

State of New Hampshire

88-P-110

PERSONNEL APPEALS BOARD



EXECUTIVE SECRETARY
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PERSONNEL APPEALS BOARD

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APPEAL OF PATRICIA KOVACS

May 26, 1988

On April 11, 1988, the Promotional Appeals Tribunal, consisting of Commissioner George Cushman and members Joan Day, Human Resources Coordinator (Department of Employment Security) and George Liouzis, Human Resources Coordinator (N.H. Liquor Commission), heard the appeal of Patricia Kovacs, an employee of the New Hampshire Hospital. Ms. Kovacs, who was represented at the hearing by SEA Field Representative Ann Spear, was appealing her non-selection to a vacant position of Social Worker III in the Medical/ Surgical Unit of New Hampshire Hospital. The Hospital was represented at the hearing by Al Shigo, Director of Psychiatric Social Work.

At the outset of the hearing, the Tribunal considered the Motion to Dismiss filed by New Hampshire Hospital Staff Attorney Barbara Markham-Maloney. That motion requested dismissal in that Ms. Kovacs' appeal was not an appeal of denial of promotion, but rather appeal of denial of a lateral transfer. Ms. Kovacs is currently employed at the level of Social Worker III in the Legal Services office of the Hospital and had applied for another position of Social Worker III. Upon review of the Motion, the Tribunal ruled that the appeal was one of denial of selection to a vacancy. The Tribunal therefore voted to deny the Motion to Dismiss and to hear the appeal.

In her presentation to the Tribunal, the appellant argued that as the only qualified in-house candidate for the vacancy, she should have been selected for the position and further should have been allowed to prove her ability to perform the required duties during the promotional probationary period. Ms. Kovacs testified that she has been a Social Worker III for 5 years, and had acquired experience dealing with intake and referral during the period in which she occupied a position as a Case Technician. The appellant further argued that her position as Guardianship Coordinator had provided her with sufficient background to successfully complete tasks in discharge and placement services. The appellant referred to an alternative Social Worker III position she had been offered in the ICF Unit, but indicated that she preferred the M & S Unit position because it was more active and "fast paced." The appellant also argued that when offered the position in the ICF Unit, she had been asked to make a commitment of at least one year to the position. She said she was not willing to make that commitment.

Mr. Shigo testified that he had interviewed Ms. Kovacs for the Social Worker vacancy in the M & S Unit. He also indicated that upon review of her personnel records, and in consideration of her answers during the interview, he found her to be lacking experience for the position in question. He stated that the M & S position required a strong background in psycho-social assessment and discharge placement services and planning. The position for which the appellant was denied selection has a very active admissions and discharge function, and Mr. Shigo did not find the appellant's background or experience sufficient for the position requirements. He further testified that the ICF position declined by the appellant would have utilized the appellant's background in eligibility assessment and supportive therapy, and might have provided experience which would later qualify the appellant for a position similar to the vacancy in M & S. He stated, however, that the appellant had no direct experience in discharge or placement services, and that the appellant's only experience in psycho-social assessment was that related to incorporating the findings of other Social Workers in guardianship petitions prepared by the appellant for submission to the Courts. Mr. Shigo concluded that the appellant lacked certain professional qualifications required for the vacancy, and therefore did not find it reasonable or possible to select the appellant for the vacancy.

The Tribunal found that the Hospital had exercised its prerogative pursuant to the provisions of Per 302.03(b)(1) to "give such weight to an employee's job performance as he deems appropriate when considering the employee for appointment to a vacancy," and that "If the appointing authority finds certain personal and professional qualifications lacking in even ostensibly qualified candidates for promotion, the employee may be denied promotion."

The Tribunal therefore voted unanimously to deny the appeal of Patricia Kovacs relative to her non-selection to the position of Social Worker III, Medical Surgical Unit, New Hampshire Hospital.

After its deliberations, the Tribunal further voted to make a strong recommendation that the New Hampshire Hospital Human Resource component restructure their posting of vacancies to include, when necessary, more specific duty or experience requirements consistent with the duties of the posted vacancy. Such clarification would help employees to better understand the skills and knowledge sought in applicants for the posted position.

FOR THE PROMOTION APPEALS TRIBUNAL



MARY ANN STEELE

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N.H. Personnel Appeals Board

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