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# State of New Hampshire

**PERSONNEL APPEALS BOARD**
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APPEAL OF LOIS BARTLETT-CAHILL
Division for Children and Youth Services

Docket #90-T-10

Dated: January 24, 1991

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, October 10, 1990, to hear the termination appeal of Lois Bartlett-Cahill, a former employee of the Division for Children and Youth Services. Ms Bartlett-Cahill was represented at the hearing by her daughter, Attorney Carol Lynn Cahill. Attorney Charles Weatherill represented the Division for Children and Youth Services (hereinafter "DCYS").

Ms Bartlett-Cahill was notified of her discharge from employment as a Child Protective Service Worker III in the Salem District Office of DCYS by letter dated March 29, 1990, signed by DCYS Director Effie Malley. The letter of discharge listed 10 separate allegations of misconduct, violation of policy, and unacceptable work performance which, individually and collectively, DCYS cited as grounds for her immediate discharge. The letter also alleged that Ms Bartlett-Cahill, on February 15, 1990, admitted to having telephoned a foster parent and having disclosed another social worker's confidential investigation material to him. Ms Bartlett-Cahill timely filed an appeal of her discharge, responding by letter dated April 9, 1990, to the allegations presented in the letter of discharge.

Ms Bartlett-Cahill argued that she was a good social worker, and that any of her alleged offenses were either assented to or practiced by others. She contended that the allegations contained in her letter of discharge were false, and merely the product of a personality conflict between herself and her supervisor, Priscilla Casimiro. She further argued that she and her supervisor had two entirely different views of social work in general, and

that she had more education and experience in the field than her supervisor. She asked the Board to find that her discharge was improper, and could only have been accomplished through progressive discipline.

In consideration of all the evidence and testimony presented, the Board unanimously voted to deny Ms. Bartlett-Cahill's appeal finding she had failed to meet her burden of proof by demonstrating that her discharge was either unlawful or unreasonable. Further, the Board found sufficient evidentiary support for a number of the allegations presented in the letter of discharge, particularly as such allegations related to the policies and statutory requirements for protection of confidential information pertaining to juvenile recipients of DCYS services. In the aggregate, the Board found Ms. Bartlett-Cahill's termination to be warranted. The Board noted, however, that many of the specific reasons for discharge seemed to be make-weight, i.e. the 1987 placement of two foster children in Appellant's own home. In its deliberations, the Board did not give this allegation serious weight inasmuch as no one in DCYS had previously taken exception to such placement.

Although the Board has ruled in favor of the agency's decision to discharge the appellant, the Board must also point out that from DCYS's initial assessment of the grounds for Ms. Bartlett-Cahill's discharge, through the discharge process, and eventual appeal by the appellant, the agency's handling of this matter presented substantial and almost inexcusable technical deficiencies. Had this appeal involved an employee whose duties and responsibilities were less critical than those of the appellant, or an employee with substantially less education and experience than the appellant, the Board might have been inclined to modify rather than uphold the agency's discharge decision.

While the Board has chosen not to discuss individually each of the technical problems involved in this case, the Board does caution the agency to be more mindful of its own policies and procedures. If, for instance, Ms. Bartlett-Cahill's temporary placement of two foster children in her home was considered a serious enough offense to warrant reference in her letter of discharge, the agency should have been able to produce evidence of its policy regarding such placements. The agency should also have been able to produce some evidence of why no disciplinary action was taken when that placement was discovered if it constituted a violation of some sort.

Of particular concern to the Board is the agency's loosely written policy on the issue of protected records, and its subsequent reliance upon the breach of confidentiality offense in effecting this employee's discharge. The Board strongly recommends that the agency make a thorough, thoughtful review of its policies and procedures, and amend such policies to reflect which offenses the agency considers serious enough to warrant an employee's immediate discharge without warning. On the issue of confidentiality, for example, the Board fully understands that some pieces information are more sensitive than others, and the agency might therefore be hesitant to adopt a blanket policy

concerning unauthorized release of confidential information. The agency would be well-served, however, to amend its policies to reflect that the unauthorized release of information protected by statute will be deemed a serious enough offense to warrant immediate discharge without warning. Careful amendment of the relevant policies and procedures should bring them more closely in line with the Rules of the Division of Personnel and make them more useful in the management of the agency.

The Board would also recommend that the agency review the nature and extent of its supervisory training, with the understanding that supervisors need a working knowledge of the Rules of the Division of Personnel, and should be expected to act quickly and decisively within the framework of those Rules. The Board is fully mindful of how distasteful confrontation and discipline can be. Nonetheless, persons in supervisory positions are responsible for making difficult and often distasteful decisions to assure that the agency's mission is fulfilled. Had more supervisory intervention occurred earlier in Ms. Bartlett-Cahill's career with the Division for Children and Youth Services, and had such supervisory intervention been more carefully and fully documented, the "make-weight" allegations offered by the Division in its case might instead have been considered substantive, and supportive of its discharge decision.

During its deliberations, the Board gave careful consideration to Ms. Bartlett-Cahill's level of training and experience, as well as her placement in the system of classified employees when determining the seriousness of the alleged offenses and the appropriate level of discipline for such offenses. Ms. Bartlett-Cahill argued that her methods were somewhat unorthodox, and admitted that her paperwork and record-keeping were less than exemplary. She also admitted that she was not above cutting through the "red tape" if it meant she could be a more effective advocate for the children in her caseload. She testified that "All systems bother me. I always try to do what's in the best interest of the child. 95% of the time we agree. 5% of the time when we don't, I have a problem."

In positions such as Child Protective Service Worker III, dedication and clinical expertise are only portions of the standard against which performance must be evaluated. The continuous exercise of discretion, professionalism, and good judgment carry equal weight in any reasonable standard of performance. The appellant attempts to minimize the extent of her offenses by representing all her actions as being "in the best interest" of the children in her caseload, and by stating she would never intentionally do anything to hurt a child. The appellant also argues that her discharge prior to receipt of multiple, written warnings was improper. The Board does not agree.

Ms. Bartlett-Cahill should have understood that conduct deviating from departmental policy and acceptable performance standards, particularly when such deviation included disregard for policies involving the provision of services to children, or the unauthorized release of statutorily protected

information about those children could only result in disciplinary action, up to and including her immediate discharge. Having considered the degree of supervision offered to Ms. Bartlett-Cahill, the level of her education, training and experience in the field of social work, and the performance standard established for employees in positions such as hers, the Board did not find the absence of multiple, written warnings a pivotal factor in deciding to deny Ms. Bartlett-Cahill's appeal.

The Board, in so ruling, admonishes the agency to follow its own rules, the Rules of the Division of Personnel, and the Rules of the Personnel Appeals Board. Ms. Bartlett-Cahill was discharged for a variety of generalized reasons. The agency appears to have then added every conceivable reason in an effort to further support the discharge decision. As previously noted, DCYS was aware of the improper placement of youths in Ms. Bartlett-Cahill's home in 1987, but elected not to discipline the appellant at that time. The Board, therefore, would consider this particular ground to be waived by DCYS. Had this infraction only come to light during the investigation into current charges, DCYS might have been allowed to rely upon that infraction in support of its discharge. Having chosen to take no action upon discovery of this action, however, DCYS may not now raise the issue as grounds for discharge, and may only present the information as evidence of Ms. Bartlett-Cahill's history of disregard for agency policy and procedure.

The same applies to the agency's charge of "stealing from the State". The agency provided no evidence that the appellant misrepresented facts for the specific purpose of getting approval of unnecessary mileage reimbursements approved for personal gain. It does appear that Ms. Bartlett-Cahill took advantage of lax audit procedures involving approval of travel requests. At worst it would appear that the appellant may have capitalized upon management's failure to carefully scrutinize travel requests, allowing her to be away from the office more often than was perhaps necessary.

Per 308.03 of the Rules of the Division of Personnel provides for discipline ranging from oral warnings to immediate, mandatory discharge. The appellant has suggested that if DCYS believed her work to have been unsatisfactory, it should have chosen a less extreme discipline than immediate termination. Ms. Cahill suggested that the agency should have produced a series of written warnings, or in a more extreme case, might have chosen to suspend or demote the appellant. The agency, on the other hand, argued that Ms. Bartlett-Cahill committed offenses of such a serious nature as to warrant her discharge under either the optional or mandatory discharge provisions of the Personnel Rules.

The Board finds Ms. Bartlett-Cahill's discharge to be warranted under the Optional Discharge provisions of Per 308.03 (2). Progressive discipline, which the appellant believes to have been the more appropriate course, presumes that the offense in question is not of so serious a nature as to warrant the employee's immediate discharge, or discharge after one warning for the same offense. Progressive discipline also presupposes that the warning

itself will outline a course of corrective action which, if followed, will both protect the employee from further disciplinary action, and make the employee a more productive and effective member of the staff.

While the issue of proper, timely completion of paperwork might have been resolved through a course of progressive discipline, the Board found little indication in Ms. Bartlett-Cahill's testimony that one or more warnings would have altered her course of "bucking the system", or believing that she could supplant her judgment and style for the policies and procedures of the agency or the directions of her supervisor in issues of child advocacy. Bearing that in mind, the Board found Ms. Bartlett-Cahill's unauthorized release of confidential information, her reluctance bordering on outright refusal to participate in training, her failure to work within the constraints of the Division's policies and procedures, and her lack of communication and cooperation with DCYS counsel and staff warranted her discharge without warning.

The Board responded as follows to the Requests for Findings of Fact and Rulings of Law submitted by the parties:

Appellant - Findings of Fact

1, 2, 3, 8, 18 and 19 are granted to the extent discussed in the decision above.

4 and 15 are neither granted nor denied, as they require clinical assessments unavailable as part of the Board's record.

5, 6, 7, 9, 11, 12, 14, 16, 17 and 20 are unsupported by the record, as neither evidence nor corroborative testimony was offered.

10 and 13 are denied.

Appellant - Rulings of Law (unnumbered)

Paragraphs 1, 3, and 4 are denied.

Paragraph 2, after striking the words "valid and necessary", is granted.

Paragraph 5 is neither granted nor denied. Appellant acted in a manner she believed to be in the best interest of the child.

Sentence 1 of paragraph 6 is granted, the remainder is denied.

DCYS - Findings of Fact

1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 14, 15, 16, 17 and 18 are granted.

5 is neither granted nor denied.

10 is granted to the extent discussed above, and to the extent that she expressed her resolve to continue defending herself against allegations or complaints. It is denied to the extent that she made any actual statement that "she would continue to violate confidentiality".

13 is granted to the extent that the 18 complaints and charges were raised.

DCYS - Rulings of Law

19, 22 and 23 are granted to the extent that they are discussed in the decision above.

20 and 21 are denied

THE PERSONNEL APPEALS BOARD

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