

State of New Hampshire



PERSONNEL APPEALS BOARD
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APPEAL OF NORMAN HINTON
DOCKET #96 -P-2
Department of Health and Human Services

June 3, 1996

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, May 8, 1996, under the authority of RSA 21-I:58, to hear the appeal of Norman Hinton, an employee of the Department of Health and Human Services, concerning his non-selection to the position of Fraud Investigator. Sandra Platt, Human Resources Administrator, appeared on behalf of the Department of Health and Human Services. Margo Steeves appeared on the appellant's behalf. The appeal was heard on offers of proof by the representatives of the parties. The pending Motion to Dismiss which had been filed by the Department of Health and Human Services was withdrawn by Ms. Platt at the beginning of the hearing.

Ms. Steeves alleged that the Department of Health and Human Services violated the spirit and intent of the Personnel Rules by failing to promote Mr. Hinton, a certified in-house applicant, to the position of Fraud Investigator. She alleged that the Department of Health and Human Services violated Per 602.02 (d) by failing to interview Mr. Hinton, or provide him with written notification of non-selection after losing his application for promotion and selecting an external candidate to fill the position. She alleged that the Department violated Per 402.01 (a) and (b), requiring the posting of all vacancies, asserting that Mr. Hinton never saw a posting for position #12190. She also argued that the agency violated Per 602.02 (a), (b) and (d) by notifying Mr. Hinton via his voice mail that he had not been selected for the second Fraud Investigator vacancy, and by failing to apprise him in writing of the specific reasons for his non-selection. Ms. Steeves also argued that it was inconceivable that an employee who had worked for a year and a half in the Child Support Enforcement Unit would be unable to obtain a "passing" grade on a structured oral interview for the position of Fraud Investigator.

Ms. Platt admitted that the Department of Health and Human Services had lost Mr. Hinton's application for promotion to Fraud Investigator (position #12243). She also agreed that while Mr. Hinton's application had been certified as meeting the minimum qualifications for the classification of Fraud Investigator. However, she argued that Mr. Hinton was unable to demonstrate through the structured interview process that he possessed the knowledge, skills and abilities necessary to perform the duties and responsibilities of the position. Ms. Platt offered to prove that the members of the interview panel were very disappointed by Mr.

Hinton's answers, resulting in an over-all rating of 59.98%, which fell into the category of "Hesitate to Recommend" on the Structured Interview Rating Form. Ms. Platt argued that candidates for promotion sometimes fail to prepare for a structured interview by reviewing the basic purpose, characteristic duties and responsibilities, and recommended work traits before completing the structured interview. She said that if Mr. Hinton had passed the structured oral examination by achieving a score of 70% or higher, she would agree with Ms. Steeves that Mr. Hinton could have been promoted to the next available Fraud Investigator position. However, having failed the structured oral interview, Mr. Hinton would need to prepare himself more carefully for any future examination, and apply for vacancies as they occurred.

Having considered the offers of proof, oral argument, and documents entered into evidence, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. Positions #12243 and #12190 were posted within the Department of Health and Human Services and employees of the Department of Health and Human Services were permitted to apply for those position vacancies.
2. Mr. Hinton made timely application for promotion to Fraud Investigator, position #12243.
3. The Human Resources Office at the Department of Health and Human Services lost Mr. Hinton's and four other employees' applications for promotion.
4. The Department of Health and Human Services offered position #12243 to an external candidate before it had discovered that, through clerical error, five "in-house" candidates had not been considered for selection to position #12243.
5. Upon discovery of its error, the Department of Health and Human Services allowed Mr. Hinton's application for position #12243 to be used for the purposes of certification and examination for position #12190, Fraud Investigator.
6. In order to be considered for selection to the position of Fraud Investigator, the Department of Health and Human Services expected candidates to achieve a passing earned rating of 70% or better on the structured oral interview for that classification.
7. Mr. Hinton participated in a structured oral interview for the classification of Fraud Investigator, but failed to achieve a score of 70% or better.

Appeal of Norman Hinton

Docket #96-P-3
page 2

8. Mr. Hinton received a verbal notice of non-selection to the second Fraud Investigator vacancy.

Rulings of Law

- A. Per 402.01 of the Rules of the Division of Personnel requires agencies to post notices of vacancies to be filled so that agency employees may apply for selection to those vacancies.
- B. Participation in a structured oral interview prior to consideration for selection to a vacancy may be required under PART Per 500 of the Rules of the Division of Personnel as a test of fitness for a position.
- C. Failure to achieve a passing earned rating, as may be established by the Director of Personnel for each classification, will disqualify an applicant from further consideration, as set forth in Per 501.07 (b) of the Rules of the Division of Personnel.

Decision and Order

The Board found that the Department of Health and Human Services did not violate the Personnel Rules by failing to promote Mr. Hinton. Although Mr. Hinton met the minimum qualifications for the position, he did not successfully complete the structured oral interview which the Department utilized in assessing each of the candidates' knowledge, skills and abilities to perform the work of a Fraud Investigator. Therefore, the Board found that the Department of Health and Human Services did not violate Per 602.02 (a) or (b). Mr. Hinton did not demonstrate that he possessed the knowledge, skills, abilities and personal characteristics listed on the specification for Fraud Investigator. Having failed to successfully complete the structured oral interview, the agency was under no obligation to provide any further assessment of Mr. Hinton's capacity for the vacant position, including specific reasons for non-selection.

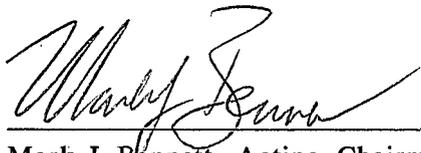
It was unfortunate that a clerical error resulted in Mr. Hinton's application for position #12243 being misplaced. However, the Board did not consider that error a violation of Per 602.02 (d) as alleged by the appellant. Furthermore, although Mr. Hinton may not have seen the second posting for Fraud Investigator, position #12190, the facts in evidence support the Department of Health and Human Services' contention that positions #12243 and #12190 were properly posted, as required by Per 402.01 (a) and (b).

The appellant alleged that the Department violated the Personnel Rules by failing to inform him that his interview would be "scored" and by later failing to apprise him of the results of

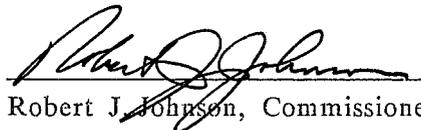
his structured oral interview. Per 501.09 of the Rules of the Division of Personnel provides that each candidate shall be notified by mail of a final earned rating as soon as the rating of the examination has been completed, and that an eligible candidate shall be entitled to review the results of a graded examination. <However, the rule appears to require that such notification be provided by the Director of Personnel, not by the agency conducting the structured oral interview. Nonetheless, the Board did not find this apparent mere technical omission dispositive of the appeal on its merits.

On all the evidence, the Board found that Mr. Hinton was not fully qualified for promotion to the position of Fraud Investigator. Accordingly, his appeal is denied.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Sandra Platt, Human Resources Administrator, Health and Human Services
Margo Steeves, SEA Field Representative