

# State of New Hampshire

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## PERSONNEL APPEALS BOARD

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

### APPEAL OF WILLIAM CHANDLER Response to Appellant's Motion for Rehearing

Undocketed Promotional Appeal  
Denial of Promotion to Principal Planner (Rivers Coordinator)

December 5, 1991

On October 30, 1991, Attorney Richard de Seve filed with the Board a Motion for Rehearing in the above-captioned appeal. The State's objection to that motion was filed by Attorney John Dabuliewicz by letter dated November 18, 1991.

After considering the grounds set forth in the appellant's Motion for Rehearing and the State's Objection, the Board (McNicholas, Bennett and Rule) voted to affirm its earlier decision and to deny the appellant's Motion for Rehearing.

The appellant argued that the Board had mistakenly assigned the burden of proof to the appellant, arguing that the appellant had offered ample evidence of his (qualifications for promotion, and that the Department of Environmental Services must establish by a preponderance of the evidence that the appellant lacked the qualifications for promotion. As one of several in-house candidates for promotion, Mr. Chandler would have had the burden of proving that he was the best qualified of those candidates. However, inasmuch as none of the other candidates appealed their denial of promotion, the burden of proof has shifted, and the appellant is correct in his assertion that the Department of Environmental Services must demonstrate that promotion of the appellant was not possible or reasonable. Having provided such evidence, the Department's denial of promotion was upheld and the appeal denied.

Although the parties stipulated that Chandler met the minimum qualifications by virtue of education and experience, the parties disagreed on the "personal and professional qualifications" for promotion. Chandler argued that Simmers' mistaken belief that the appellant had made unauthorized contacts with the Attorney General's Office and the legislature formed the basis of his negative assessment of Chandler's "approach" to the position of Principal Planner. The appellant further argued that the Board committed error in failing to make such a finding.

That argument is not supported by the record. The Board found Chandler's "approach" to be defined by his objection to the possibility that management might "dilute" the responsibilities of the Rivers Coordinator by expecting the position to perform other planning duties for the Commissioner's Office. Respondent's Exhibit #2, Simmers' October 12, 1988 letter to the appellant, states: "An additional problem with your approach is the concern, based on past performance, that you would go beyond your authority and direction in carrying out the job as you believe it should be. ..." The central issue of Chandler's "approach" was described by Simmers as follows:

"In the interview, you made it clear that you were only interested in the job if you were going to be able to devote 100 percent of your time to the new rivers Program. ... As I explained in the interview, the Rivers Coordinator will have other responsibilities (the Merrimack River Initiative) for a period of six - nine months that will take approximately half of the person's time. Also, in light of the increasing demands on the Planning Unit in a number of areas, and its function within the Office of Commissioner, it will be necessary for the Rivers Coordinator to perform other duties from time to time as assigned by either myself or the Assistant Commissioner. These conditions are clearly outside of the limitations you placed on your interest in this position." (Exhibit 2)

In support of his Motion for Reconsideration, the appellant reiterated his argument that he had never "refused" to perform ancillary duties as might be assigned. He further argued that he had produced more than sufficient evidence to rebut the Department's evidence that he was not qualified by reason of his experience, education and approach, and stated the following:

"The Board's granting of the Department's Request for Finding of Fact #2, that the applicant had stated that he would be unwilling to perform related duties not directly connected to the Rivers Management and Protection Program as assigned by his superiors., is inconsistent with the finding in the Board's opinion that Mr. Chandler would not have refused to perform planning duties other than those directly related to the Rivers Coordinator position."

Mr. Chandler testified at the hearing that he was surprised about the "shift" in the Principal Planner's duties and that it was "clearly [his] impression" that the promotion would entail "full-time working on Rivers Management". Inasmuch as this issue appears to be central to the appellant's Motion for Rehearing, a portion of the appellant's testimony is reproduced as follows:

"There may have been some, not discussion, but some indication that there may be other assignments that come along to which I had no objection as long as they weren't diluting the responsibilities of the Rivers Coordinator position and meeting the deadlines".

"I was being interviewed for the position of Rivers Coordinator. We had a State Statute. We had the generic description for Principal Planner. I was applying for the position of Rivers Coordinator because I thought I was well qualified. I did not bring up the matter of any ancillary planning functions. I was not looking to do any other functions than that of Rivers Coordinator."

"Mr. Simmers did raise the possibility that there may be ancillary functions assigned to the Rivers Coordinator. They were not discussed specifically. I responded by saying, "As long as those ancillary responsibilities would not deteriorate or take away from the primary function of the Rivers Coordinator that I would obviously perform those functions. I never refused to perform any other functions".

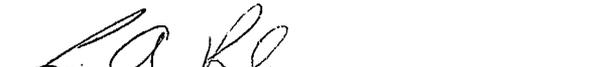
Clearly Mr. Chandler had established the parameters within which he intended to perform the duties of Principal Planner if offered the promotion. The Board continues to find that Chandler's expressed disinterest in performing ancillary responsibilities, as well as his reluctance to discuss those other functions as part and parcel of the classification of Principal Planner characterize his "approach".

Therefore, the Board found, and continues to find, that although Mr. Chandler was certified as meeting the minimum qualifications in the areas of education and experience, he did not possess the personal and professional qualifications for promotion to Principal Planner. The Board voted unanimously to deny the appellant's Motion for Rehearing and to affirm its earlier order denying Mr. Chandler's appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Mark J. Bennett

  
Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel  
John Dabuliewicz, Esq., Dept. of Environmental Services  
Richard de Seve, Esq.



# State of New Hampshire

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## PERSONNEL APPEALS BOARD

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

### APPEAL OF WILLIAM CHANDLER (Undocketed)

Department of Environmental Services

October 11, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Rule) met Wednesday, July 24, 1991, to hear the promotional appeal of William Chandler, an employee of the Department of Environmental Services, relative to his denial of promotion to the position of Principal Planner (Rivers Coordinator) during the fall of 1988. The appellant was represented at the hearing by Attorney Richard de Seve. Attorney John Dabuliewicz, Assistant Commissioner of Environmental Services, appeared on behalf of the agency.

The Board granted Attorney de Seve's Motion for Late Filed Appearance, finding that the State would not be prejudiced by such late filing. In response to an earlier inquiry from the parties concerning the order of presentation, the Board ruled that the Department of Environmental Services would present its evidence first.

The Board accepted the parties' jointly filed Stipulation of Facts as follows:

"William R. Chandler was certified on September 6, 1988 by the New Hampshire Division of Personnel for appointment as a principal planner, Labor Grade 23, which is the classified title for the Rivers Coordinator position.

"Chief Environmental Planner Chris A. Simmers interviewed Mr. Chandler for the Rivers Coordinator position on September 16, 1988. No one but Mr. Simmers and Mr. Chandler were present during the interview.

"Mr. Chandler was notified of his non-selection in accordance with the provisions of New Hampshire Code of Administrative Rules Per 302.03(e) by virtue of documents dated September 21 and October 12, 1988.

"This appeal was timely filed.

"Ms. Beth Patrino assumed the position of Rivers Coordinator on November 16, 1988. Ms. Patrino's appointing was a lateral transfer from the Office of State Planning, and not an in-house appointment.

"The in-house personnel file on Mr. Chandler contained no complaints, warnings, or other documents which would reflect negatively on Mr. Chandler's performance as of September 16, 1988."

At the conclusion of the hearing on the merits, neither party submitted requests for findings of fact and rulings of law. Both parties, however, filed Motions for late-filing of such pleadings on July 25, 1991, the day after the hearing. The Board, at its meeting of September 25, 1991, voted to grant both Motions.

Throughout the course of his appeal, Mr. Chandler has maintained that he was a qualified permanent employee of the Department of Environmental Services and that, as such, the Department was obligated to select him for promotion to the position of Principal Planner (Rivers Coordinator) if such promotion were reasonable and possible. The State argued that although the appellant did meet the minimum qualifications for promotion to Principal Planner, his insistence upon having his assignments limited to the statutorily defined duties of the Rivers Coordinator position made such promotion unreasonable.

The Board, in considering the instant appeal, found that the central issue in dispute concerns the appellant's "approach" to the position vacancy. The parties have stipulated that the appellant met the minimum qualifications for promotion by virtue of education and experience, and that Mr. Chandler's file contains no complaints, warnings or notices of unsatisfactory performance. The Board, therefore, will limit its discussion to the appellant's suitability for the vacancy.

Chris Simmers, DES Chief Environmental Planner, testified that during his interview with Mr. Chandler for the Principal Planner position, the appellant made it clear to him that he was interested solely in the Rivers Coordinator duties, and that he was not interested in being "just another Planner" in the Commissioner's Office, or in being Simmers' assistant. Mr. Simmers testified that the appellant's expressed disinterest in performing any of the related duties expected of Principal Planners disqualified him as an appropriate candidate for promotion.

The appellant testified that he had not refused to perform duties other than those specifically described by the statute creating the Rivers Coordinator position. He testified that he was surprised during his interview with Mr. Simmers by the "shift" in duties. He indicated it was clearly his impression that the position for which he had applied would be devoted full-time to the Rivers Management program. He further testified that he had some grave

concerns about the Department being able to meet the mandated reporting deadlines described by the Rivers Management legislation if it were to assign ancillary duties to the Rivers Coordinator. He concluded that he had no objection to performing related duties as long as they did not dilute the Rivers Coordinator responsibilities or compromise the legislative reporting deadlines.

Per 302.03(b) of the Code of Administrative Rules, Rules of the Division of Personnel, provides as follows:

"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."

Mr. Chandler's testimony essentially corroborated what Mr. Simmers had said about the appellant's "approach" to the position of Rivers Coordinator. While the appellant was capable of performing related planning duties, and would not have refused to perform those duties, he would have insisted that the Rivers Management program take precedence over other assignments from the Commissioner's office. The Board found the appellant's view of the duties and responsibilities of the position, and his reservations about the Department "diluting" the responsibilities of the position sufficient evidence that the appellant was not a suitable candidate for the position of Principal Planner.

The appellant has the burden of proving that he was the best qualified in-house candidate for promotion, that he possessed the personal and professional qualifications for promotion, and that the State abused its discretion in denying him promotion under the provisions of Per 302.03 of the Rules of the Division of Personnel. The appellant failed to meet his burden. Accordingly, the Board voted to deny Mr. Chandler's appeal. In so doing, the Board ruled as follows on the parties' Requests for Findings of Fact and Rulings of Law:

Appellant's Requests for Findings of Fact (numbered 1 - 13):

1 and 2 are granted.

3 is denied

4 is granted.

5 is granted to the extent Delbert Downing was Mr. Chandler's immediate supervisor for reporting purposes.

6 - 8 are denied.

9 is neither granted nor denied.

10 - 11 are granted, but are not dispositive of this appeal.

12 is granted to the extent that it is consistent with the Joint Stipulation of Facts.

13 is denied.

Appellant's Requests for Rulings of Law (numbered 12 - 15)

\*12 is denied.

\*\*13 is granted, however, the Board found that because of the appellant's "approach" to the position, although he was an ostensibly qualified candidate, certified as meeting the minimum qualifications by virtue of education and experience, he lacked certain personal and professional qualifications for promotion.

14 - 15 are denied.

State's Requests for Findings of Fact (numbered 1 - 6)

1 is granted.

2 is granted to the extent that it is consistent with the decision above.

3 - 5 are granted.

6 is granted to the extent that it is consistent with the decision above.

State's Requests for Rulings of Law (numbered 7 - 8) are granted.

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\*Appellant misnumbered his requests, duplicating #12 in his proposed rulings  
\*\*Appellant misnumbered his requests, duplicating #13 in his proposed rulings



# State of New Hampshire

WPPID504



NOTE: CORRECTED COPY  
Original misdated

## PERSONNEL APPEALS BOARD

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### APPEAL OF WILLIAM CHANDLER

Response to Appellant's Motion to Continue  
Response to Appellant's Request for Depositions

May 17, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, April 24, 1990, for a prehearing conference in the appeal of William Chandler. At that meeting, the appellant's representative, Attorney Richard Molan, filed a Motion for Continuance of Prehearing Conference and his Withdrawal as the appellant's representative. The Board denied the Motion for Continuance, notifying Mr. Molan by telephone that Mr. Chandler and or a representative, should plan to be at the prehearing conference as scheduled. The appellant did appear without representation, and argued that the Board should grant his request for continuance to allow him the opportunity to seek representation. John Dabuliewicz, Assistant Commissioner of the Department of Environmental Services, concurred with his request. The Board rescheduled the pre-hearing conference at 9:00 am. on Wednesday, May 22, 1991 in Room 401, State House Annex, Concord, New Hampshire.

The appellant raised objections to the failure of the Attorney General's Office to withdraw its appearance on behalf of the Department of Environmental Services, to the notice of prehearing conference, and to the Board's lack of response to several of the pleadings filed on his behalf by Attorney Molan, including his continuing request for discovery.

Before addressing Appellant's outstanding requests, the Board reviewed its file in this matter, noting the requests and responses made to date:

September 26, 1988: Mr. Chandler, through his SEA Field Representative Jean Chellis, originally filed a request for hearing on denial of promotion to the position of Principal Planner (Rivers Coordinator), Department of Environmental Services, stating he "believe[d] the refusal to promote him ... is inappropriate since he has been certified for the position by the Division of Personnel and since he feels more than adequately qualified to fill the position".

September 29, 1988: The Board issued its first order, allowing the appellant five days in which to re-file his appeal "stating fully the grounds upon which the appeal is made", noting that "simply stating that the appellant met the minimum qualifications for consideration and feels qualified for the position fails to satisfy the standard defined by rule for proper filing of an appeal".

APPEAL OF WILLIAM CHANDLER

Response to Appellant's Motion to Continue  
Response to Appellant's Request for Depositions  
page 2

October 8, 1988: Ms. Chellis responded to the Board's order, arguing that Per 302.03(a) of the Rules of the Division of Personnel requires that vacancies be filled, whenever possible and reasonable, by promotion of a qualified permanent employee from within the department or agency, and that Mr. Chandler was deemed "qualified" by the Director through his certification for the position. Ms. Chellis further argued that Per 102.01(e) provides that "State service, as far as practicable, be made attractive as a career". Therefore, she concluded that the Department of Environmental Services' decision to recruit outside the department, after having interviewed the in-house candidates, violated the intent of the Rules.

November 10, 1988: Ms. Chellis, on Appellant's behalf, filed a Motion for Discovery, stating, "the basis of the action taken by the [Department of Environmental Services] and the basis of the appeal by the appellant are statements made by third parties to the Appellee's agent, Chris Simmers<sup>n</sup>. Therefore, Appellant argued that the "best manner in which to obtain this information with the least amount of inefficiency and interference with Departmental work is to propound interrogatories to Mr. Simmers with respect to the statements he received."

November 28, 1988: The Board ordered the Department of Environmental Services to respond to the Appellant's Motion for Discovery, ruling that it would hold Appellant's motion in abeyance until receipt and review of the Department's response.

November 29, 1988: Field Representative Chellis requested a timely response to the November 10, 1988 motion (as answered by the Board on November 28, 1988).

December 6, 1988: Chris Simmers, Chief Environmental Planner (Department of Environmental Services) filed the department's objection to the Motion for Discovery, arguing that the information sought by Appellant "was provided in a confidential manner and merely served to reinforce Mr. Simmers' concerns regarding Mr. Chandler's ability to carry out the job according to departmental requirements and standards. The interrogatories requested in the Motion for Discovery would require Mr. Simmers to violate the confidence in which the comments were given and would go beyond what is relevant for the Appeals Board review of the Department's non-selection of Mr. Chandler."

December 7, 1988: Chris Simmers filed a supplemental response to the Board's November 28th order, stating that his October 12, 1988 letter to Mr. Chandler informed him that "the primary reason for his non-selection was his reluctance to perform other duties beyond the Rivers Coordinator from time to time. This reason was based solely on statements made during the interview with Mr.

APPEAL OF WILLIAM CHANDLER

Response to Appellant's Motion to Continue  
Response to Appellant's Request for Depositions  
page 3

Chandler and does not involve any third party statements. The statements made by third parties represented an additional concern<sup>n</sup>, not the basis for the non-selection. Mr. Simmers reasserted the department's belief that "the normal appeal process, which should focus on the primary reason for Mr. Chandler's non-selection, will provide sufficient information for all parties to evaluate the Department's decision<sup>n</sup>".

December 12, 1988: SEA Representative Chellis filed Appellant's Response to Appellee's Objection to Motion for Discovery, arguing that "references to prospective employers are generally not viewed as unconditionally confidential, nor absolutely privileged". Ms. Chellis further argued that the reasons provided for Mr. Chandler's non-selection may have been laid out sequentially in the October 12th letter, but were not referred to as primary or secondary, and that third-party statements to Mr. Simmers did form the basis of Chandler's non-selection. Ms. Chellis argued that "due process commands, the Right to Know Law and the requirement of a fair adjudicative proceeding require the [Appellee] to disclose the sum and substance of the aforementioned statements and outweigh any defense of confidentiality<sup>n</sup>".

January 30, 1989: The Board notified the parties that a hearing had been scheduled in the matter for February 15, 1989.

February 3, 1989: SEA Field Representative Chellis filed a Motion to Continue until the Personnel Appeals Board provided a timely ruling on Appellant's Motion for Discovery. That Motion noted that the opposing party objected to any continuance.

February 15, 1989: The Promotion Appeals Tribunal (Scott and Liouzis) heard oral argument on Appellant's Motion for Discovery.

February 16, 1989: John D. Roller, Human Resource Coordinator for the Department of Environmental Services, filed a request that the appeal be dismissed, noting that "Mr. Chandler stated on the record during the February 15 hearing before the Personnel Appeals Tribunal on his Motion for Discovery that if the Department had made an in-house selection for the position, he would not have appealed the decision. Mr. Chandler is therefore not appealing his own non-selection, but rather an agency's right to hire an outside candidate for a vacant position if the agency feels all in-house applicants are lacking in certain qualifications". Mr. Roller concluded that a hearing before the Tribunal "is not the appropriate forum for challenges to established rules of the Division of Personnel<sup>n</sup>".

February 23, 1989: SEA Field Representative Chellis filed an objection to the request for dismissal of Mr. Chandler's appeal.

March 31, 1989: The Tribunal denied the agency's Motion to Dismiss, stating the record of the hearing could not support the agency's conclusion that Mr. Chandler was appealing the application of a policy rather than his non-selection for promotion.

APPEAL OF WILLIAM CHANDLER

Response to Appellant's Motion to Continue  
Response to Appellant's Request for Depositions  
page 4

March 31, 1989: The Tribunal ruled on Appellant's Motion for Discovery, granting **it** in part. In so ruling, the Tribunal noted that Appellant's request to propound interrogatories "...to ascertain the source and substance of each and every statement made by third parties in regards to Department inquiries ... goes well beyond what appears necessary and pertinent to the case". The Tribunal ordered the department to respond, within eight working days, to Appellant's interrogatories in keeping with the guidelines of the Tribunal's order.

April 21, 1989: Chris A. Simmers filed a timely response to Appellant's interrogatories.

May 1, 1989: SEA Field Representative Chellis wrote to the Tribunal, stating that Appellant found the agency's replies unresponsive. Ms. Chellis therefore requested that the Tribunal compel Mr. Simmers to "fully" respond to the interrogatories or, in the alternative, allow the Appellant to depose Mr. Simmers.

May 23, 1989: Ms. Chellis again requested that the Appellant be ordered to respond "fully" to the interrogatories, or to submit to a deposition of Mr. Simmers.

May 25, 1989: The Board issued a Ruling on Motion to Compel, finding that "the appointing authority has correctly interpreted the quoted language [of the prior Tribunal order] to mean that **it** need only produce information relative to evidence that **it** intends to produce before the Board". The agency was allowed five working days from date of receipt of the order to provide any supplemental answers the agency wished to provide, noting that any statements **it** intended to make during the evidentiary hearing that were "to be supported by specific examples or by reference to conversations with specific individuals. .. need to be disclosed". The order went on to provide the appellant with an opportunity to request permission for depositions **if** still not satisfied with the response, provided that the appellant first contacted the appointing authority and made a good faith attempt to resolve the discovery issues.

June 19, 1989: John Roller, Human Resource Coordinator for the Department of Environmental Services, responded to the Board informing the Board the agency did not wish to supplement its answers to the interrogatories.

June 22, 1989: SEA Representative Chellis requested permission to depose both **Mr.** Simmers and Mr. Mollineaux, stating no resolution to the discovery issues had been reached.

APPEAL OF WILLIAM CHANDLER

Response to Appellant's Motion to Continue  
Response to Appellant's Request for Depositions  
page 5

June 26, 1989: The Board notified the parties it was hesitant to establish precedent by routinely permitting the depositions of individuals involved in appeals before the Tribunal or Board, and stated the Tribunal would allow them ten additional days in which to meet and resolve any outstanding discovery issues. That same order directed the parties to appear for a hearing on the merits of this appeal on July 26, 1989.

June 30, 1989: SEA Representative Chellis requested that the appellant be allowed a minimum of 30 minutes to present testimony because he had been denied a request for depositions.

July 18, 1989: Attorney Richard E. Molan filed his appearance on behalf of William Chandler.

July 19, 1989: SEA Field Representative Chellis withdrew her appearance on behalf of Mr. Chandler.

July 20, 1989: Chris Simmers notified the Board that Environmental Services would be represented in the Chandler appeal by Assistant Attorney General Stephen Judge. Mr. Simmers also requested the Department be allowed a full thirty minutes for presentation of its case.

July 26, 1989: The scheduled hearing was postponed as a key witness was involved in a medical emergency and would be unable to appear. Both parties were notified by telephone of the postponement.

August 10, 1989: Attorney Molan registered with the Board a complaint that a copy of Mr. Simmers' letter of July 20, 1989 to the Board was sent to Mr. Chandler by messenger mail, and was not marked "confidential". Mr. Molan further argued that delivery by messenger mail was contrary to Per-A 206.02(d) requiring personal service, or delivery by first class mail.

August 15, 1989: Attorney Molan again requested the Board to order the depositions of both Mr. Simmers and Mr. Mollineaux, arguing that "the responses to the interrogatories while facially complete, continue to leave open other areas that would seem appropriate for purposes of discovery in that Mr. Chandler is put in the position of having to prove his competency against allegations made by unidentified persons or from general platitudinal rationales<sup>m</sup>.

September 18, 1989: Assistant Attorney General Judge filed with the Board the State's objection to the request for depositions, noting his objection to Appellant's statement that "a ten-day period went by without contact on behalf of the state to Ms. Chellis". He argued that Ms. Chellis was contacted by the State and that a meeting was arranged, but later cancelled by Ms. Chellis who withdrew from the case shortly thereafter. Assistant Attorney General Judge

APPEAL OF WILLIAM CHANDLER

Response to Appellant's Motion to Continue  
Response to Appellant's Request for Depositions  
page 6

asked that no additional discovery be allowed. However, if the Board were to order the depositions of the State's witnesses, then he asked that Mr. Chandler and his witnesses be deposed as well.

October 15, 1989: Attorney Molan filed a request for a ruling on his previous request for depositions.

March 2, 1990: The Board notified the parties a hearing on the merits had been scheduled for March 20, 1990.

March 7, 1990: Attorney Molan filed with the Board a request to continue the hearing, informing the Board that Mr. Chandler would be serving as a juror in the Merrimack County Superior Court. He suggested the Board could consider scheduling the matter late in the day, after 4:00 p.m. He also suggested the Board might use the currently scheduled hearing to address his discovery request. Attorney Molan also requested that the Board schedule additional time for the evidentiary hearing, but did not specify how much time he believed would be required.

March 19, 1990: The Board provided written notice to the parties confirming that the hearing scheduled for March 20, 1990, had been postponed.

October 15, 1990: Attorney Molan filed a Motion, requesting that the Board order the Department of Environmental Services to refrain from filling the Rivers coordinator position which had become vacant because of the resignation of the incumbent.

October 24, 1990: Assistant Attorney General Stephen Judge filed the Defendant's Objection to the appellant's October 15, 1990 motion, arguing that the Board lacked jurisdiction to order the Department not to fill the vacancy.

April 3, 1991: John Dabuliewicz, Assistant Commissioner of the Department of Environmental Services, filed his appearance on behalf of the Department, and filed a Motion for Prehearing Conference.

April 9, 1991: The Board notified the parties that a prehearing conference would be held on April 24, 1991, to: 1) simplify the issues and define those matters to be addressed during the hearing on the merits, 2) stipulate to those facts not in dispute, and 3) reach agreement on proposed changes to the order of presentation by the parties.

April 24, 1991: Attorney Molan filed a written withdrawal of his appearance on the appellant's behalf, and a Motion for Continuance of the Prehearing Conference.

APPEAL OF WILLIAM CHANDLER

Response to Appellant's Motion to Continue  
Response to Appellant's Request for Depositions  
page 7

- A. August 10, 1989 complaint that a copy of Mr. Simmers' July 20th letter to the Board was sent to Mr. Chandler by messenger mail, and was not marked "confidential", and that delivery by messenger mail was contrary to Per-A 206.02(d) requiring personal service, or delivery by first class mail.

At the April 24, 1991 prehearing conference, Mr. Chandler objected to the Board's failure to impose sanctions in response to Attorney Molan's August 10, 1989 complaint.

Attorney Molan's letter of August 10, 1989, was not a request that sanctions be imposed. Rather, it advised the Board, "...that the Appellant reserves his applicable rights to request the Tribunal to determine a violation and to sanction Mr. Simmers accordingly, as stipulated in Per-A 206.03."

The records of appeals before the Personnel Appeals Board are public records, and are open to inspection by any interested party. The Board therefore found that the Department of Environmental Services committed no offense for which any sanction would be appropriate.

- B. August 15, 1989 request that the Board order depositions of both Mr. Simmers and Mr. Mollineaux, that "the responses to the interrogatories while facially complete, continue to leave open other areas that would seem appropriate for purposes of discovery in that Mr. Chandler is put in the position of having to prove his competency against allegations made by unidentified persons or from general platitudinal rationales".

The Board has granted the appellant extensive pre-hearing discovery, and remains of the opinion that no useful purpose will be served by allowing the depositions of either Mr. Simmers or Mr. Mollineaux. The Board affirms its order of May 25, 1989, which stated:

"The Appointing Authority need not produce information about conversations or events on which it does not intend to rely in support of its decision before the Tribunal."

The Board remains unconvinced that such extensive discovery is required for a fair hearing on this matter. As has been clearly stated in several prior orders of this Board and the Tribunal, neither the Appointing Authority nor the appellant will suffer through the admission of unsupported testimony or evidence. The Board refers both parties to the Board's May 25, 1989 Ruling on Motion to Compel. Accordingly, the appellant's request for permission to take the depositions of Chris Simmers and George Mollineaux, and the State's request for depositions of Mr. Chandler and his witnesses are denied.

APPEAL OF WILLIAM CHANDLER

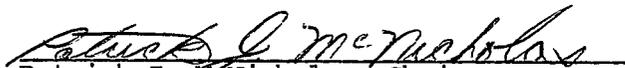
Response to Appellant's Motion to Continue  
Response to Appellant's Request for Depositions

page 8

- C. October 15, 1990, request that the Department of Environmental Services be ordered to refrain from filling the vacant Rivers Coordinator position.

The Department of Environmental Services indicated at the prehearing conference on April 24, 1991, that because of budgetary concerns, the Rivers Coordinator position was not filled. In his October 15, 1990 Motion, the appellant contended that the incumbent in that position had resigned, but offered no information about a subsequent posting of the vacancy. Inasmuch as the Department has already indicated that it has no intention of filling the position of Rivers Coordinator at this time due to budgetary constraints, the Board found that the request is moot.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Robert J. Johnson

  
Mark J. Bennett

cc: William Chandler  
John Dabuliewicz, Assistant Commissioner of Environmental Services  
John D. Roller, Human Resource Coordinator, Dept, of Environmental Services  
Virginia A. Vogel, Director of Personnel