

State of New Hampshire



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

**APPEAL OF JAMES A. CALLUM**  
**(Docket #93 -T-29)**  
**and**  
**APPEAL OF PAUL E. STEVENS**  
**(Docket #93 -T-30)**

**New Hampshire Adjutant General's Department**

**Response to Appellant's Motion for Reconsideration/Rehearing**

April 26, 1995

On June 21, 1994, the New Hampshire Personnel Appeals Board received SEA General Counsel Michael Reynolds' request for reconsideration of the Board's June 1, 1994 decision in the termination appeals of James Callum and Paul Stevens, former employees of the Adjutant General's Department. In support of that Motion, Mr. Reynolds argued that the Board had ignored and/or misstated much of the relevant evidence, that the decision is against the weight of the evidence, and that the terminations were illegal and unjust.

The Board is mindful of its responsibility to assess the credibility of witnesses, to determine what evidence is relevant, and to consider the weight of the evidence in reaching its decisions. In this instance, the Board continues to find that the weight of the evidence supports the conclusion that Mr. Callum and Mr. Stevens wrongfully and forcibly entered building 257, violated standing orders regarding entry into certain base buildings, misreported a security check at building 257, and failed to report their entry into the building. The Board also continues to find that those offenses rose to the level of optional dismissal offenses as defined by Per 1001.08(b) of the Rules of the Division of Personnel.

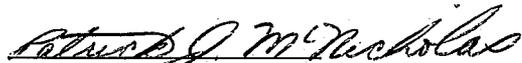
With regard to the assertion that the Board improperly found the appellants to have committed the offenses of refusal to accept a job assignment or willful falsification of agency records, the appellant's are simply incorrect. The Board's order specifically states that the offenses which the appellant's committed "rose to the level of offenses described by Per 1001.08(b) of the Rules of the Division of Personnel". "Refusal to accept a job assignment" and "willful falsification of agency records" are listed solely for the purpose of comparing the nature and seriousness of

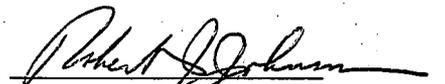
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the offenses for which the appellants were discharged to those offenses specifically enumerated in Per 1001.08 (b).

The appellants have failed to establish that the decision of the Board in this matter is either unlawful or unreasonable. Accordingly, the Board voted to deny the appellants' Motion for Reconsideration/Rehearing, and to affirm its original decision denying the appeals of James Callum and Paul Stevens.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Michael C. Reynolds, SEA General Counsel  
Dennis O'Connell, Esq., Adjutant General's Office

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### APPEAL OF JAMES A. CALLUM

(Docket #93 -T-29)

and

### APPEAL OF PAUL E. STEVENS

(Docket #93 -T-30)

New Hampshire Adjutant General's Department

June 1, 1994

The New Hampshire Personnel Appeals Board (McNicholas and Johnson) met February 9, 1994, February 16, 1994, and May 4, 1994, to hear the termination appeals of James A. Callum and Paul E. Stevens, former Security Officers at Pease Air National Guard Base. Although the charges against the two men differed slightly, they arose from the same incident involving alleged improper entry into Building 257 at the Pease Air National Guard Base on April 7, 1993. Both Mr. Callum and Mr. Stevens were dismissed from their full-time Security Officer positions, effective April 16, 1993.

The charges against Mr. Callum are listed in his April 16, 1993 letter of termination as follows:

1. That he was a party to, and participated in, the wrongful and forced entry of building 257 at Pease ANGB at approximately 1:15 a.m., 7 April 1993 while he was performing security officer patrol duties.
2. That he was present when, and observed that, Officer Stevens wrongfully removed contents of building 257 (to wit: a container of disposable coffee cups) and failed to report this wrongful taking.

The charges against Mr. Stevens are listed in his April 16, 1993 letter of termination as follows:

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1. That he wrongfully and forcibly entered building 257 at Pease ANGB at approximately 1:15 a.m., 7 April 1993 while he was performing security officer patrol duties.
2. That he wrongfully removed contents of building 257, to wit: a package of disposable coffee cups.
3. That he attempted to conceal the fact that he had entered building 257 by falsifying the 157th Security Police Building Checklist and 157th Security Police Desk Blotter report for the period 6:00 a.m., 6 April 1993 to 6:00 a.m., 7 April 1993.

Both employees were advised that their conduct was unacceptable for persons charged with, and responsible for, the security and protection of expensive and sensitive facilities, and large amounts of costly government property located at Pease Air National Guard Base. They were advised that their terminations were being effected pursuant to Per 1001.08 (b) of the Rules of the Division of Personnel. They were also advised of their rights to appeal pursuant to RSA 21-I:58.

By letters dated April 28, 1993, and April 29, 1993, SEA Legal Intern Linda Chadbourne requested hearings before the Board to appeal James Callum's and Paul Stevens' termination. In support of those request, Ms. Chadbourne denied the charges listed in the letters of termination and argued that the termination was "effected for reasons other than cited in the letter of termination, which are not allowable reasons under the personnel rules." Ms. Chadbourne did not specify what reasons those might have been. She also argued that even if the Board were to find some merit in the charges the terminations should be considered unjust in light of all the relevant facts. Again, she failed to specify what other facts might have bearing on the propriety or impropriety of the discharges. Ms. Chadbourne asked the Board to consolidate the appeals.

The appellants were represented at the hearing by SEA General Counsel Michael C. Reynolds. Attorney Dennis O'Connell appeared on behalf of the Adjutant General's Department. The parties agreed to consolidation of the two appeals.

At the hearing, Attorney Reynolds argued that the terminations were essentially retaliatory in nature, arising largely from animosity between the civilian and military personnel on the base. He argued that security problems at the base were a result of poor management, and that Mr. Callum and Mr. Stevens were only performing their regular security duties, entering Building 257 to perform an internal rather than an external building check.

After considering the extensive testimonial and documentary evidence presented by the parties, the Board made the following preliminary findings of fact:

1. Mr. Callum and Mr. Stevens were both employed as civilian security guards at Pease Air National Guard Base.
2. Civilian security personnel are responsible for performing all the same duties and functions as regular military security personnel, although they are not armed.
3. Because of the classified information and sensitive equipment contained in some of the buildings, civilian security personnel are prohibited from entering a large number of buildings on the base unescorted by appropriate military personnel.
4. Except in the event of an emergency, civilian and military security personnel are instructed not to enter any building without the building supervisor, or without appropriate authorization from the officer in charge.
5. On the morning of April 7, 1993, Mr. Callum and Mr. Stevens drove to the rear of building 257 and entered the building without the building supervisor and without any prior approval from the officer in charge. Neither of the appellants reported that they had entered the building, or that the building was not secure.
6. While in the building, Mr. Stevens found a sleeve of disposable coffee cups which he removed from the building to take to the guard shack.
7. The appellants were seen leaving the building at approximately 1:15 a.m. by a pair of military security personnel who also failed to immediately report that the building had been entered.
8. The 157th Security Police Building Check Sheet completed by Mr. Stevens (State's Exhibit 2) indicated that at 2322 hours, building 257 was checked and was secure. There is no notation of a visit to building 257 at 0115 hours.

According to the appellants, "everyone" knew the doors at the rear of building 257 were not secure, and that if the doors were pulled with sufficient force, they could be opened. Both testified that calling in a building as insecure meant that the controller or flight sergeant would have to do a lot of paperwork, and that at least one of the flight sergeants had told the guards not to call in Building 257. Officer Stevens in particular testified that all the guards knew they shouldn't call the building in as insecure unless they found "something unusual".

On the evening in question, the appellants claimed that when they went to Building 257 to perform their regular outside security check, they found two skunks at the front of the building. They also said that the building was "being moved" and that there was a moving van parked outside. Officer Stevens testified that "movers are sloppy" and he decided to check the building from the interior to make sure none of the space heaters had been accidentally left on. Officers Callum and Stevens left the doors to the building open when they went inside and used their flashlights rather than turning on any of the lights. Officer Stevens testified that he found some unused, disposable coffee cups in a pile of trash and decided to take them back

to the guard post. The appellants testified that after having performed an interior check of the building, they exited and found Sergeants Drisko and Langevin waiting outside. They spoke briefly then left.

Much of the appellants' testimony is simply not credible. Master Sergeant Timothy Hanes interviewed both of the appellants and took written statements from both Sergeant Drisko and Langevin about the incident. None of those reports make mention of skunks at the building. When asked why he had failed to mention the skunks to Sgt. Hanes during his original interview, Mr. Callum said Sgt. Hanes had never asked him why he hadn't completed a full exterior building check, so he didn't mention the skunks. Since the presence of the skunks allegedly was the precipitating factor which necessitated an interior building check, there is no credible explanation why Mr. Callum would have neglected to mention them. Neither appellant had a plausible explanation for why they failed to report being at the building at approximately 1:15 a.m., or failing to report that they had completed an internal security check, if in fact, they had. During questioning, Officer Stevens also mentioned something about an orange cord, like an electrical cord, which usually had been tied in place to hold the doors shut. On the evening in question, he said the cord was missing. He failed to offer any plausible explanation for why he did not report the absence of the tie as something "unusual" at the building if the doors generally had been tied in that fashion in the past. Neither appellant offered a credible reason for failing to turn on the lights inside the building if, in fact, their only purpose in entering the building was to perform an otherwise reasonable and lawful security search of the building.

The appellants called Security Officer Andrew Ramsay to testify on the issue of building security procedures at the base. Officer Ramsay did testify that security procedures were not as rigorously enforced as the State's witnesses had asserted, and that it was common knowledge that the doors at building 257 could easily be forced open. However, Officer Ramsay also testified that while he often did not radio in to report that building 257 was not secure, he testified that he "always, always" noted it in the security building check list.

The appellants alleged that military personnel at the base were being cut because of budget reductions, and resented those non-military personnel filling positions at the base which could have been filled by full-time or part-time military employees. They also alleged that Sergeant Langevin in particular was angry with Mr. Stevens for having reported to base personnel that he had left the base and had not returned through the main gate. The appellants alleged that the incident at building 257 was simply an excuse to fire them so that military personnel could be hired into their position. They further argued that they received far more severe treatment than their military counterparts who had also been aware that the building had been entered.

The evidence does not support such a finding. As a result of the incident and investigation, both Sgt. Drisko and Sgt. Langevin were reprimanded and removed from supervisory positions. Although neither suffered a loss in pay or rank, Sergeant Hanes testified credibly that there were fewer disciplinary options for military personnel, and that Drisko and Langevin had not been guilty of as serious an offense as the appellants because they had not actually entered the building. He also credibly testified that both Sgt. Langevin and Sgt. Drisko were aware of the

damage that had been done to their reputations and their careers, and that one of them subsequently resigned. Further, in spite of the appellants' assertion that they were fired to free up two more positions, neither of the vacant positions created by the dismissal of the appellants was filled as of the date of the hearing.

The appellants have asked the Board to find that security procedures at the base were very lax, and that Mr. Callum and Mr. Stevens were actually just carrying out their assigned duties by entering the building to complete a security check when they discovered that they could not approach the front of the building because of skunks near the door. They have asked the Board to find that the military personnel at the base were looking for an excuse to fire them, and seized on the issue of theft, but that the "theft" amounted to nothing more than picking up and using an item which had been left as trash. The Board does not agree.

In spite of the numerous hours of testimony and argument offered by both parties, the issue is relatively simple. James Callum and Paul Stevens were security officers whose responsibilities included assuring the security of the physical plant at the base. As unarmed, civilian security personnel on a military installation, they were prohibited from entering a large number of buildings on the base. They were aware that they were not to enter any building without the building supervisor or the express approval of the officer in charge of security. The appellants were aware that even when there were standing work orders on a building such as building 257, they were to report anything unusual about the building which made it "insecure".

On the date in question, the appellants made a completely undocumented visit to building 257, opened the doors at the rear of building and entered the building without authority to do so. Upon leaving the building, Mr. Stevens took a sleeve of disposable coffee cups which he then took to the guard shack for use at the coffee machine.

Even if they appellants had actually entered the building for their stated purpose of conducting an interior security check, they violated common sense security procedures by entering an open building, unarmed, without letting their shift supervisor know where they were and what they were doing. The appellant's not only committed a grave, and potentially dangerous error in judgement, they later failed to report their visit to the building, in violation of the operating procedures which governed their work assignment.

The Board found that the appellants wrongfully and forcibly entered building 257 at Pease ANGB at approximately 1:15 a.m., April 7, 1993, while performing security officer patrol duties. The Board further found that the appellants knowingly attempted to conceal the fact of their entry into the building by intentionally omitting any reference in the building security check list to their presence inside building 257 at approximately 1:15 a.m., April 7, 1993. The Board found that the removal of the coffee cups was significant only because it was the unauthorized removal of material from a building which the appellants themselves had reported as secure. The Board found that the appellants committed an offense constituting a serious breach of security procedures in violation of standing orders, and that the entire

incident constituted an offense within the meaning of Per 1001.08 (b) of the Rules of the Division of Personnel, warranting their discharge from employment.

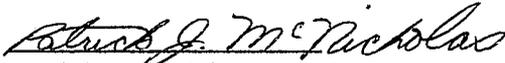
Per 1001.08(b) of the Rules of the Division of Personnel states, in pertinent part:

In cases such as, but not necessarily limited to the following, the seriousness of the offense may vary. Therefore in some instances immediate discharge without warning may be warranted while in other cases one written warning prior to discharge may be warranted:

Among the listed offenses are refusal to accept a job assignment and willful falsification of agency records. The Board found that the offenses committed by the appellants in wrongfully and forcibly entering building 257, violating standing orders regarding entry into certain base buildings, misreporting a security check at building 257 at 2322 hours, and failing to report their entry into the building at 0115 hours rose to the level of offenses described by Per 1001.08(b) of the Rules of the Division of Personnel.

Accordingly, the Board voted to deny the instant appeals. In so doing, the Board voted to affirm the decision of the Adjutant General in dismissing Mr. James Callum and Mr. Paul Stevens from their employment at the Pease Air National Guard Base, effective April 16, 1993.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Robert J. Joanson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Michael C. Reynolds, SEA General Counsel  
Dennis O'Connell, Esq., Adjutant General's Office