in deciding not to select her for Secretary II.
10. Ms. Platt conducted a review of the selection process, and in her June 8, 1998, letter to Ms. Chadbourne, wrote that Mr. Clay had obtained references from Ms. Cable's current and former supervisors. Ms. Platt wrote that those references had described Ms. Cable's difficulty meeting performance standards in both quality and quantity of work, as well as difficulty with her inter-personal skills.
11. Ms. Cable continued to believe that negative or unfavorable information about her may have been obtained from co-workers, rather than appropriate supervisory staff.

12. After the Step II meeting with Ms. Cable and Ms. Chadbourne, Ms. Platt discussed the appellant's work performance with Mr. Nelson, the appellant's current supervisor. He confirmed that the appellant's skills in the use of computers continued to be a concern, that her repeated unscheduled absences affected her ability to complete her work, and despite improvements, she continued to have difficulty with her interpersonal relationships.
13. Ms. Cable considered herself qualified for selection because she met the minimum requirements for the position, and had applied for a position with a lower salary grade than the position she occupied at the time.
14. Although administrative personnel had discussed Ms. Cable's work performance with her from time to time, Ms. Cable had not received a formal performance appraisal for several years.

#### Rulings of Law

- A. Per 602.02 (a): "Whenever possible, selection by the appointing authority to fill a vacancy shall be made from within an agency and shall be based upon the employee's: (1) Possession of the knowledge, skills, abilities and personal characteristics listed on the class specification for the vacant position; and (2) Capacity for the vacant position as evidenced by documented past performance appraisals."
- B. Per 602.02 (d): "Employees may be denied selection if, in the opinion of the appointing authority, they are deemed to lack personal or professional qualifications for promotion."
- C. Per 603.02 (e): "If an employee is not selected after applying for a posted position, the appointing authority shall notify the employee in writing and shall state the reasons why the employee was not selected."
- D. Per 801.06 (a): "Each appointing authority shall be responsible for conducting at least one evaluation per year for each full-time classified employee pursuant to RSA 21-I:42, XIII."

## Decision and Order

After receiving notice of non-selection, Ms. Cable requested resolution through the informal settlement process, asserting that she had the qualifications for selection to the vacancy. Ms. Cable, the State Employees' Association, Mr. Clay, Ms. Platt and Mr. Davis made what appears to be a good faith effort to resolve this dispute through the procedures for informal settlement outlined in the Rules of the Division of Personnel. However, the evidence reflects that the agency could do little to dispel Ms. Cable's belief that Mr. Clay relied on references provided by co-workers, rather than references from appropriate supervisory personnel, when he concluded that Ms. Cable did not possess the personal or professional qualifications for selection.

The evidence reflects that as a result of his interview, Mr. Clay did not believe Ms. Cable possessed the personal and professional qualifications for selection to Secretary'II. His concerns included Ms. Cable's ability to develop and maintain harmonious, effective working relationships, to produce the quantity and quality of work required in the position, and to maintain an acceptable level of attendance.

Mr. Clay's impression of Ms. Cable as a candidate was corroborated by information obtained from Mr. Croteau, one of Ms. Cable's previous supervisors, and Jean Ottolini, one of Ms. Cable's former co-workers from the Berlin District Office who had been selected to serve as the Manager of Administration during that same time frame. There was no clear explanation why Mr. Clay asked for references from former rather than current supervisory personnel. However, the State made an uncontroverted offer of proof that Ms. Cable's current supervisor agreed that Ms. Cable lacked the skills and abilities for selection to the vacancy in the Berlin District Office.

Having considered all the evidence arguments and offers of proof, the Board voted unanimously to DENY Ms. Cable's appeal.

Although the appellant did not persuade the Board to reverse or modify the appointing authority's decision, her presentation did raise some extremely important issues involving an agency's obligations to administer the merit system fairly, and to manage its employees in a fashion that will encourage them to provide their best service to the State. That obligation includes providing objective performance appraisals and appropriate feedback. By its own admission, the Department of Health and Human Services has failed to comply with the requirement of RSA 21-I:42, XIII, that:

- a) All full-time classified employees shall be evaluated on a regular basis.
- b) Evaluations shall be in writing and shall be conducted at least annually.
- c) Evaluations shall be conducted by an employee's immediate supervisor.
- d) Evaluations shall be based upon specific written performance expectations or criteria developed for the position in question and employees shall be made aware of these performance expectations in advance of any evaluation.
- e) The evaluation format shall include a narrative summary on the employee's performance.
- f) Employees shall be permitted to participate in the evaluation process, shall be given a copy of their evaluation, and shall have an opportunity to comment, in writing, on their evaluation, and such comments will be included in the employee's permanent record.
- g) Employees shall have a right to nonconcur, in writing, with their evaluation.
- h) Employees shall certify, in writing, that they have reviewed their evaluation.
- i) Evaluation reports shall be reviewed by the supervisor of the official completing the evaluation who shall concur or nonconcur in writing with each evaluation report.

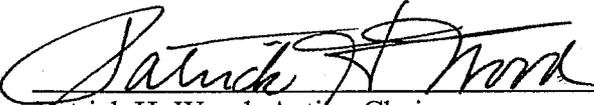
The agency admits that it has not provided a complete a written evaluation of Ms. Cable's performance for the last several years. While the agency asserts that it now has taken steps to ensure agency-wide compliance with RSA 21-I:42, XIII and Per 801.06(a), the benefit to both the agency and the appellant in this case is prospective at best. Absent clearly articulated, specific written performance expectations coupled with regular and timely evaluations of Ms. Cable's performance, the Board is not surprised that Ms. Cable became suspicious about the source of information about her job performance.

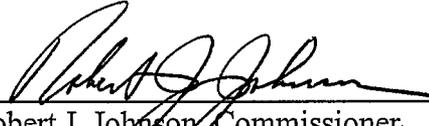
With regular feedback and objective, timely evaluations of her job performance, Ms. Cable might improve both her personal and professional skills sufficiently to help her compete for

future vacancies. Similarly, if the agency has concerns about Ms. Cable's current level of skill, regular feedback and constructive criticism can be used to help the employee become a more productive, effective member of the agency.

As the Board noted during the hearing on the merits, the State's employees are a valuable resource. When they are poorly managed, their value to the State as an organization is diminished. When employees have occasion to question the integrity of the merit system because of the agency's failure to meet its own statutory obligations, the system itself is diminished.

The New Hampshire Personnel Appeals Board

  
Patrick H. Wood, Acting Chairman

  
Robert J. Johnson, Commissioner

  
James J. Barry, Commissioner

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