

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
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1989-P-109

THE STATE OF NEW HAMPSHIRE

DIVISION OF PERSONNEL

PERSONNEL APPEALS BOARD

(PROMOTIONAL APPEALS TRIBUNAL)

## Appeal of Sidney Osgood

Mr. Sidney Osgood appeals his non-selection to the position of MIS Analyst/Programmer I at the New Hampshire Technical Institute.

This case was previously combined with an identical appeal by Ms. Diane Johnsen. However, Ms. Johnsen withdrew her appeal on or about November 29, 1989. Accordingly, the tribunal considers only appellant Osgood's appeal and does not address that of Ms. Johnsen. We express no opinion on the probable outcome of Johnsen's appeal, as each individual candidate must be considered entirely independently in such appeals.

A hearing was held in this matter on April 12, 1989. Stephen J. McCormack of the State Employees Association represented the appellant. The decision in this matter is

presented in summary fashion. An audio recording of the hearing was compiled and numerous documents received, as well as information, argument and materials relative to a hearing of February 15, 1989, when this matter was previously scheduled. Following that hearing, the Tribunal issued an order which required that the agency comply with certain requests of the appellant for additional information and the presence of several witnesses before a new hearing (this hearing) could be scheduled. The order also required that the position in question not be filled until at least the end of March on account of the pendency of this hearing. These materials and the file of the Board, constitute the record in this appeal.

The Board was comprised of Chairman Mark J. Bennett, (Personnel Appeals Board), and Human Resource Coordinators George E. Liouzis (New Hampshire Liquor Commission) and Sharon Sanborn (New Hampshire Hospital). The hearing testimony, some 20 exhibits, and the record, as aforesaid, were considered in the Tribunal's deliberations on this appeal.

The appellant is concerned about the selection process. Specifically, concern is raised regarding his belief that he should have received an interview for the position in question. Mr. Osgood had been interviewed previously and was allegedly known to those concerned with the selection process, but had had no recent interview.

It is alleged that his last interview was approximately two and one-half (2 1/2) years ago. The testimony suggests that he is well known to those in the selection process through regular contact in the workplace.

The appellant contends that he is the best qualified candidate for the job in question. The testimony suggests that those responsible for administration at the Technical Institute and for the selection process have a different view of the requirements and characteristics of the job than Mr. Osgood.

Rule Per 302.03 is pertinent to promotional appeals, and promotions within agencies in general, and the rule has been reviewed by the Tribunal in light of the evidence. Note, Per 302.03(b)(2).

The Tribunal finds no violation of Per 302.03 in the non-selection of the appellant. The rule, within certain parameters, is designed to facilitate the efficient selection of the candidate reasonably perceived to be the best qualified by the appointing authority.

Reviewing the rule as a whole, while promotions from within the department or agency are favored, that objective is subject to the obligation to seek the best qualified candidate, and the expressly conferred authority, and flexibility of approach, for

the appointing authority to make that choice absent evidence, lacking here, that an improper criteria was applied.

Accordingly, the appeal is denied.

18 December 1989

The Personnel Appeals Tribunal

  
Mary Ann Steele  
Executive Secretary

DATE OF ISSUE - January 2, 1990

cc: Sarah Hopley, Human Resource Coordinator  
New Hampshire Technical Institute

Stephen J. McCormack, SEA Field Representative

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