

# State of New Hampshire

PERSONNEL APPEALS BOARD

Loretta Platt / Chairman



EXECUTIVE SECRETARY  
Mary Ann Steele

## PERSONNEL APPEALS BOARD

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

### APPEAL OF DONALD NICHOLS

May 31, 1988

On March 14, 1988, the Promotional Appeals Tribunal, consisting of Chairperson George Cushman and members Joan Day, Human Resources Coordinator (Department of Employment Security) and George Liouzis, Human Resources Coordinator (NH Liquor commission) heard the appeal of Donald Nichols, an employee of the Department of Corrections. Mr. Nichols, who was represented at the hearing by SEA Field Representative Stephen McCormack, was appealing his non-selection for lateral transfer to a vacant position of Correctional Officer on first shift at the Secure Psychiatric Unit, Department of Corrections. Mr. Nichols was employed in a third shift Correctional Officer position at the time of his non-selection. The Department of Corrections was represented by Human Resources Coordinator Richard Greenwood.

The State Employees' Association submitted Exhibits I through X, and additional copies of documents marked A through N to support Mr. Nichols request for a lateral transfer. Through his representative, the appellant contended that two vacant Correctional Officer positions existed at the Secure Psychiatric Unit, and that of the applicants for the vacancies only one other applicant was an employee of the Secure Psychiatric Unit. The remaining applicants were employees at the New Hampshire State Prison. The appellant indicated that Correctional Officers employed in the Secure Psychiatric Unit are required to have mental health training, while officers at the State Prison itself are not required to possess such training.

In his presentation, Mr. McCormack argued that the appellant has met all of the qualifications for the position; he has received good to excellent ratings of performance as a correctional officer; and he has received the necessary training to fill the position. The appellant therefore contended that denying his request for transfer to the first shift is not in the best interests of the agency and does not meet the guidelines described in Per 102.01(e) of the Rules of the Division of Personnel, "That state service, as far as practicable, be made attractive as a career, encouraging each employee to render his best service to the state."

Mr. Greenwood and Sergeant Serviss testified on behalf of the Department of Corrections that there were five applicants for the position of Correctional Officer, Secure Psychiatric Unit, first shift. All five were interviewed and scored by the Selection Board which consisted of Lt. Peasley, Sgt. Serviss and Mr. Hamilton. As a result of the scoring process, Mr. Bagetis received a higher score than Mr. Nichols.

The Tribunal asked to see the questions asked of the applicants and the interview scores of each of the candidates. The Department of Corrections did

APPEAL OF DONALD NICHOLS  
May 31, 1988  
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not have them available at the time of the hearing. The Tribunal voted to defer decision in this appeal until such time as the members could review that information.

On April 4, 1988, having received no information from the Department of Corrections, the Tribunal issued a formal request for copies of the above-noted information. That information was received in the Division of Personnel on April 8, 1988 and was reviewed by the Tribunal in May.

The Tribunal reviewed the questions asked of each candidate and the score received by those candidates. As had been indicated by the Department of Corrections, Mr. Bagetis had scores of 25 and 26. Mr. Nichols received scores of 22 and 25.

Per 302.03(b) of the Rules of the Division of Personnel states, "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." The Tribunal found that the interview process was a valid means of determining relative capacity for a vacancy.. Further, Per 302.03(b)(1) states, "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." Therefore, the Tribunal found that management had exercised its prerogative in weighing the appellant's past performance when reviewing candidates for the first shift vacancy.

Based upon the foregoing, the Tribunal voted to deny Mr. Nichols' appeal.

In its deliberations, the Tribunal further voted to recommend to the Department of Corrections that copies of interview questions and ratings/scores from those interviews be made available to the Tribunal at the time of hearing in future appeals of non-selection. The availability of that information can help eliminate a lengthy wait for a final decision on an appeal of non-selection.

FOR THE PROMOTION APPEALS TRIBUNAL



MARY ANN STEELE  
Executive Secretary  
N.H. Personnel Appeals Board

cc: Stephen J. McCormack, SEA Field Representative

Richard Greenwood, Human Resources Coordinator  
Department of Corrections

Virginia A. Vogel  
Director of Personnel

# State of New Hampshire

PERSONNEL APPEALS BOARD  
Edward J. Haseltine, Chairman  
Gerald Allard  
Loretta Platt



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April 4, 1988

TO: Richard Greenwood, Human Resources Coordinator  
New Hampshire Department of Corrections  
105 Pleasant St.  
Concord, N.H. 03301

FROM: New Hampshire Personnel Appeals Board  
(PROMOTIONAL APPEALS TRIBUNAL)

SUBJECT: Requested Documentation  
Non-Selection Appeal of Donald Nichols  
March 14, 1988

On March 14, 1988, Donald Nichols appeared before the Promotion Appeals Tribunal, consisting of Chairman George Cushman and members George Liouzis and Joan Day, to appeal his non-selection to the position of Correctional Officer, Secure Psychiatric Unit.

During the hearing before the Tribunal, the members requested copies of the rating sheets used to score the seven applicants to the positions, as well as copies of the questions which were asked of each of the applicants in the interview. Copies of same shall be forwarded to the Tribunal and to the appellant no later than March 11, 1988. The Tribunal will defer decision in this matter pending receipt and review of the above-noted documents. The documents should be filed in an original and three.

FOR THE PROMOTION APPEALS TRIBUNAL

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE  
Executive Secretary  
N.H. Personnel Appeals Board

cc: Stephen J. McCormack, SEA Field Representative

Dr. Lawrence Hipsham, Secure Psychiatric Unit

# State of New Hampshire



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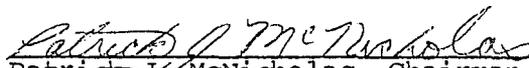
Telephone (603) 271-3261

### Response to Request for Reconsideration APPEAL OF DONALD NICHOLS AND CYNTHIA HOLT

On February 14, 1989, SEA Field Representative Stephen J. McCormack filed on behalf of the above-named appellants a request for reconsideration of the Promotion Appeals Tribunal decision (February 10, 1989) on Appellants' denial of request for transfer.

At its meeting of May 17, 1989, the Personnel Appeals Board (McNicholas and Scott) voted to uphold the decision of the Tribunal, and further to deny the request for reconsideration for the same reasons set forth in Lovequist (Order on Motion for Rehearing - Appeal of Conservation Officer David Lovequist, May 22, 1989).

THE PERSONNEL APPEALS BOARD

  
\_\_\_\_\_  
Patrick J. McNicholas, Chairman

  
\_\_\_\_\_  
Peter C. Scott, Alternate

Dated: June 21, 1989

cc: Stephen J. McCormack, SEA Field Representative

Richard Greenwood, Human Resource Coordinator  
Department of Corrections

Virginia A. Vogel  
Director of Personnel

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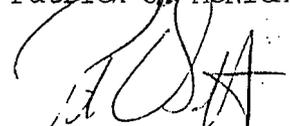
### APPEAL OF DONALD NICHOLS Department of Corrections Request for Lateral Transfer

By letter dated December 21, 1988, SEA Field Representative Stephen J. McCormack requested a hearing on behalf of Donald Nichols, an employee of the Secure Psychiatric Unit, New Hampshire Department of Corrections. Appellant requested a hearing to appeal his denial of selection for lateral transfer to the first shift.

At its meeting of May 17, 1989, the Personnel Appeals Board (McNicholas and Scott) voted to deny the request. In so doing, the Board refers Appellant to the decision in the matter of Lovequist (Order on Motion for Rehearing - Appeal of Conservation Officer David Lovequist, May 22, 1989).

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Peter C. Scott, Alternate

Date: June 21, 1989

cc: Stephen J. McCormack  
SEA Field Representative

Richard Greenwood, Human Resource Coordinator  
Department of Corrections

Virginia A. Vogel  
Director of Personnel

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## APPEAL OF DONALD NICHOLS AND CYNTHIA HOLT February 10, 1989

On October 19, 1988, the Promotion Appeals Tribunal consisting of Loretta S. Platt, Chairman, John Roller, Human Resource Coordinator (Department of Environmental Services and JoAn Buntin, Human Resource Specialist (Division of personnel), heard the appeal of Donald Nichols and Cynthia Holt, who were appealing a denial of their request for lateral transfer to the first shift at the Secure Psychiatric Unit, Department of Corrections. The appellants were represented by SEA Field Representative Stephen McCormack. Lieutenant Darrell Peasley appeared on behalf of the Department of Corrections.

At the beginning of the hearing, Lieutenant Peasley argued that because the appellants were denied a lateral transfer rather than a promotion, the case should be dismissed. The Tribunal took the Motion under advisement and decided to hear all the evidence prior to making a decision.

Upon review of the evidence presented, the Tribunal made the following findings of fact and rulings of law. Both appellants were employed as Correctional Officers at the Secure Psychiatric Unit at the time they requested a lateral transfer to the first shift at the Secure Psychiatric Unit. As such, the Tribunal found that the appellants did not have standing to appeal under Per 302.03, as their selection would not have resulted in a promotion.<sup>1</sup> The Tribunal further noted that under the Rules of the Division of Personnel, transfers are subject to appeal only by the affected employee when that employee feels that the transfer was not made in the best interests of the agency.

For the foregoing reasons, the Tribunal voted unanimously to dismiss the appeal.

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<sup>1</sup> Per 101.28 defines "promotion" as "a transfer of an employee from a position in one class to a position in another class having a higher salary grade."

FOR THE PROMOTION APPEALS TRIBUNAL

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE, Executive Secretary  
NH. Personnel Appeals Board

cc: Stephen J. McCormack, SEA Field Representative  
Corrections Commissioner Ronald Powell  
Virginia A. Vogel, Director of Personnel