

The State of New Hampshire

Supreme Court

No. 89-145

Appeal of William Ahern

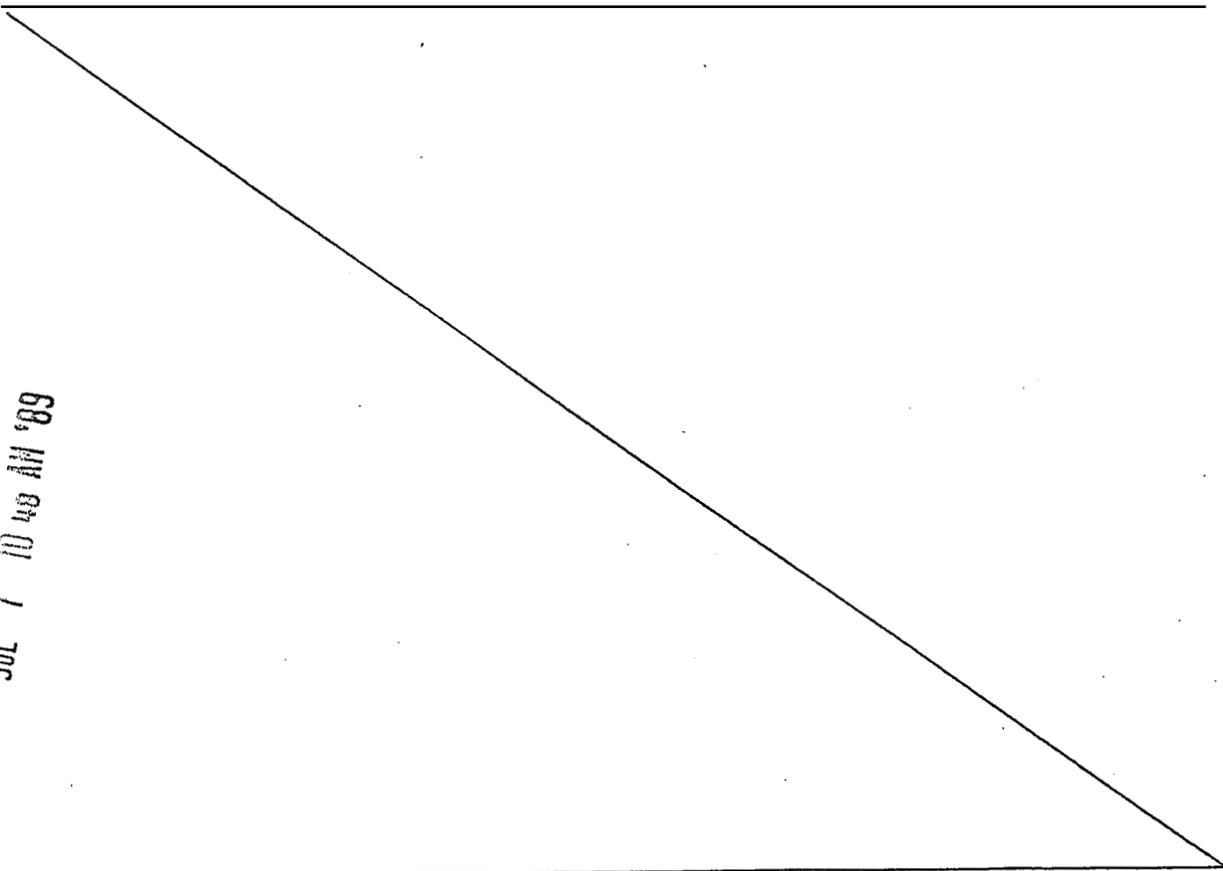
88-7-100

PERSONNEL APPEALS BOARD

TO THE CLERK OF \_\_\_\_\_

I hereby certify that the Supreme Court has issued the following order(s) in the above-entitled action(s):

June 9, 1989      Appeal not having been filed on or before May 29, 1989, the appeal is deemed waived.



RECEIVED  
DIV. OF PERSONNEL  
JUL 7 10 48 AM '89

Attest: Ralph H. Wood (122)  
Ralph H. Wood, Clerk

July 6, 19 89

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

89-145 Appeal of William Ahern

In Case No. ....

April 28, 1989

the court upon ..... made the following order:

Plaintiff's motion to extend time to file appeal is granted. Plaintiff shall file his appeal on or before May 29, 1989, or the appeal shall be deemed waived.

Distribution:

- Personnel Appeals Board
- Mr. William Ahern
- Robert Dunn, Esquire
- File

RECEIVED  
 DIV. OF PERSONNEL  
 MAY 2 11 32 AM '89

Ralph H. Wood,

Clerk

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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

### APPEAL OF WILLIAM AHERN Motion for Reconsideration

At its meeting of February 22, 1989, the Personnel Appeals Board, Commissioners Cushman and McNicholas sitting, reviewed the Motion for Reconsideration filed on December 28, 1988 by William Ahern relative to his appeal of termination from employment at the New Hampshire Vocational Technical College in Manchester.

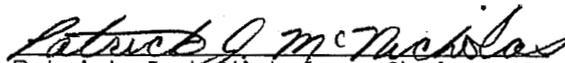
Upon consideration of that Motion, the Board voted to deny the requested reconsideration. In so doing, the Board made the following rulings.

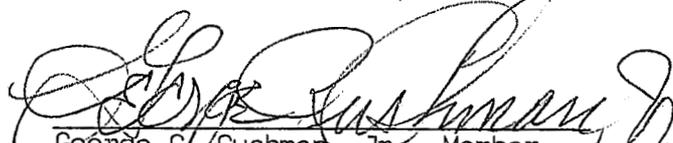
The appellant failed to substantiate his argument that he was refused access to his personnel file. During the period of February 5, 1988, the date of termination, and the date of hearing on August 23, 1988, the appellant had ample opportunity to review his records or to request formal discovery of same.

The appellant argued that he was not provided the opportunity to refute the Affidavit of Cecile Vachon. At the August 23, 1988 hearing, the Board granted the appellant twenty days in which to respond to the Affidavit of Cecile Vachon. On September 2, 1988, SEA General Counsel filed on Mr. Ahern's behalf such response. The Board's decision made reference to same in its decision of December 14, 1988.

Based upon the foregoing, the Board voted to affirm its December 14, 1988 decision upholding the termination of William Ahern.

PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
George C. Cushman, Jr., Member

dated: March 15, 1989

Appeal of William Ahern - Motion for Reconsideration  
page 2

cc: William J. Ahern  
P.O. Box 1706  
Concord, New Hampshire 03301

Robert Dunn, Assistant Attorney General  
Office of the Attorney General

Virginia A. Vogel  
Director of Personnel

March 15, 1989

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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

### APPEAL OF WILLIAM AHERN

December 14, 1988

On Tuesday, August 23, 1988, the Personnel Appeals Board consisting of Commissioners Brickett and Cushman, heard the termination appeal of William Ahern, an employee of the Department of Postsecondary Vocational Technical Education (Manchester Vocational Technical College (hereinafter "College")).

Mr. Ahern, who was represented at the hearing by SEA General Counsel Michael Reynolds, had received notification of termination in a letter from College President Richard Mandeville dated February 5, 1988. That letter, issued for unsatisfactory work, also referred to letters of warning issued by the College to the appellant on April 14, 1987 and November 2, 1987 for unsatisfactory work and lack of cooperation.

By letter dated February 19, 1988, SEA General Counsel Reynolds filed an appeal before the Personnel Appeals Board on behalf of Mr. Ahern, alleging the discharge to be unreasonable on the following grounds:

- 1) his work performance was meeting any reasonable standard;
- 2) he was cooperative;
- 3) he made changes "to the extent reasonably possible, as suggested by the appointing authority";
- 4) Mr. Ahern was not fully apprised of what incidents of inefficiency or uncooperativeness precipitated his discharge; and
- 5) any "incidents where Mr. Ahern's performance would ideally have been better" were insufficient grounds for termination in light of his years of service with the State.

In the appeal filed on his behalf by the State Employees' Association, the appellant also requested that the Board consider a second appeal, the Personnel Director's decision to dismiss Mr. Ahern's appeal of a November 2, 1987 letter of warning for failure to timely file said appeal. In his hearing request, the appellant argued that, "Mrs. Brown [Commissioner of the Department of Postsecondary Vocational Technical Education] effectively waived the timeliness issue in Mr. Ahern's appeal to her; and that the Board should allow him to appeal the letter of warning to the Director's level even if the appeal to Mrs. Vogel was untimely since he was unrepresented at that level and no prejudice to the appointing authority would occur if that appeal were allowed."

With regard to the November 2, 1987 letter of warning as appealed at the Director's level, the Board found no justification to order that the Director of Personnel waive the timely filing requirements of the Rules of the Division of Personnel. Whether or not the appellant had formal representation at that time has no bearing upon the requirements of Per 308.04(c)(4)a., that, "The employee by himself and/or his chosen representative or agency head may ask within 5 working days for additional review of the problem by the director of personnel." (Emphasis added.) Electing to file an appeal with or without formal representation is a choice which only the appellant could make. Mr. Ahern's decision to pursue an appeal of a letter of warning without formal representation does not bar the Director from dismissing his appeal for failure to timely file, nor does it prohibit the Board from upholding the Director's decision that an appeal at that level was untimely pursuant to those rules.

By order of notice dated March 28, 1988, the Personnel Appeals Board notified representatives of the parties that a hearing had been scheduled in the termination appeal of William Ahern on Tuesday, April 26, 1988 at 1:00 p.m. in the State House Annex. In a motion filed by Attorney Claire Gregory of the Attorney General's Office on April 15, 1988, the College requested the hearing be postponed until some date after May 10, 1988, because key witnesses for the College would be unavailable until that time. In that motion, Attorney Gregory indicated consent to the motion by the appellant's representative Attorney Reynolds.

By order of notice dated July 27, 1988, the Personnel Appeals Board notified representatives of the parties that a hearing in Mr. Ahern's termination appeal had been rescheduled for Tuesday, August 23, 1988.

At the hearing, without objection from the appellant, the College entered into the record ten marked exhibits. The appellant requested and was granted twenty additional days from the date of the hearing to file a response to "Exhibit X - Affidavit of Cecile Vachon." Such response was filed by Attorney Reynolds on September 2, 1988. On August 23, 1988, Attorney Dunn, on behalf of the College, filed with the Board copies of attachments to the "Affidavit of Cecile Vachon". Based upon the testimony and evidence presented by the appellant and the College, both at the time of the hearing and within the twenty days provided by the Board for response, the Board made findings of fact and rulings of law which shall be addressed in the same order as appeared in the appellant's "Response" of September 2, 1988.

A. Response to Ms. Vachon's Affidavit, Exhibits, Etc.

The appellant argued that any deficiencies in his work performance were the direct result of an excessive and unreasonable workload, shared responsibility over which the appellant had no control, improper procedures in the business office, and "change of receiving policy [which] was made over [appellant's] strenuous objections and has caused many of problems

that are brought up in this Affidavit." The appellant did not provide documentation or corroborative testimony to support his contention that the workload exceeded that which could be handled by an employee in the position of Stock Control Supervisor. While he made reference in his testimony to using and relying upon assistance from typists or work-study students, he provided insufficient evidence to persuade the Board that such assistance had actually been detrimental to his work performance. The only written evidence before the Board concerning the appellant's work assignments was his memo of June 18, 1987 to his supervisor, Ruth Michaud (State's Exhibit I) concerning his job duties. In that memo, Mr. Ahern stated, "The amount of purchase orders and requisitions being processed impacts heavily on the amount of time required to perform these duties [listed by the appellant in that memo as 'receiving, inspecting and delivery of materials purchased on State Purchase Orders and In-House Requisitions']." The appellant provided insufficient evidence to support his argument that deficiencies in his work performance were justifiable and therefore an inappropriate basis for disciplinary action.

B. Response to November 2, 1987 Letter of Warning

The letter of warning issued by President Mandeville to William Ahern on November 2, 1987, cited unsatisfactory work and lack of cooperation as the basis for the resultant disciplinary action. Specifically, that letter referred to timeliness of Receiving Reports, incorrect Receiving Reports, insufficient stock supply, incomplete orders, disorganization of files and improper inventory controls. The appellant again argued that changes in procedures, personnel assignments and reorganization of the business office at the College, in addition to reassignment of some of his duties to other personnel at the College were the cause of any perceived deficiencies in his performance or attitude. The appellant also stated, "After sixteen years as a Stock Control Supervisor waiting for a Stock Clerk to assist me, I end up with the Stock Clerk directing me and authorized by the College Administration as proper State procedure."

The Board might have found the appellant's rebuttal more compelling had he provided supporting documentation or corroborative testimony which would reflect favorably upon his work performance and attitude. The weight of evidence and testimony, however, supported the College's allegations of unsatisfactory work and lack of cooperation.

C. Response to April 15, 1987 Letter of Warning

The appellant argued that his response "is certainly appropriate to the extent that the Board might consider the substance of that April 15, 1987 Letter of Warning since that Letter of Warning was included in the appointing authority's submissions.

APPEAL OF WILLIAM AHERN  
December 14, 1988  
page 4

The Board ruled that this warning! dated April 15, 1987, did not require review or discussion on its merits. The appellant did not pursue a timely appeal before the Personnel Appeals Board of that letter of warning and the appellant, therefore, has no opportunity now to dispute the contents or the substance of that warning. Nothing in the Rules of the Division of Personnel or the Rules of the Personnel Appeals Board would prohibit the appointing authority from submitting a valid letter of warning as an exhibit in this appeal.

D. Response to February 5, 1987 Letter of Warning/Termination

Neither the materials submitted on September 2, 1988 nor the appellant's testimony at the hearing of August 23, 1988, supported rescinding the February 5, 1988 letter of warning or the appellant's termination. The appellant failed to provide supporting documentation or corroborative testimony to cause the Board to question the credibility of the College's allegations in its letter of February 5, 1988 which cited deficiencies in the appellant's performance and notified him of his termination. The appellant further failed to provide sufficient evidence or testimony to support modification of the discipline imposed.

Based upon the foregoing, the Board voted unanimously to deny the appeal of William Ahern, upholding the College's decision to discharge the appellant effective February 5, 1988.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE  
Executive Secretary

cc: Michael C. Reynolds, Esquire  
SEA General Counsel

Robert E. Dunn, Jr., Esq.  
Office of the Attorney General

Virginia A. Vogel  
Director of Personnel