

State of New Hampshire



PERSONNEL APPEALS BOARD
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Appeal of Matthew Savoy

Docket #2008-P-001

Department of Administrative Services

November 15, 2007

The New Hampshire Personnel Appeals Board (Bonafide, Johnson and Casey) met in public session on Wednesday, September 12, 2007, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeal of Matthew Savoy, an employee of the Division of Plant and Property Management, Department of Administrative Services. Mr. Savoy, who appeared pro se,¹ was appealing his March 30, 2007 non-selection for the position of Building and Grounds Utility Person as assigned to the Governor's Office. Michael Connor, Director of Plant and Property Management, appeared on behalf of the State. The Board heard the appeal on offers of proof by the representatives of the parties.

The record of the hearing in this matter consists of pleadings with attached supporting documentation submitted by the appellant, notices and orders issued by the Board, the audio-tape recording of the hearing on the merits of the appeal, and a letter dated September 11, 2007 from Hilary E. Denoncourt of the Governor's Office, which was introduced separately without objection as Appellant's Exhibit 1. The Board also reviewed the class specification for Buildings and Grounds Utility Person as published on the Division of Personnel's website.

¹ SEA Steward Peter Venne accompanied Mr. Savoy to the hearing.

Position of the Parties

In the appellant's July 2, 2007 notice of appeal, which the Board received on July 3, 2007, the appellant wrote, "It remains my contention that I was denied transfer to a position for which I was clearly the most qualified candidate, and that the denial was the result of unfair discrimination by one or more persons in authority over me."

The specific allegations presented in the appellant's notice of appeal are summarized below:

1. The appellant has all satisfactory performance evaluations.
2. The appellant has frequently performed the duties of the position in question, including for a period of seven months when he filled in for the previous position incumbent. During those periods of time, there were no complaints about the appellant's work performance.
3. The candidate who was selected for the position had worked for the State for less than a year and had duties similar to those of the appellant, but had never performed the specific duties of the position assigned to the Governor's Office.
4. The appellant was asked to train the successful candidate how to perform the duties of the position in question.
5. Contrary to the State's claims, the interview panel did not conduct a structured oral interview for the position.
6. Pre-selection occurred, and the decision to select another candidate was made before anyone interviewed the appellant for the position.

At the hearing, the parties made offers of proof as follows:

Mr. Connor stated that:

1. Tom Marks and Matt Savoy applied for position #10133 and were both certified as meeting the minimum qualifications for the position.
2. On March 22, 2007, Mike Hall (Administrator), Bill Hubbard (Supervisor) and Hilary Denoncourt (Governor's Office representative) interviewed both candidates.

3. Mr. Hall reportedly selected Marks because he was more reliable, dependable and maintained a better appearance. Mr. Ball told Mr. Connor that he had seen Mr. Savoy "loafing and not attending to task," and indicated that Mr. Savoy reported to work looking "scruffy, in less than desirable attire."
4. Mr. Hubbard reportedly selected Mr. Marks because Mr. Marks was more reliable. Mr. Hubbard told Mr. Connor that he needed to count on his employees reporting to work at 5:30 a.m., not having them call in at 6:00 a.m. saying they were unavailable.
5. Ms. Denoncourt reportedly selected Mr. Marks because she was concerned that Mr. Savoy did not have a good attitude.

Mr. Connor argued that there were concerns about Mr. Savoy's work performance, appearance and commitment to the position. As a result, in the opinion of the appointing authority, Mr. Marks was the candidate best qualified and best suited to the position.

Mr. Savoy stated that:

1. After being notified that he had not been selected for transfer to the position of Buildings and Grounds Utility Person, he was asked to fill-in for Mr. Marlts, the successful candidate, while Marks was on vacation.
2. Mr. Savoy received a letter (Appellant's Exhibit 1) from the Governor's Office thanking him for his assistance.
3. Mr. Savoy has worked for the State for more than 10 years, starting out as a part-time employee at the Department of Justice before taking a position with Plant and Property Maintenance. Mr. Savoy worked on Bill Hubbard's "roving crew" for seven years, and was assigned for the last two and a half years to work at the State House.
4. In ten years, Mr. Savoy has received five performance evaluations, all of which showed him meeting expectations.
5. Former Governor Benson recognized Mr. Savoy for his excellent work and attitude.
6. Mr. Savoy has never been counseled verbally about complaints or poor work performance, and he has never received anything in writing about any alleged complaints.

7. There is no dress code for members of the grounds crew. Mr. Savoy explained that he was willing to maintain whatever sort of appearance the job required.
8. Executive Councilor Burton, who sees Mr. Savoy twice a month at meetings in the State House, recommended Mr. Savoy for appointment.
9. Mr. Savoy was notified of his non-selection on April 3, but was then told he would need to fill-in from April 23-27 for Mr. Marks who was going on vacation.
10. Mike Connor told Mr. Savoy that snow removal was the most important element of the Buildings and Grounds job, and even when he is sick, Mr. Savoy will come to work to clear snow. Once that task is completed, he goes home.
11. Reports that he was lazing around and not doing his job were inaccurate.

Mr. Savoy argued that if concerns about his appearance were legitimate, it would make no sense for the agency assign him in his current position to the downtown area and the State House complex, where important agency personnel, legislators and members of the public could observe him. Mr. Savoy argued that all his use of leave was appropriate and approved. He also argued that if there was a problem with his job performance or appearance, neither issue was noted in his performance appraisals.

Standard of Review

Per-A 207.12 (c), NH Code of Administrative Rules (Rules of the Personnel Appeals Board)

"In appeals involving denial of promotion or selection to a vacancy, the board shall determine if the appellant proves by a preponderance of the evidence that the decision was unreasonable or unlawful because:

- (1) The appellant met the minimum educational and work experience requirements for selection to the vacancy;
- (2) The appellant possessed the personal and professional qualifications for selection to the vacancy; and
- (3) The appointing authority abused its discretion by denying selection to the person best qualified for selection to the vacancy, or that the non-selection decision was unlawful."

Decision and Order

There is no dispute that the selected candidate met the minimum qualifications for selection to the vacancy. According to Per 602.02 (c) of the Rules of the Division of Personnel, "Candidates may be denied selection if, in the opinion of the appointing authority, they are deemed to lack personal or professional qualifications for appointment to the position." While there is no dispute that Mr. Savoy met the minimum qualifications for selection to the vacant position of Buildings and Grounds Utility Person, the parties disagree whether or not Mr. Savoy possessed the personal or professional qualifications for selection to that particular vacancy. The fact that Mr. Savoy was assigned to fill-in for a former incumbent for several months, was asked to train the selected candidate in tasks specific to the position, or that he later filled-in for the successful candidate during his vacation would seem to indicate that Mr. Savoy did possess the requisite qualifications. That, however, would not preclude the agency from finding the other candidate to be better qualified or better suited to the vacancy. The Personnel Rules grant substantial discretion to agencies in selecting a candidate who, in the opinion of the appointing authority, is best qualified for the vacancy. As such, there is insufficient evidence for the Board to find that the agency abused its discretion in this instance.

The only question remaining for the Board is whether or not the agency's non-selection decision was unlawful. In this case, the appellant argued that the agency discriminated against him by failing to conduct a structured oral interview for the position, and by choosing another candidate before conducting interviews of any kind.

The appellant offered insufficient evidence to persuade the Board that pre-selection occurred, or that the agency engaged in any form of unlawful discrimination by failing to conduct structured oral interviews. In reviewing the class specification for the position of Buildings and Grounds Utility person, the Board found that there is no requirement for the agency to conduct a structured, oral interview. As such, the agency might have made

its decision solely on the basis of information provided by the candidates in their applications for employment and on personal observation of the two candidates by the selection panel. In the context of employment, discrimination occurs when employment decisions are not based on individual merit, but upon an individual's age, sex, race, creed, color, marital status, familial status, physical or mental disability, national origin, or sexual orientation. The appellant has not claimed status in any protected group. The agency offered several reasons why it believed the appellant was not the most qualified candidate. Accordingly, the Board found insufficient evidence or argument to support the appellant's assertion that his non-selection for transfer was the result of unlawful discrimination or a violation of the Rules of the Division of Personnel.

Therefore, for all the reasons set forth above, the Board voted unanimously to DENY Mr. Savoy's appeal.

THE PERSONNEL APPEALS BOARD

Philip Bonafide, Acting Chair



Robert Johnson, Commissioner



Joseph Casey, Commissioner

cc: Karen Hutchins, Director of Personnel
Michael Connor, Director, Division of Plant and Property Management
Matthew Savoy