

State of New Hampshire

PERSONNEL APPEALS BOARD
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MOTION FOR REHEARING

Appeal of Peter Minnon - Department of Corrections

July 22, 1988

At its meeting of June 28, 1988, the Personnel Appeals Board, Commissioners Cushman and Platt sitting, considered the Motion for Rehearing filed by the Department of Corrections in the above-captioned matter. The Motion consists of four pages¹ which describe the promotion process utilized by the Prison and does not appear to set forth any argument or theory inconsistent with the decision of the Promotion Appeals Tribunal.² The Board construed the Motion as seeking a rehearing on the grounds that educational degrees may be considered as a factor in evaluating candidates for promotion when the minimum qualifications do not require such degrees, and further that the appointing authority is not required to appoint ostensibly qualified candidates if such candidates are lacking certain professional and personal qualifications.

Nothing contained in the Promotion Appeals Tribunal decision differs from the two principles set forth herein above. The Tribunal's decision found that if a candidate were to receive additional points in a promotion evaluation process for education obtained above the minimum qualifications set forth in the job description, then that factor should be made known to all candidates (generally at the time of posting). The representative appearing on behalf of the appointing authority before the Tribunal did not dispute the appellant's contentions that this was not done in the promotion process which resulted in

¹ The motion also includes for the Board's consideration some documents which were apparently available at the time of hearing but not offered by either party. The Board did not consider those documents attached to the Motion which were not already part of the record in reaching this decision.

² The Board assumes that the Department's representative reviewed the entire record of the proceedings prior to preparing the Motion for Rehearing.

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this appeal.³ Nothing in the Tribunal's decision would prohibit the appointing authority from considering additional education in the promotion process if otherwise permitted under the Rules of the Division of Personnel if such notice were given.

To the extent that the Motion for Rehearing emphasizes the discretion of the appointing authority in selecting candidates for promotion, the Board found that such an argument would not require a rehearing. The Tribunal's decision did not require that the appellant be promoted but rather ordered that the credentials of all applicants be reviewed without considering the additional education (because according to the record no notice was given that said qualification would be a factor in this promotion evaluation process) and that the appointing authority then based his decision on those results. The decision went on to indicate that the appointing authority could still exercise his discretion in making the promotions, citing Per 302.03(b)(2).

Given the foregoing discussion, the grounds upon which the Department of Corrections seeks a rehearing are unclear. To the extent that the Department contends that additional education may be considered as a factor in promotion decisions without informing candidates, the Board continues to disagree.

For the foregoing reasons, the Board voted to deny the Motion for Rehearing.

³ The reference to education set forth in the Policy and Procedure directive submitted with the motion indicates education will be considered only to the extent it "can be related to position being applied for." New Hampshire Department of Corrections, Policy and Procedure Directive, Chapter Personnel, Statement 2.2.1 IV, 4, g (emphasis added). Again, the appointing authority's representative did not dispute the appellant's contention that other applicants had received credit in the promotion selection process for education unrelated to the position to which the appellant sought promotion.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE, Executive Secretary

cc: Michael K. Brown, Esq.
Department of Corrections

Stephen J. McCormack
SEA Field Representative

Virginia A. Vogel
Director of Personnel

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APPEAL OF PETER MINNON

May 23, 1988

On February 1, 1988, the Promotion Appeals Tribunal consisting of Loretta S. Platt, Chairman, and members Joan Day (Human Resources Coordinator, Department of Employment Security) and Sharon Sanborn (Human Resources Coordinator, New Hampshire Hospital) heard the appeal of Peter Minnon. Mr. Minnon, an employee of the Department of Corrections, was appealing his non-selection to the position of Corrections Corporal, labor grade 15. The appellant was represented at the hearing by SEA Field Representative Stephen McCormack. Richard Greenwood, Human Resources Coordinator, represented the New Hampshire State Prison.

Mr. Greenwood stated that the Department of Corrections had posted six openings for Corrections Corporal, and that seven applications were received for consideration. Mr. Greenwood and Mrs. Roberta Metalious reviewed and evaluated those applications using an established Prison Promotion Board Factor Rating, and guidelines taken from the Department of Corrections Policy and Procedures Directive dated 1/6/87 (Exhibit G).

After the initial rating in the Department of Corrections Human Resource Office, the applications were given to the Corporal Promotion Board. The Board consisted of Capt. Metalious, Sgt. Stafford, and Joseph Panarello. The Board completed Oral Interview Score Sheets on each of the seven candidates. Selection of the six successful candidates was made from the six highest scoring candidates. Mr. Minnon ranked seventh, with a total score of 47.183.

In his presentation to the Board, Mr. McCormack cited Per 301.11 (a) and (b) of the Rules of the Division of Personnel regarding the "Rating Education and Experience", stating that improper usage of the educational rating resulted in Mr. Minnon scoring seventh of the seven candidates. The appellant contended that Mr. Minnon received zero points for education under Rating Factor G, as Mr. Minnon did not possess an AA, BS or MS degree. Mr. McCormack argued, however, that the job specification for the position of Corporal does not call for any kind of degree, and that Mr. Minnon should not have been denied promotion for lacking a degree when no degree was required for the position. Mr. McCormack further stated that if the education factor had not been used in ranking the applications, Mr. Minnon would have placed higher in the scoring. He then concluded that if selection of the six successful applicants had been based entirely upon the total points scored by each candidate, Mr. Minnon would have been one of the candidates selected for promotion.

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Based upon the evidence presented at the hearing, the Tribunal made the following findings. The Department of Corrections Policy and Procedures Directive (Exhibit I) states, "2. Individuals to be selected for promotion must: a. Meet the specific minimum requirements established by the State of New Hampshire Job Specifications..." That policy also provides in "g"... Education: Only that which can be related to position being filled ... "would be awarded additional points. [Exhibit J] will be credited. The specific minimum requirements for the posted position of Corrections Corporal include: "Education Factor 1.: graduation from high school or its equivalent...", "Experience Factor 2. One year of experience as a Corrections Officer or its equivalent..." The job specification does not include a requirement for an AA, BS, or MS, nor does the specification state that additional rating points will be awarded to candidates possessing education or experience in excess of the minimum requirements.

The Tribunal found that Mr. Minnon does meet the minimum qualifications as stated on the job specification for Corrections Corporal. Mr. Minnon's evaluations were all rated above average, and he had been employed by the Department of Corrections for 2 years and 10 months at the time that he completed the application for promotion to Corrections Corporal. At the time of the hearing, Mr. Minnon had not received a letter of non-selection as required by the Per 302.03 of the Rules of the Division of Personnel, "(e) 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 reasons therefor."

Based upon the above findings, the Tribunal unanimously voted to direct the Department of Corrections to re-evaluate the seven applications for the positions of Corrections Corporal, eliminating any additional points earned by any of the candidates under the "Education" factor which are not specifically related to the posting or position specification attached to that posting. If the rescoring the applications affects Mr. Minnon's scoring placement on the list of candidates, then the applicant placing seventh in the scoring shall be ordered to vacate that position and the appellant promoted into that position. If, however, the Department of Corrections has specific reservations concerning promotion of Mr. Minnon, unrelated to education, the Department of Corrections shall notify the appellant of those reservations in writing, enumerating the specific reasons for his non-selection. A copy of that letter of non-selection shall be forwarded simultaneously to the Tribunal for review. Mr. Minnon shall then be allowed 5 working days from receipt of said notification to file with the Tribunal an appeal of that decision.

FOR THE PROMOTION APPEALS TRIBUNAL



MARY ANN STEELE, Executive Secretary
Personnel Appeals Board

cc: Stephen J. McCormack, SEA, Field Representative
Warden Michael J. Cunningham, New Hampshire State Prison
Virginia A. Vogel, Director of Personnel