

State of New Hampshire



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

APPEAL OF ALFRED F. CHASE, JR.
Docket #94 -T-16

Department of Safety/Division of State Police

Order on Appellee's Motion to Dismiss Pursuant to Per-A 207.05 (b)

September 14, 1995

The New Hampshire Personnel Appeals Board (Rule, Johnson and McGinley) met Wednesday and Thursday, July 26 and 27, 1995, to hear the appeal of Alfred Chase, a former probationary employee of the New Hampshire Division of State Police. Mr. Chase, who was represented at the hearing by Attorney Rupert Leeming, was appealing his September 23, 1993 termination from employment prior to completion of his probationary period for alleged unsatisfactory work performance. Attorneys Sheri Kelloway-Martin and Clarence Bourassa appeared on behalf of the Division of State Police.

By Decision dated June 15, 1993, the Board had denied the State's Motion to Dismiss Pursuant to Per-A 207.04(e), finding that the appellant had alleged facts sufficient on their face to make a prima facie case that he was improperly dismissed as a probationary employee. Under the authority of RSA 21-I:58 and Per-A 207.04(a) of the Rules of the Personnel Appeals Board, the Board scheduled the matter for hearing to determine the validity and sufficiency of the appellant's allegations.

The record in this matter consists of the pleadings filed by the parties prior to the hearing, audio tape recordings of the hearing, and exhibits entered into evidence. The following persons gave sworn testimony:

Major Thomas F. Kennedy
Lt. John Stevens
Trooper James W. White
Dispatcher Lynda Albertson
Trooper Christopher E. Conley
Alfred F. Chase

State's Exhibits 1 - 19, which had been submitted by the State prior to the hearing on the merits of the appeal, were admitted into evidence at the request of the State without objection by the appellant, as joint exhibits. The appellant also offered Exhibit A, which was entered into the record.

STANDARD OF REVIEW

As a probationary employee, Mr. Chase was subject at all relevant times to the provisions of Per 1001.02 (a) which states:

At any time during the initial probationary period an appointing authority may dismiss an employee who fails to meet the work standard provided the dismissal is not:

- (1) arbitrary;
- (2) illegal;
- (3) capricious; or
- (4) made in bad faith.

At the conclusion of the appellant's presentation, the State Police moved for dismissal of Mr. Chase's appeal, arguing that he had failed to establish sufficient credible facts to support his allegations that the employer acted in bad faith, arbitrarily and capriciously to terminate his employment, and that State Police training personnel conspired to terminate his employment by falsely charging him with substandard performance.

After carefully considering the testimony and evidence offered by the appellant, and the substance of the State's Motion, the Board voted to dismiss the appeal based upon the testimonial and documentary evidence presented which make up the appellant's case. The Board found that Mr. Chase failed to prove his claim that State Police personnel acted in bad faith, arbitrarily or capriciously in terminating his employment. In reaching that decision, the Board made the following findings of fact and rulings of law.

FINDINGS OF FACT

1. As a condition of employment, each probationary State Trooper, unless otherwise certified as a full-time police officer, is required to complete the basic recruit academy at the New Hampshire Police Standards and Training Council. Such training constitutes the first phase of the New Hampshire State Police Field Training Program. Phase two of the program involves Field Training with Field Training Officers (FTOs). The final phase occurs when the Probationary Trooper is released to "Solo Status" and he or she

- assumes full responsibility as a Trooper for the remainder of the 12 month probationary period.
2. Mr. Chase attended the 100th State Police Academy at New Hampshire Police Standards and Training, a ten week training academy intended to develop a recruit's skill and evaluate his performance in the areas of Appearance, Attitude, Academic Performance, Physical Performance, and Relationships with instructors and classmates.
 3. Overall, Mr. Chase's performance at the Academy showed steady improvement. The evaluator made positive comments about Mr. Chase's efforts, while identifying those areas in which Mr. Chase appeared to need remedial training. The final evaluations by Police Standards and Training staff at the conclusion of the ten-week academy consistently indicated that Mr. Chase was intelligent and that he had the potential to be a good officer. However, the evaluators noted that Mr. Chase needed extra supervision, and that his constant questioning and analysis of orders and instructions could pose a threat to his own safety or that of other officers.
 4. Having concluded that Mr. Chase needed a strong Field Training Officer, the State Police assigned Mr. Chase to Troop E where his field training program would be overseen by Sgt. James Noyes, the Field Training Program Supervisor. Mr. Chase was assigned to Harry Nedeau as his Primary FTO, and to James White and Paul Birmingham as his two Alternate FTOs. Mr. Chase trained exclusively with FTO Nedeau during weeks 1 and 9, with FTO White during weeks 3 and 4, and with FTO Birmingham Weeks 6,7 and 8. Mr. Chase trained with both FTO Nedeau and FTO White in week 2, with both FTO White and FTO Birmingham in week 5, and with both FTO Nedeau and FTO Birmingham in week 10.
 5. An analysis of Mr. Chase's training evaluations for the 10 weeks of training which followed the Academy reveals that he had an average of "acceptable" performance of 90% or better overall in the areas of Appearance, Interview/Interrogation/Statement-Taking Skills, Relationships with General Public, Relationships with Peers (Other Division Members), Courtroom Demeanor and Testifying, and Court Prosecution. Court Prosecution was only evaluated one day during week 7, and Courtroom Demeanor and Testifying was rated one day per week during weeks 5, 6 and 7.
 6. Mr. Chase had an "acceptable" performance average of 80% - 89% in the areas of Acceptance of Feedback, Knowledge of Division Policies and Procedures, Knowledge of NH Criminal Law, Criminal Investigation Procedures, Accident Investigation

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Procedures, Report Writing (Grammar, Spelling, Neatness), Judicious Use of Time (Report Writing, Etc.), Maintenance of Assigned Vehicle and Equipment, and Ability to Comprehend/Comply with [Written] Directives.

7. Mr. Chase had an "acceptable" performance average of 70% -79% in the areas of Report Writing (Organization/Details), Field Performance (Non-Stress Conditions), and Officer Safety (Suspects, Motor Vehicle Stops, Prisoners).
8. Mr. Chase had an "acceptable" performance average of 69% or lower in the areas of Knowledge of NH Motor Vehicle Law, Orientation/Response Time to Calls, Driving Skills (Non-Stress Conditions), Officer Safety (General), Problem Solving/Decision Making, Radio (Appropriate Use of Codes and Procedures), Radio (Ability to Listen/Comprehend/Speak Clearly), Self-Initiated Field Activity, and less than 59% in Field Performance (Stress Conditions), Ability to Comprehend/Comply with [Verbal] Directives, and Knowledge of Division Reporting System.
9. Mr. Chase considered FTO White's instruction to be most beneficial, largely because he found Mr. White's personal style to be more relaxed than that of his other two trainers. Mr. Chase received the highest percentage of acceptable ratings from FTO White during week 3 of his training. However, he also received some of his lowest acceptable ratings from FTO White in weeks 2 and 4.
10. Mr. Chase believed that FTO Nedeau was too involved in personal business to provide the kind of training he needed. Mr. Chase's lowest percentages of acceptable ratings were received in weeks 1 and 2 while working with FTO Nedeau. However, he also received his fifth highest rating from FTO Nedeau in week 9, a month after Mr. Chase's meeting with Lt. Stevens when he believed Lt. Stevens decided to "turn up the heat".
11. Mr. Chase believed that a personality conflict between himself and FTO Birmingham contributed in large part to the recommendation by the FTOs to remove him from the training program. He believed that the conflict began three or four days into the training period when he and FTO Birmingham had a conversation about Mr. Chase's brother who had become a Massachusetts State Trooper by transferring from the Metropolitan Police. Mr. Chase did not advise any of the supervisors involved in the Field Training Program of the alleged personality conflict, nor did he advise them that he felt his relationship with FTO Birmingham would interfere with his training or evaluations.

12. Lt. Stevens, Mr. Chase's Troop Commander, was aware of tension between Mr. Chase and FTO Birmingham, but after speaking with Mr. Chase and reviewing FTO Birmingham's Daily Observation Reports (DORs) of Mr. Chase' performance, Lt. Stevens concluded that FTO Birmingham had shown no bias, and was not responsible for any conflict between the two men. After Mr. Chase had completed roughly half of his field training program, Lt. Stevens asked Mr. Chase if he was experiencing any particular problem with the program. Mr. Chase told him that everything was fine.
13. Lt. John Stevens met with Mr. Chase on July 27, 1993, to apprise him of concerns that his Field Training Officers had raised about Mr. Chase's ability to successfully complete the training. That discussion took place before Mr. Chase resumed training with FTO Nedeau.
14. Lt. Stevens summarized the points covered in the meeting with Mr. Chase in a memorandum to Col. Presby, Director of State Police. He informed Col. Presby that he was not convinced that Mr. Chase possessed "the qualities to be a New Hampshire State Trooper." He also indicated that he had concerns about Mr. Chase assuming the full responsibilities of a trooper if he were to be released to solo status.
15. Mr. Chase believed that his FTOs were under orders after the meeting with Lt. Stevens to "turn up the heat," and that their continued criticism of him and his work was part of "the game" the State Police were using to discover how he would handle work-related stress. However, FTO Birmingham's DORs in weeks 5, 6, and 7 of the training were the second, third and fourth highest ratings of acceptable performance which Mr. Chase received during the ten weeks of evaluations, with overall acceptable performance between 81% and 89%. They do not reflect conspiracy or bias on the part of the FTOs.
16. After eleven weeks of training, Sgt. Noyes described Mr. Chase's performance as needing improvement in 12 of the 24 categories rated. He noted, "This lack of significant progress is exceptional when compared to that of the average Probationary Trooper. The improvement hoped for has not been seen."
17. A careful review of the Daily Observation Reports reveals sporadic performance levels in the majority of evaluation categories, reflecting the FTOs' complaint that Mr. Chase would appear to learn a technique or procedure but would later be unable to recall it or apply it in practice.
18. Mr. Chase's performance had not improved sufficiently through the field training, even

after an additional 11 days, to justify releasing him to solo status. Although Mr. Chase believed his performance would improve when he was no longer subject to the scrutiny of a Field Training Officer, Sgt. Noyes, writing on behalf of the field training staff and non-commissioned officers, advised the Director of State Police that they did not believe Mr. Chase possessed the requisite skills to perform the duties of a trooper including, but not limited to: organizational skills, handling multiple tasks, retaining previously taught information and procedures, acting decisively under stress conditions, completing tasks on time, and maintaining a constant sense of officer safety. By memorandum dated September 9, 1993, Sgt. Noyes recommended termination of Mr. Chase from the field training program and from the Division of State Police.

19. Major Thomas Kennedy met with Mr. Chase on September 16, 1993, to discuss his performance and to give Mr. Chase an opportunity to resign. At that meeting, Mr. Chase attributed his performance deficiencies to an overly critical evaluation process, and alleged that some of the evaluation comments, particularly those by Officer Birmingham, were inaccurate. The meeting with Major Kennedy was the first time that Mr. Chase raised the issue of a personality conflict.
20. Mr. Chase had signed each of the Daily Observation Reports and summaries in which the deficiencies in his performance were enumerated. Mr. Chase did not discuss any alleged discrepancies in the evaluations with any supervisory personnel prior to his meeting with Major Kennedy on September 16, 1993. In retrospect, he wished he had discussed the issues with the field training supervisory personnel.
21. When Mr. Chase declined the offer of an opportunity to resign after the September 16, 1993 meeting, disciplinary proceedings were undertaken to remove him from his employment as a probationary employee for failing to demonstrate sufficient competency to properly perform his duties and responsibilities as a Probationary Trooper.
22. A meeting was held September 23, 1993, in Col. Presby's office to review the charges of poor performance against Mr. Chase. Col. Presby determined that Mr. Chase's explanation for his poor performance was insufficient to persuade him to retain Mr. Chase as a Probationary Trooper. Mr. Chase received, in hand, his written notice of termination, which included a statement outlining Mr. Chase's right to appeal the termination to the New Hampshire Personnel Appeals Board.

RULINGS OF LAW AND APPLICATION TO FACTS

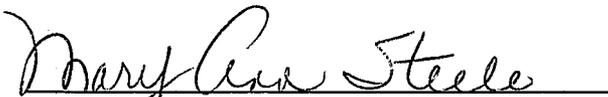
- A. Per 1001.02 (a) of the Rules of the Division of Personnel authorizes an appointing authority to dismiss an employee at any time prior to completion of the probationary period if that employee fails to meet the work standard, provided that the dismissal is neither arbitrary, illegal, capricious, nor made in bad faith.
- B. For a termination to be deemed arbitrary, the Board would have to find that it was effected without reason. Mr. Chase's performance was sporadic, at best, and never improved sufficiently with one-on-one supervision for the Division to release him to solo status. The Division of State Police had serious reservations about Mr. Chase's ability to carry out his assigned duties and responsibilities in a safe, competent manner. The reasons for the termination are clearly set forth in Exhibit #1.
- C. For a termination to be deemed capricious, the Board would have to find that the termination was the result of a whim or a sudden, unreasoned change of mind. Throughout the training period, reservations about Mr. Chase's ability to satisfactorily complete his training were addressed in the Daily Observation Reports and Summaries. The decision to terminate Mr. Chase's employment was not sudden. In fact, the Division of State Police extended the normal training period by an additional 11 days before finally deciding to dismiss Mr. Chase.
- D. For a termination to be deemed illegal, the Board would have to find that it violated the standard imposed by rule or law. Mr. Chase's termination was in compliance with Per 1001.02 of the Rules of the Division of Personnel when Mr. Chase demonstrated that he was unable to meet the work standard.
- E. For a termination to be deemed in bad faith, the Board would have to find more than that the decision was improper, but that there was some motive for the termination other than removing an employee for committing an offense warranting termination, or failing to meet the work standard. The Board did not find evidence of any motive for removing Mr. Chase from his position other than his continued inability to meet the work standard.
- F. The Division of State Police was acting within its discretion when it terminated Mr. Chase's employment after determining that he was failing to meet the work standard, and could not reasonably be expected to meet the work standard by the time his probationary period was due to expire.

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DECISION AND ORDER

The Board voted unanimously to deny Mr. Chase's appeal, finding that his termination was lawful and reasonable. The Board also voted to affirm the decision of the Department of Safety, Division of State Police, in finding that Mr. Chase failed to meet the work standard prior to completion of his probationary period, and was therefore subject to termination from employment.

FOR THE PERSONNEL APPEALS BOARD



Mary Ann Steele, Executive Secretary

cc: Virginia A. Lamberton, Director of Personnel
Rupert Leeming, Esq., Leeming and Leeming
Clarence E. Bourassa, Esq., Department of Safety

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Preliminary Order - Appeal of Alfred Chase
Docket #94-T-16
Division of State Police

October 10, 1994

The New Hampshire Personnel Appeals Board, upon its own motion, under the authority of RSA 541-A:16, and Per-A 202.05 of the Rules of the Personnel Appeals Board, convened a prehearing conference on Wednesday, October 5, 1994, in Room 411, State House Annex, 25 Capitol Street, Concord, New Hampshire. The Board (Bennett, Johnson and Rule) had advised the parties through its notice dated September 27, 1994, that they should be prepared to address the following:

- (1) Scope of the hearing
- (2) Number of witnesses expected to testify in a hearing on the merits
- (3) Stipulations or admissions as to issues of fact or proof
- (4) Amount of time required to hear the case
- (5) Scheduling
- (6) Outstanding discovery issues
- (7) Offers of settlement

Additionally, the parties were advised that there was a pending December 10, 1993 Motion filed by the Division of State Police entitled Appellee's Motion That Board Not Accept Appeal which requested that the Board refuse to hear the matter or, in the alternative, order that the Appellant furnish more specific facts to support his request for a hearing.

Attorney Clarence Bourassa, appearing on behalf of the State Police, argued that the State's Motion was dispositive, and that the Board should rule on the motion before addressing the other seven issues listed in the prehearing notice. Attorney Rupert Leeming argued on the appellant's behalf that the Board's scheduling order had not provided adequate notice that the Board intended to hear any argument on dispositive motions. Although he had filed a timely objection to the Motion, he argued that he was not prepared to go forward with oral argument. He argued that the parties should address the remaining issues contained in the order of notice so that there would be no further delay in hearing the merits of the appeal should the Board ultimately deny the State's Motion to dismiss.

The Board agreed to allow the appellant, who had volunteered to do so, to furnish a statement of more specific fact. Attorney Bourassa requested permission to amend the Division's Motion to Dismiss by inserting in paragraph 4 a reference to Per-A 207.02(a) of the Rules of the Personnel Appeals Board. Over Mr. Leeming's objection, the Board granted that request. The parties agreed to submit their arguments in writing on the State's Motion to Dismiss.

The Board reviewed the Appellant's Request for Production of Documents which was received by the Board and by the Department of Safety one day prior to the scheduled prehearing conference. Attorney Bourassa indicated that he had reviewed the request with the Personnel Administrator for the Department of Safety and had been advised that Mr. Chase was free to

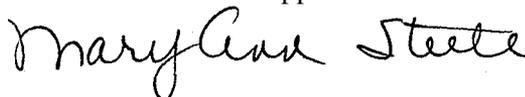
request a copy of his personnel file from the Department of Safety. He said he believed that letters of commendations and the like which were received by the Department of Safety should be part of that file. Attorney Bourassa also indicated that the State Police does not have custody or control of the Police Academy's files, and therefore was in no position to produce the documents requested. He said he believed that the appellant had certain rights to request copies of those files from Police Standards and Training and should be directing his request to that agency. The Board found that the items listed in the request appeared to be available to the appellant and his representative without any action on the part of the Board at this time.

Attorney Bourassa suggested that a second conference should be scheduled to allow the parties to resolve any outstanding pre-hearing issues prior to a hearing on the merits, should the Board deny the Division's dispositive motion. Attorney Bourassa also requested that the Board's order be reduced to writing to assure that both parties clearly understood the Board's directions. The Board agreed.

1. Not later than Thursday, October 20, 1994, the appellant shall submit a Statement of More Specific Facts to the Board, pursuant to the requirements of Per-A 202.02. The Appellant shall not construe this order as granting him permission to expand or amend the scope of the allegations contained in his October 8, 1993 notice of appeal.
2. Not later than Friday, November 4, 1994, both parties shall submit written arguments to the Board on the State's pending Motion to Dismiss.
3. In accordance with Per-A 206.02(c), copies, of all papers filed by a party shall, at or before the time of filing, be served by a party or person acting for him on all other parties to the case. Service on a party represented by another shall be made on such representative.
4. Submissions by the parties to the Board shall, in all cases, be made in an original and three copies.
5. Unless otherwise ordered, if the Board accepts the appeal for scheduling by denying the Division's Motion to Dismiss, the parties shall appear before the Board at 9:00 a.m. on November 23, 1994, for a further pre-hearing conference. The parties shall be expected to address the following: (1) scope of the hearing, (2) number of witnesses expected to testify in a hearing on the merits, (3) stipulations or admissions as to issues of fact or proof, (4) amount of time required to hear the case, (5) scheduling, (6) outstanding discovery issues, (7) offers of settlement, and (8) any outstanding requests or motions, dispositive and non-dispositive.

Inasmuch as the parties will have had more than 30 days notice of the second scheduled prehearing conference, and have already agreed to the scheduling, requests to postpone or reschedule that conference will only be considered for the most exceptional circumstances.

For the Personnel Appeals Board



Mary Ann Steele, Executive Secretary

cc: Virginia A. Lamberton, Director, Division of Personnel
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Order on Appellant's Motion for Reconsideration and Rehearing

December 7, 1995

On October 13, 1995, the Personnel Appeals Board received Appellant's Motion for Reconsideration and Rehearing of the Board's September 14, 1995, decision, denying Mr. Chase's appeal. Appellee's Objection to that Motion was received by the Board on October 17, 1995.

Having reviewed the Motion and Objection in conjunction with the Board's decision in this matter, the Board voted unanimously to deny Appellant's Motion. In so doing, the Board voted to sustain the Appellee's Objection, and to affirm the Board's decision that Mr. Chase's termination was both lawful and reasonable.

THE PERSONNEL APPEALS BOARD

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Lisa A. Rule, Esq., Acting Chairperson

Handwritten signature of Robert J. Johnson in cursive.

Robert J. Johnson, Commissioner

Handwritten signature of Karen S. McGinley in cursive.

Karen S. McGinley, Commissioner

cc: Virginia A Lamberton, Director, Division of Personnel
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