

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF ANN MARIE AMES

Docket #99-T-22

New Hampshire Hospital

August 4, 1999

The New Hampshire Personnel Appeals Board (Wood, Rule and Johnson) met on Wednesday, August 4, 1999, under the authority of RSA 21-I:58, to consider the termination appeal of Ann Marie Ames, a former part-time employee of New Hampshire Hospital.

On July 16, 1999, Attorney John B. Martin, writing on behalf of the Office of Family Services, Behavioral Health, moved for dismissal of the appeal, arguing that the Board lacked jurisdiction to hear appeals by part-time employees. In support of that Motion, Mr. Martin argued that RSA 21-I:58 extends appeal rights to, "...any permanent employee who is affected by an application of the personnel rules." He argued that Ms. Ames was not a permanent employee, and therefore had no right to appeal her dismissal as a part-time employee. Mr. Martin cited the Court's decision in the Appeal of Carol Higgins-Brodersen and William McCann, 133 NH 576 (1990) to support his position.

The appellant's objection to that Motion was received by the Board on July 22, 1999. The appellant argued that by occupying a classified position, accepting payment at the classified rate, and performing work outlined in a classified job description, she must be considered a "classified employee" subject to the Rules, and eligible to appeal under the provisions of RSA 21-I:46, I.

The Board's jurisdiction is broadly defined by RSA 21-I:46, I, that states in pertinent part, "The personnel appeals board shall hear and decide appeals as provided by RSA 21-I:57 and RSA 21-

I:58 and appeals of decisions arising out of application of the rules adopted by the director of personnel..."

1. Ms. Ames' appeal does not involve an allocation decision appealable under RSA 21-I:57.
2. RSA 21-I:58, I, applies specifically to, "Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57..."
3. Ms. Ames was not a permanent employee, and therefore was ineligible to appeal under the provisions of RSA 21-I:58, I.'
4. RSA 21-I:46, I, provides for, "...appeals of decisions arising out of application of rules adopted by the director of personnel..."
5. Per 1001.01 of the Rules adopted by the Director, effective April 28, 1998, states, in pertinent part:

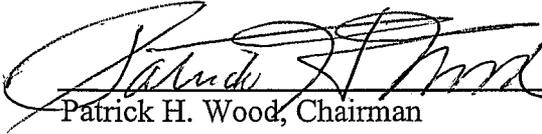
"The following disciplinary measures exist for full-time employees [emphasis added] within the state system:

- (a) *Dismissal during initial probationary period;*
 - (b) *Written warning;*
 - (c) *Withholding annual increment;*
 - (d) *Suspension;*
 - (e) *Demotion; and*
 - (f) *Dismissal."*
6. There are no similar provisions in the Director's Rules covering the dismissal of part-time employees.
 7. There is no dispute that Ms. Ames was a part-time employee.
 8. Ms. Ames' termination as a part-time employee is not subject to appeal under the general authority of RSA 21-I:46, I.

¹ "...the legislature intended to confer upon State employees a specific right of appeal to the Board based upon permanent status." Appeal of Higgins-Brodersen 133 N.H. 576, 580

Accordingly, the Board voted to DISMISS the appeal of Ann Marie Ames.

THE PERSONNEL APPEALS BOARD


Patrick H. Wood, Chairman


Lisa A. Rule, Commissioner


Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol Street, Concord NH 03301
Chad E. Rankin, Legal Intern, State Employees' Association, PO Box 3303, Concord NH
03302-3303
Michael C. Reynolds, SEA General Counsel, PO Box 3303, Concord NH 03302-3303
John Martin, Counsel, Behavioral Health, 105 Pleasant St., Concord NH 03301