

State of New Hampshire

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PERSONNEL APPEALS BOARD

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

WILLIAM CHANDLER

Docket #92-P-8
Department of Environmental Services
Response to State's Motion for Rehearing
and Appellant's Response

June 18, 1992

A quorum of the New Hampshire Personnel Appeals Board (McNicholas and Johnson) met Wednesday, June 10, 1992, to consider the State's May 27, 1992 Motion for Rehearing, the appellant's June 1, 1992 Objection to the Motion, and the State's June 1, 1992 addendum to the Motion in the above captioned appeal.

Having reviewed the documents described above in conjunction with its May 7, 1992 decision in this matter, the Board voted to deny the Motion for Rehearing. The State failed to provide sufficient grounds to support a finding that the Board's Order of May 7, 1992 was unlawful or unreasonable. Further, the State failed to persuade the Board it had been denied the opportunity to introduce evidence necessary to defend its decision in this matter.

Early in the hearing, the Department of Environmental Services insisted the selection decision denying the appellant promotion to Principal Planner was based solely on the issue of "poor job fit". In its Motion, the Department of Environmental Services argued, in part:

"Later in the testimony, the board restated 'We are supposed to be limited to whether or not Ms. Yergeau did not think he was suitable because of his lack of interest in the position...' further emphasizing that the board expected the Department to stay within its initial reason for denial." (See Appellant's Motion for Rehearing, May 27, 1992, paragraph 3, page 1)

Per 302.03(e) of the Rules of the Division of Personnel provides that "An employee who is not selected after applying for a posted position shall be informed in writing of their non-selection and, if requested, the reason therefore [sic]." The Board understands circumstances exist which make it difficult to detail the complete rationale for denying an employee promotion.

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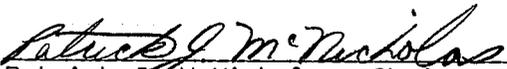
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For instance, when a number of well-qualified candidates apply for promotion, only one can be selected. Notice of non-selection and the "reason therefore" could only advise the unsuccessful applicants that the best qualified candidate was selected.

That was not the case in this appeal. Mr. Chandler was notified his application for promotion was rejected because of "poor job fit", and that while he met the qualifications for promotion he failed to demonstrate a "true interest" in the position. The letter did not allude to weak interpersonal skills or uncertain supervisory relationships, nor did it intimate that "poor job fit" was the "initial reason" for non-selection.

Per 302.03(f) provides that an employee may request the "reason" for non-selection. Requesting and providing a "reason" for denial of promotion would be an empty exercise if the rule were read so narrowly as to suggest that an agency could comply by listing only a single reason for non-selection when the reasons are manifold. Accordingly, the Board voted to deny the Motion for Rehearing. The Board further voted to affirm its earlier order that Mr. Chandler be promoted to the position of Principal Planner.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson

cc: Virginia A. Vogel, Director of Personnel
John Roller, Human Resource Administrator, Dept. of Environmental Services
Stephen J. McCormack, SEA Field Representative

State of New Hampshire



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WILLIAM CHANDLER
Docket #92-P-8
Department of Environmental Services

May 7, 1992

A quorum of the New Hampshire Personnel Appeals Board (McNicholas and Johnson) met Monday, March 2, 1992, to hear the appeal of William Chandler, an employee of the Department of Environmental Services regarding his appeal of non-selection for promotion to the position of Principal Planner. Mr. Chandler was represented at the hearing by SEA Field Representative Stephen McCormack. John Roller, Human Resources Coordinator appeared on behalf of the Department of Environmental Services.

Before hearing the appeal on the merits, the Board heard oral argument on Appellant's Motion to Continue, which the Board received on February 25, 1992 and voted to deny at its meeting on February 26, 1992. Mr. McCormack said the Department of Environmental Services had denied two separate requests for information concerning the ratings and evaluations used by the Department in denying Mr. Chandler promotion. He argued that without the information he had requested through the Board on October 3, 1991, he was unable to adequately prepare Mr. Chandler's appeal.

The October 3rd letter stated, in part:

"It is requested that the Department of Environmental Services:

1. Identify all parties involved in the selection process;
2. Provide the appellant, through the State Employees¹ Association, all documents, ratings and recommendations related to the selection process."

Mr. Roller said the Department had not used any rating system in the selection process, and had not relied on the notes taken by Ms. Yergeau during the interview with Mr. Chandler when it decided to deny him promotion. Mr. Roller said the selection decision was based entirely on Ms. Yergeau's professional assessment of the appellant's level of interest in the specific position, summarized in her letter to the appellant dated October 7, 1991:

"You were not selected for this position because, in my judgement [sic] your answers to the questions posed during the interview did not express a true interest in this specific position. I consider this personal qualification to be essential to the position. I did not utilize a ranking system in this decision."

Under the Board's rules, prehearing discovery is limited to "exceptional circumstances". The Board's procedural rules contemplate an informal exchange of information between the parties. When a party is unable to obtain information necessary for the Board to understand and decide an appeal, it may file a motion for discovery stating specifically the grounds upon which such motion is made. The appellant failed to demonstrate that any circumstances, exceptional or otherwise, warranted additional discovery. Further, the Board would have no reason to consider either the appellant's letter of October 3, 1991 or October 21, 1991, to be Motions for Discovery. The Board would have had no reason to act upon those requests absent a formal motion for discovery, a subsequent finding by the Board that the appellant had been denied access to information necessary for presentation in his case, and proof the appellant had exhausted all reasonable means to secure that information.

Having denied the Motion to Continue, the Board cautioned the Department of Environmental Services that it would not be allowed to stray from the cited basis for non-selection, specifically that Mr. Chandler did not have a true interest in the position of Principal Planner and that his promotion would not have resulted in a good "job fit".

Sharon Yergeau, Administrator of the Waste Management Planning Bureau of the Department of Environmental Services, testified the Principal Planner opening for which Mr. Chandler had applied is a staff level planning position whose major functions included technical assistance, community outreach, and review of Solid Waste District Management Plans. She said she designed her interview questions to assess each candidate's personal, technical and communication skills and level of job motivation. She said Mr. Chandler concentrated throughout the interview on what the promotion would accomplish for him in furthering his own career interests rather than the contribution he could make to the agency. She said he expressed his desire to secure a management level position as part of his plan to ultimately attain appointment as a Division Director or as the Commissioner of Environmental Services.

Ms. Yergeau testified the position of Principal Planner is not a managerial position and, in light of the appellant's explanation of his own career plans, she did not believe he would stay in the position long enough to warrant the amount of time she would have to spend training him. Although Mr. Chandler met the minimum qualifications for the position, Ms. Yergeau believed his appointment would not be a good "job fit". She testified she considered "job fit" and attitude toward the job the most important qualifications for promotion. She said candidates who do not fit the job usually lack effectiveness and don't remain in a job long enough to justify the amount of time required to train them. She said Mr. Chandler failed to demonstrate a true interest in the position and she rejected his application for promotion on that basis.

Mr. Chandler testified he had been employed as a Land Agent since 1984. He said he was certified as meeting the minimum qualifications for promotion to Principal Planner and Senior Planner, but there were no planning positions in Water Resources. Mr. Chandler testified he had participated fully and candidly in the interview process and had no recollection of commenting on his career goals except where he had listed them in the writing sample he and the other candidates had been asked to complete.

Mr. McCormack asked Mr. Chandler to describe candidly why he believed he had not been selected for promotion. Mr. Chandler did not answer the question directly. Instead, he said he had requested the reasons for non-selection in writing and hoped to receive a response indicating the Department had selected someone more qualified than he. He said he was shocked to learn that there were two vacancies instead of one and that he had been denied promotion to either position for "for some questionable motive".

Mr. McCormack then asked the appellant if the Department might have denied him promotion on the basis of his personality, or their view of his personality. Mr. Chandler replied it was difficult to say. He testified he had been turned down for at least four promotional opportunities including Chief Environmental Planner, Assistant Planning Director, Principal Planner and Senior Planner. Mr. Chandler said he was interested in the position and would plan on staying in such a position for three to four years.

In consideration of the record before it, the Board voted to grant Mr. Chandler's appeal, ordering him promoted to the position of Principal Planner.

Per 302.03 (a) and (b) of the Rules of the Division of Personnel provide the following:

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

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

Mr. Chandler has been employed by Water Resources since 1984, and is certified as meeting the minimum qualifications for promotion to Principal Planner. The only reason given for denying him promotion was his "lack of interest" in the specific position. Ms. Yergeau appears to have drawn that conclusion based on the appellant's statement that he ultimately would hope to be appointed as Commissioner of the Department of Environmental Services. The Board did not consider this "job fit" issue or the appellant's lofty career aspirations sufficient evidence that the appellant lacked the personal and/or professional qualifications for promotion.

During direct examination of the appellant Mr. McCormack hinted that the underlying reason for non-selection might have been the appellant's

personality rather than a concern about "job fit". The appellant failed to answer the question directly, and the agency never pursued the line of questioning. The Board noted that several times during the course of the hearing, the appellant failed to provide direct answers to questions posed by both Mr. McCormack and Mr. Roller. At one point when pressed for a response to a question during cross-examination, the appellant became loud and argumentative, demanding that the Board order the Department to turn over its copy of the writing sample he produced during the promotional interview. Had Departmental concerns about the appellant's demeanor been a factor in the decision, the Board could have upheld the denial of promotion. However, the Department continually maintained the appellant was denied promotion solely on the basis of "poor job fit" because he seemed to express a greater interest in the furtherance of his own career plans than in what he could learn from and contribute to the promotional position. The Board did not find that to be sufficient reason to deny him promotion and his appeal is therefore granted.

The Board ruled as follows on the Department's Request for Findings of Fact and Rulings of Law:

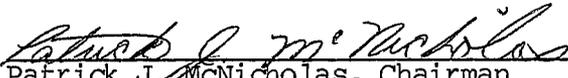
Findings of Fact -

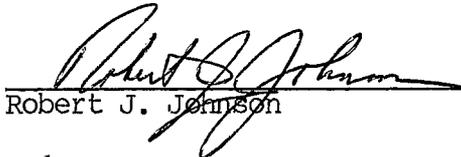
- 1, 3, 4, 5, and 6 are granted
- 2 is neither granted nor denied
- 7 is denied

Rulings of Law -

- 8 is denied.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson

cc: Virginia A. Vogel, Director of Personnel
John Roller, Human Resource Administrator, Dept. of Environmental Services
Stephen J. McCormack, SEA Field Representative