

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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## APPEAL OF MURIEL FAULKNER

*Docket #98-P-4*

*New Hampshire State Liquor Commission*

*February 18, 1998*

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met on Wednesday, October 15, 1997, under the authority of RSA 21-I:58, to hear the appeal of Muriel Faulkner, an employee of New Hampshire State Liquor Commission. Ms. Faulkner, who was represented at the hearing by SEA Steward William McCann, was appealing her non-selection for promotion to the position of Manager I at Store #72 in Concord. George E. Liouzis, Human Resources Administrator, appeared on behalf of the Commission. Without objection from either party, the appeal was heard on offers of proof by the representatives of the parties.

The record in this matter consists of the notices and orders issued by the Board, pleadings submitted by the parties, the audio tape recording of the hearing, and documents admitted into evidence as follows:

### State's Exhibits

1. 5/6/97 memo from George Liouzis to John Bunnell, Director of Stores

### Appellant's Exhibits

1. 6/24/97 letter from George Liouzis to William McCann
2. Memo of 7/18/97 to Liquor Commission from John Bunnell, Director of Stores
3. Memo of 7/17/97 to Liquor Commission from George Liouzis
4. 7/28/97 letter from Commissioner Anthony Maiola to William McCann
5. 5/8/97 letter from George Liouzis to Muriel Faulkner
6. 2/29/97 letter from George Liouzis to Muriel Faulkner

6. 2/29/97 letter from George Liouzis to Muriel Faulkner
7. Page 1-13 of the NH Liquor Commission's Store Operation Manual
8. 6/23/97 memo from William McCann to John Byrne, Chairman, NH State Liquor Commission

Mr. McCann argued that Ms. Faulkner, a qualified, permanent employee, was improperly denied selection for promotion. In his written arguments, Mr. McCann alleged:

1. That the Liquor Commission's decision did not take into consideration Ms. Faulkner's "capacity for the vacant position as evidenced by documented past performance appraisals," as required by Per 602.02 (a)(2) because the agency failed to complete such appraisals of Ms. Faulkner's performance for a period in excess of 3 years;
2. That the Liquor Commission violated Per 501.06 (b) by using different interview panel members to interview Ms. Faulkner than those who were used to interview Mr. Hill;
3. That the Liquor Commission violated Per 501.06(c) when the Director of Stores asked Ms. Faulkner about her health, thereby providing personal information about the appellant to the other members of the interview panel; and
4. That the selection of Mr. Hill violated Per 405.01 (a), Per 405.01 (b)(2) and the Commission's Store Operations Manual because he failed to meet the minimum qualifications for selection.

Mr. Liouzis responded to the Appellant's written allegations as follows:

1. The Liquor Commission only takes performance evaluations into consideration during the selection process when there have been performance problems, and in this instance, Ms. Faulkner's job performance was not an issue.
2. Although the Liquor Commission uses a structured interview format as part of the selection process for positions in the Manager classification, those positions are not subject to the "Structured Interview" requirements of Per 501.06. The Commission makes every effort to use the same interviewers for each applicant to a classification, but that sometimes is not possible. Commission employees who serve on the interview panels are very familiar with the job requirements, understand the interview and

selection process, and know how to achieve consistent scoring of the applicants' responses.

3. Ms. Faulkner's interview scores were based solely upon her responses to five job-related questions, 2 of which she answered poorly. Mr. Bunnell's inquiry about the appellant's health did not prejudice her in any way or affect the way in which the panel scored her answers.
4. The selected candidate met the qualifications for Manager I. There is no requirement for an applicant to have obtained the necessary experience involving public contact and the handling of money as an employee of the Commission.

Mr. McCann argued that Robert Hill, the selected candidate, received a score of 81.25% interviewing for a position of Manager III. He argued that Mr. Hill did not meet the minimum qualifications for that position and therefore, his score should not have counted for the Manager I opening. He argued that when Ms. Faulkner interviewed for a Manager III vacancy in 1996, her score was 84.25%, 3 points higher than Mr. Hill's score.

Mr. McCann asserted that when John Bunnell asked Ms. Faulkner about her health, he made personal, non job-related information available to the other interviewers. He argued that upon hearing the question, Ms. Faulkner immediately assumed she would not get the job. He argued that the effect on Ms. Faulkner's interview performance and/or the panel's rating of her performance was evident in the decrease in her interview score from 84.25% in 1996 to 76.25% in 1997.

Mr. McCann argued that the Liquor Commission violated the Rules of the Division of Personnel by using a different panel to interview Ms. Faulkner than the panel used to interview Mr. Hill. He argued that since the Commission uses a structured interview format, the process is subject to all the requirements of Per 501.06. He also argued that there were no mitigating factors or extenuating circumstances that would excuse the Commission from using the same panel to interview all the Manager I candidates.

Mr. McCann argued that by failing to provide Ms. Faulkner with timely appraisals of her performance, the Commission denied her any meaningful review of her capacity for the Manager I vacancy. He also argued that throughout the informal settlement process, the Commission refused to admit that by failing to complete annual performance evaluations, the Commission had violated the Personnel Rules.

Mr. McCann asked the Board to find that the entire selection process deviated so far from the requirements of the Rules of the Division of Personnel that the only appropriate solution was to order Mr. Hill removed from the Manager I position and Ms. Faulkner promoted, retroactively, in his place.

Mr. Liouzis argued that some managers complete employee evaluations by simply marking "meets expectations" or "does not meet expectations," while others are more "flowery" in describing an employee's work. He said that the Commission, therefore, only considers performance evaluations when there are issues of unsatisfactory work. He argued that in the absence of an evaluation, the candidates are assumed to meet expectations.

Mr. Liouzis said that there were a number of reasons why Ms. Faulkner had not received regular evaluations for the previous three years. He said that before her transfer to Store #72 as a Retail Store Clerk II, she and her manager did not get along. He said that after her transfer to Store #72, she had suffered a workplace injury, and had been assigned to light duty since that time. He said that her manager felt he should not be evaluating her performance until she was returned to full duty.

Mr. Liouzis argued that although the Commission should have been providing regular performance evaluations, its failure to do so should not be considered a valid reason for reversing the Commission's selection of Robert Hill and promoting the appellant over two other candidates who had received better ratings than she had in the selection interviews.

Mr. Liouzis stated that since 1985, the Commission has used a structured interview format in selecting candidates for management positions, and that the candidates' answers are

supposed to demonstrate their knowledge of store operations and their capacity for the vacancy. He said that candidates are all asked the same series of questions, and that their scores are "good" for six months. He explained that because the Commission generally promotes from within, filling one vacancy ultimately leads to other vacancies occurring. He said that by allowing candidates to use scores from a previous interview instead of having to re-interview all the applicants, the Commission is able to fill vacancies more quickly.

Mr. Liouzis said that manager candidates are interviewed by a 3-member panel. He said that the panel always includes the area supervisor and whenever possible, at least two of the three members interview each of the candidates for a position. He said that in Ms. Faulkner's case, the only interviewer who saw each of the candidates was John Bunnell, Director of Stores. He argued that while the Commission does attempt to follow the guidelines for structured interviews, Manager I positions are not subject to the requirements of Per 501.06. He argued that scores in this instance should not be considered invalid because two different interview panels were used. He said that in both cases, the interviewers were very familiar with both the subject matter and the scoring methods, that they found Ms. Faulkner's responses to two of the questions to be weak, and that they rated her accordingly. He noted that Mr. Angelides had the same interview panel as Ms. Faulkner, and that the panel believed Mr. Angelides was a more suitable candidate for promotion. He argued that even if the Board were to find that the selection process was substantially flawed, promoting Ms. Faulkner over the other two candidates would not be a fair remedy, since she had been ranked third among the applicants.

Finally, Mr. Liouzis argued that Mr. Bunnell's question about the appellant's health did not affect the interview process in any way. He stated that interview scores are based solely on an applicant's answers to questions during the formal interview process, and that Mr. Bunnell's inquiry was made before the interview started. He also said that the members of the panel were aware of Ms. Faulkner's asthma and the fact that she had been on light duty for more than a year, so that Mr. Bunnell's inquiry did not provide any information of which they were not already aware. Finally, he argued that during the informal settlement process,

Ms. Faulkner never suggested that the question about her health had any negative effect on her or her ability to answer the interview panel's questions.

On the evidence, arguments and offers of proof, the Board made the following findings of fact:

1. Ms. Faulkner was one of five applicants for the position of Manager I, Store #72 in Concord. Three of the five candidates, including Muriel Faulkner, Jeff Angelides and Robert Hill, were permanent, full-time Retail Store Clerks II.
2. Mr. Angelides and Ms. Faulkner were interviewed in April, 1997, and May, 1997, respectively, by a panel consisting of John Bunnell, Director of Stores, Rick Gerrish, Area Supervisor, and John Larochelle, Stores Supervisor. Mr. Hill was interviewed in March 1997, for an earlier opening of Manager III by a panel consisting of George Liouzis, Human Resources Administrator, Mike Lafond, Area Supervisor and John Bunnell, Director of Stores.
3. Mr. Hill was selected for promotion to Manager I.
4. In response to Ms. Faulkner's request for informal settlement of the selection decision, Mr. Liouzis, who had participated in the Robert Hill interview, reviewed Ms. Faulkner's interview responses and scoring. He reported to the Liquor Commission that the appellant's responses were weak to 2 of the 5 questions asked.
5. Mr. Bunnell's question about Ms. Faulkner's health was not intended to, nor did it have the effect of, influencing the panel's scoring of Ms. Faulkner's interview responses.
6. Mr. Hill met the minimum qualifications for Manager I.
7. Manager I positions are not subject to the provisions of Per 501.06.
8. In the absence of a negative performance evaluation, the Liquor Commission treats applicants as having "met expectations" in the performance of their jobs.

#### Rulings of Law

1. Per 602.02 (a) of the Rules of the Division of Personnel provides that, "Whenever possible, selection by the appointing authority to fill a vacancy shall be made from within an agency and shall be based upon the employees: (1) possession of the knowledge, skills, and abilities and personal characteristics located on the supplemental

job description; and (2) capacity for the vacant position as evidenced by documented past performance appraisals."

2. Per 602.02 (b) of the Rules of the Division of Personnel states, "The most qualified candidate for the position, in the opinion of the appointing authority, shall be selected from designated groups of employees considered in the following order..."

### Decision and Order

Under the facts in evidence, the Board found that Ms. Faulkner was not prejudiced in the selection process by the Commission's failure to provide her with timely evaluations of her performance. Having so found the Board notes that Per 801.06 (a) of the Rules of the Division of Personnel provides that, "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." The Liquor Commission admits that it failed to provide Ms. Faulkner with annual performance evaluations as required by Per 801.06 (a). While there were some mitigating circumstances, the Commission should take immediate steps to come into compliance with that rule.

Selection for the position of Manager I was not subject to the structured oral interview requirements of Per 501.06, and the Board did not find that the Commission violated Per 501.06. Even if the Board were to have found that the Manager I classification was subject to those requirements, the mere fact that different interviewers asked and scored the questions would not necessarily invalidate the results. However, whenever practicable, all candidates for a position should be interviewed by the same panel of interviewers, regardless of whether or not a position is subject to the requirements of Per 501.06.

The evidence reflects that prior to the actual interview, Mr. Bunnell asked Ms. Faulkner about her health. There is evidence that the interviewers were already aware of Ms. Faulkner's asthma, and the fact that she'd been working in a light duty capacity. There is no evidence to support the appellant's allegation that Mr. Bunnell violated Per 501.06 (c) by

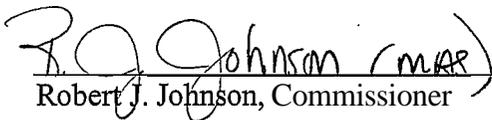
asking Ms. Faulkner how she was, or that the appellant's interview was rated on "prior personal knowledge" the interviewers had of the appellant.

On the evidence, argument and offers of proof, the Board voted unanimously to deny Ms. Faulkner's appeal. Ms. Faulkner failed to persuade the Board that she was the best qualified candidate for promotion, or that the Liquor Commission abused its discretion in selecting a candidate they believed to be better suited to the vacancy.

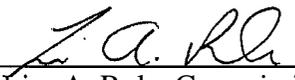
THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
William McCann, SEA Steward/Employee Representative  
George E. Liouzis, Human Resources Administrator, NH State Liquor Commission