

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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Appeal of Priscilla DeHotman

Docket #2002-D-15

Department of Corrections

August 22, 2002

The New Hampshire Personnel Appeals Board (Rule, Johnson and Urban) met on Wednesday, June 19, 2002, 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 Priscilla DeHotman, a former employee of the Women's Prison of Department of Corrections. Attorney Michael Sheehan appeared on behalf of the appellant. Attorney John Vinson appeared on behalf of the Department of Corrections. Neither party objected to the participation of any of the members of the Board scheduled to hear and decide the appeal.

Ms. DeHotman was appealing a three-day suspension without pay, effective March 1, 2002, resulting from the appellant's alleged failure to obey an oral order of a superior. In the notice of suspension, the State alleged that the appellant's "uncooperative and disruptive behavior, Per 1001.05 (a) 9, during the medical emergency on February 24, 2002 jeopardized the safety and security of the facility, inmates and fellow co-workers."

In the original notice of appeal, which the appellant filed *pro se*, the appellant denied the allegations, arguing that "after some discussion, [she] did follow the orders of the officer in charge...." [State's Exhibit 2]. The appellant argued that the charges against her "resulted from a prior report [she] gave to the warden about an alleged cover-up that included Warden Gerry

and the [Lieutenant],” and were made in retaliation for a charge of sexual harassment that she made against Sgt. Tower.

The record of the hearing in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, the audio tape recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

State’s Exhibits

1. Ms. DeHotman’s March 17, 2002 letter of resignation
2. Ms. DeHotman’s “Statement Form” dated March 18, 2002
3. Corporal Ford’s “Incident Report” dated February 24, 2002
4. Officer Furgal’s “Incident Report” dated February 25, 2002
5. Officer Pettine’s “Incident Report” dated February 25, 2001
6. March 1, 2002 Letter of Suspension issued to Ms. DeHotman
7. Department of Corrections PPD (Rules and Guidance for DOC Employees) 2.16

Without objection, the statements of all the witnesses other than the appellant were received by the Board in the form of uncontroverted offers of proof made by the representatives of the parties. The appellant chose to testify live.

Attorney Sheehan argued that the appellant gave uncontroverted testimony that she was ordered to make an ambulance run and did what she was ordered to do. He admitted that the appellant resisted the assignment, but argued that there is a substantial difference between resisting an assignment and refusing an assignment.

Attorney Sheehan admitted that Cpl. Ford was operating without full knowledge of the appellant’s circumstances, as the appellant had not disclosed the events that had transpired between herself and the Warden. He also asked the Board to remember that the appellant had received prior approval to work no overtime that week and had made other commitments. Under those circumstances, he suggested, the appellant’s discussion with Cpl. Ford should be deemed a “time out,” not an act of insubordination. In the narrow focus, he argued, the charge of insubordination was unsupported. Attorney Sheehan asked the Board to find that the appellant received the order, challenged the order, then carried out the order.

Attorney Vinson asked the Board to consider carefully the sequence of events. The day before the appellant was ordered to take the inmate to the hospital, she had made a report of sexual misconduct to the warden and informed him that she had been the victim of sexual harassment herself. The appellant had completed a written statement for the warden, which the warden had not seen at the time the appellant was ordered to accompany the inmate to the hospital. The appellant never told the OIC that she wanted to interview an inmate or that there was an inmate waiting to speak with her. She simply told Cpl. Ford that the hospital run would interfere with her veterinary run. Attorney Vinson argued that the appellant's own description of her conduct on the night of the incident provides the very reason for finding that she was insubordinate and for deciding to discipline her by suspending her without pay.

Attorney Vinson argued that the appellant's conduct on the night in question constituted intentional defiance of an order in violation of Prison policies and procedures. As such, he argued, the appellant was subject to discipline under both departmental policy and the Rules of the Division of Personnel. He asked the Board to note that the material facts of the incident that resulted in the suspension were not in dispute. He argued that while the appellant had given several reasons that she believed she should not have been ordered to make the ambulance run, those reasons did not excuse her from following orders or relieve her from discipline for failing to do so when the order was originally given.

The material facts are not in dispute.

1. The appellant started working on February 23, 2001, as a Corrections Officer Trainee.
2. She attended the Corrections Academy in Concord at NH Police Standards and Training and graduated from the academy near the top of her class.
3. Training at the academy included a review of the Department's Rules and Guidance for DOC Employees (PPD 1.16), covering topics such as obeying an oral order of a superior.
4. On the evening of February 24, 2002, the appellant was scheduled to work 2nd shift at the Women's Prison in Goffstown.
5. There were three other officers on shift that night: Corporal Ford, Officer Pettine, and Officer Furgal.

6. During the shift, the appellant received a report that one of the inmates on her core was suffering a seizure, so she alerted the medical staff, prompting a call for an ambulance.
7. Cpl. Ford heard the call and directed the appellant to accompany the inmate to the hospital, telling her that Goffstown Police would supply the “chase” vehicle.
8. The appellant told Cpl. Ford to find someone else to “take the run” as the appellant was scheduled to be on-call for a veterinary ambulance service at 11:00 p.m. and had already told her Sergeant that she could not work overtime because of that commitment.
9. Cpl. Ford assured the appellant that she would be available to relieve her from duty at 11:00 p.m.
10. The appellant told Cpl. Ford that she had “had enough” and that someone else would have to go.
11. Cpl. Ford again told the appellant it was her responsibility to escort the inmate.
12. The appellant told Cpl. Ford she was quitting, then went to clean out her locker and took her belongings to her car.
13. The appellant also told Officers Pettine and Furgal that she was quitting and would not be back after her shift.
14. The appellant then returned to the facility and told Cpl. Ford that she would “make the run,” although she said it was the last thing she was going to do.
15. Officers who accompany security level C-3 inmates must be armed during transport, so Cpl. Ford reminded the appellant to sign out a weapon.
16. The appellant refused.
17. Cpl. Ford told her she had no choice in the matter and needed to be armed.
18. The appellant asked for permission to bring her own weapon.
19. Cpl. Ford reminded the appellant that employees were not permitted to use their own weapons and again directed her to sign out a weapon for the transport.
20. The appellant signed out a weapon, accompanied the inmate in the ambulance to the hospital, and was relieved by Cpl. Ford at 11:00 p.m. as promised.
21. The following evening, Cpl. Ford wrote out an incident report, describing what had happened between herself and the appellant the previous evening, including their exchange at the hospital when Cpl. Ford arrived to relieve the appellant.

22. Cpl. Ford wrote, "When I relieved her at the hospital she was very cold and said 'tell those guys that they got what they wanted.' and then she left. Officer DeHotman was very insubordinate to me during the entire emergency. Her actions and words proved to me that she has no respect for me or her fellow officers and that she is definitely is not a team player."
23. Cpl. Ford's recommendation would have been to dismiss the appellant as a result of the incident.
24. There was no evidence that when she recommended termination, Cpl. Ford was aware of the appellant's allegations of sexual misconduct by other DOC employees or of the appellant's complaint of sexual harassment by Sgt. Towers.
25. The appellant did not tell Cpl. Ford that she had discussed inmate reports with Warden Gerry or that she was preparing a statement for the Warden.
26. The only reason that the appellant gave Cpl. Ford for initially refusing to accompany the inmate in the ambulance was Sgt. Tower's assurance she would not have to work overtime and that she was scheduled to be on-call at 11:00 p.m. for the veterinary ambulance service.
27. Before the appellant agreed to make the ambulance run, she twice refused the assignment and argued with Cpl. Ford about being armed with a department-issued weapon.

Rulings of Law

- A. Per 1001.05 (a) (11) of the NH Code of Administrative Rules provides that, "An appointing authority shall be authorized to suspend an employee without pay for offenses including, but not limited to... (11) Any offense listed under Per 1001.08
- B. Per 1001.08 (a) of the NH Code of Administrative Rules lists as two separate offenses "Refusal to accept a job assignment [Per 1001.08 (a)(6)] and "Willful insubordination" [Per 1001.08 (a)(9)].
- C. Although the appellant did not refuse the assignment she was given to sign out a departmental weapon and accompany an inmate to the hospital, she did commit willful insubordination within the meaning of Per 1001.08 (a)(6) by challenging Cpl. Ford's order.

Standard of Review – Per-A 207.12 (b), NH Code of Administrative Rules

“In disciplinary appeals, including termination, disciplinary demotion, suspension without pay, withholding of an employee's annual increment or issuance of a written warning, the board shall determine if the appellant proves by a preponderance of the evidence that:

- (1) The disciplinary action was unlawful;
- (2) The appointing authority violated the rules of the division of personnel by imposing the disciplinary action under appeal;
- (3) The disciplinary action was unwarranted by the alleged conduct or failure to meet the work standard in light of the facts in evidence; or
- (4) The disciplinary action was unjust in light of the facts in evidence.”

Decision and Order

Having considered all the evidence, argument and offers of proof, the Board voted unanimously to DENY Ms. DeHotman's appeal. In so doing, the Board found that the facts in evidence support the department's conclusion that the appellant was willfully insubordinate. As Attorney Sheehan pointed out, there is a difference between refusing and resisting an order. However, the Rules allow for that distinction by differentiating between refusal to accept a job assignment and willful insubordination. While Ms. DeHotman conduct did not rise to the level of refusal to accept a job assignment, she did challenge the oral order of her superior, repeatedly refusing to do what Cpl. Ford ordered her to do.

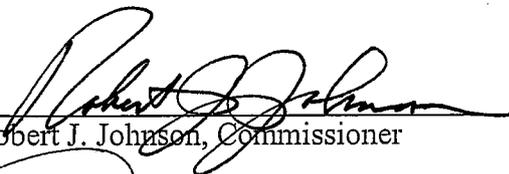
Apart from the appellant's allegations that she had been the victim of sexual harassment, there was insufficient evidence to make such a finding. Absent such evidence, the Board is unable to conclude that the discipline would not have been imposed or that the discipline would have been less severe if she had not complained to the Warden and to other staff in the Department.

Accordingly, the Board voted to affirm the agency's decision to issue Ms. DeHotman a three-day suspension without pay for willful insubordination. Ms. DeHotman's appeal, therefore, is DENIED.

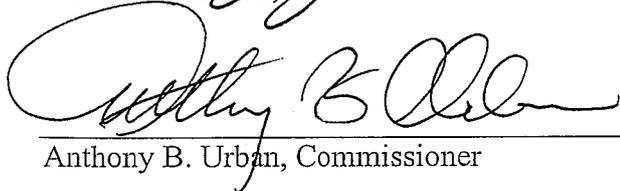
The Personnel Appeals Board



Lisa A. Rule, Acting Chair



Robert J. Johnson, Commissioner



Anthony B. Urban, Commissioner

cc: Thomas F. Manning, Director of Personnel
Attorney Michael Sheehan
Attorney John Vinson