

State of New Hampshire

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PERSONNEL APPEALS BOARD

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

APPEAL OF ARTHUR C. CLARK Anna Philbrook Center

Docket #89-T-11

April 23, 1990

On Wednesday, March 14, 1990, the Personnel Appeals Board (McNicholas, Cushman and Johnson) heard the appeal of Arthur C. Clark, a former probationary employee of the Anna Philbrook Center. Mr. Clark was discharged from his employment as a Youth Counselor III for unsatisfactory work under the provisions of Per 302.23(c), "Dismissal during probationary period". Mr. Clark was represented at the hearing by SEA General Counsel Michael Reynolds. Donna Martel, Acting Superintendent, represented the Philbrook Center (hereinafter "Center").

The central issue in Mr. Clark's termination from employment was his decision on the evening of March 22, 1989, to place a Philbrook Center student in seclusion. The Center alleged that Mr. Clark violated the seclusion policy by placing a student in a locked seclusion room for more than one hour, and by allowing that student to have a mattress and bed dressings, with which he might have injured himself. The Center also contended that Mr. Clark had left the student under the supervision of ADC staff, who would have been unfamiliar with the Philbrook Center Special Education Program seclusion and least restrictive environment policy. The Center argued that Mr. Clark had violated Anna Philbrook Center posted rule #26, and as such was discharged from his employment as a probationary employee.

The Center also alleged that Mr. Clark had been verbally abusive to his co-workers, having made disparaging remarks about, and to, several of them in the presence of students and staff at the Center. The Center cited several such instances, providing as exhibits statements from those co-workers.

Mr. Clark argued that on the night in question, he had only ordered the student to be confined in a locked seclusion room for one hour, and that the student was to have been kept under close observation thereafter. He also argued that he had allowed the student to have a mattress and bed dressings because the student was out of control, and was less likely to injure himself by banging his head on the floor if he were allowed to have a mattress. He contended that his decision was compassionate and professional, and should not be construed as abuse. He also argued that the seclusion

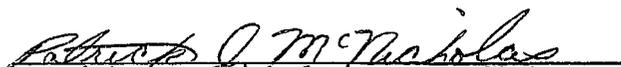
decision had been made by a team of Youth Counselors, and that those counselors who remained on duty after he had left his shift should have known to unlock the door after the first hour once Clark had left for the night.

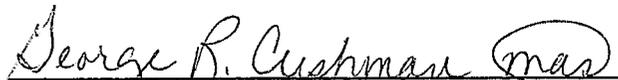
Mr. Clark testified that his discharge from employment was precipitated by personality conflicts between himself and other staff. He argued that his commitment to the students and his continuing advocacy on their behalf made him appear to be a threat to his peers and his supervisors. He stated he had applied for promotion to the position of Assistant House Leader just prior to his discharge, and believed that his application for promotion was the real reason for his termination.

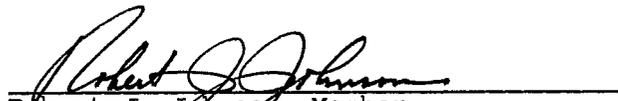
Upon review of the testimony and evidence, the Board found sufficient evidence that Mr. Clark's actions on the evening of March 22, 1989, did not comply with the Anna Philbrook Center policy for seclusion of Special Education Program students, substantiating the Center's assessment of his work as failing to meet the work standard. The Board is sensitive to the highly connotative nature of the term "abuse", and is hesitant to find that Mr. Clark's acts of omission or commission were "abusive" as generally defined and understood. The Board does find, however, that Mr. Clark's actions were in violation of Center policies and procedures, and therefore constituted unsatisfactory work, sufficiently serious to warrant his discharge as a probationary employee.

The Board found Mr. Clark's discharge from the position of Youth Counselor III was not arbitrary, illegal, capricious, or made in bad faith. Accordingly, Mr. Clark's appeal is denied.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Esq., Chairman


George B. Cushman, Jr., Member


Robert J. Johnson, Member

cc: Michael C. Reynolds, SEA General Counsel
Donna Martel, Acting Superintendent, Anna Philbrook Center
Virginia A. Vogel, Director of Personnel
David S. Peck, Assistant Attorney General

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NOTICE OF HEARING ON MOTION FOR RECONSIDERATION APPEAL OF ARTHUR C. CLARK DOCKET #89-T-11

The Personnel Appeals Board (McNicholas, Cushman and Scott) reviewed the September 7, 1989 Motion for Reconsideration filed by SEA General Counsel Michael C. Reynolds in the above captioned matter at its meeting of Wednesday, September 20, 1989.

The Board voted, to schedule one-half hour for oral argument on that motion on Wednesday, December 6, 1989 at 10:30 a.m. in Room 401, State House Annex, Concord, New Hampshire.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE
Executive Secretary

cc: Donna Martel, Business Administrator
Philbrook Center

Jan D. Beauchesne, Human Resource Coordinator
Division of Human Services

Michael C. Reynolds, General Counsel
State Employees' Association

Virginia A. Vogel
Director of Personnel

Attorney General's Office
ATTN: David S. Peck

DATED: November 16, 1989

State of New Hampshire



PERSONNEL APPEALS BOARD

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

APPEAL OF ARTHUR C. CLARK Youth Development Center Docket #89-T-11

At its meeting of June 21, 1989, the Personnel Appeals Board (McNicholas, Cushman and Scott) considered the appeal of Arthur C. Clark, a former employee of the Anna Philbrook Center (Department of Health and Human Services, Division for Children and Youth Services). Mr. Clark, through his attorney SEA General Counsel Michael C. Reynolds, had filed with the Board an April 11, 1989 request for hearing to appeal his termination from employment prior to completion of his probationary period.

By letter dated May 10, 1989, Philbrook Center Superintendent William V. Wheeler filed a Motion to Dismiss. Appended to that motion were the following documents:

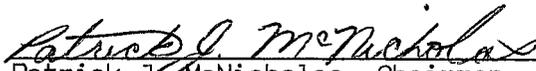
- 1) May 2, 1989 report from Theodore M. Prizio to William V. Wheeler:
"Incident involving Arthur Clark's Activities and Special Education
Student - P.N."
- 2) 4/3/89 Incident Reporting Form
- 3) 3/22/89 Seclusion Report
- 4) 2 page Policy Procedure Manual/Anna Philbrook Center Subsection: Seclusion
- 5) Notarized statement of Rodney Martinez-Buckley
- 6) Notarized statement of Edward F. Imhoff
- 7) Anna Philbrook Center Employee Rules and Regulations
- 8) Notarized statement of Elizabeth O. Hafidi
- 9) Notarized statement of Carol Martin
- 10) Notarized statement of Linda Couch
- 11) Notarized statement of Peta Cote

Upon review of the documents submitted by both parties, the Board determined that Appellant has failed to sustain a pleading of facts sufficient on their face to establish that the appointing authority acted improperly in dismissing Appellant, or that the actions of the appointing authority violated the applicable standard. [Per-A 207.04(d)] Therefore, under the authority of Per-A 207.04 (d) and (e), the Board voted unanimously to dismiss Mr. Clark's appeal.

APPEAL OF ARTHUR C. CLARK
Youth Development Center
Docket #89-T-11

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THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


George R. Cushman, Jr., Member


Peter C. Scott, Alternate

cc: Michael C. Reynolds, SEA General Counsel

William V. Wheeler, Superintendent
Anna Philbrook Center

Virginia A. Vogel
Director of Personnel

DATED: August 18, 1989