

State of New Hampshire

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**PERSONNEL APPEALS BOARD**  
State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

APPEAL OF WAYNE FACE  
Docket #92-T-2  
Department of Corrections

June 11, 1992

On June 4, 1992, the New Hampshire Personnel Appeals Board received a letter from Wayne Face, listing as its subject "Docket #92-T-2 (Wayne Face vs. Dept. of Corrections) PAB decision dated April 10, 1992".

Mr. Face states in his June 3, 1992 letter that the Board did not rule on an oral motion made by him during the course of his hearing, and "...therefore is not complete until ruled upon." The motion to which Mr. Face referred requested "reversal of the discharge decision", which the Board answered by denying his appeal on April 10, 1992.

If the appellant believed the appeal was "...not complete" or that the decision did not provide a legal ruling on his motion, he had 20 days from the date of the decision in which to file a Motion for Rehearing, citing each and every ground upon which he believed the Board's order was unreasonable or unlawful. Such Motion for Rehearing must have been filed not later than Thursday, April 30, 1992, to be considered timely. The instant request was received by the Board 55 days after the date of the Board's decision in this matter.

Accordingly, the appellant's request for further ruling on its order is denied.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script, appearing to read "Mark J. Bennett".

Mark J. Bennett, Acting Chairman

cc: Virginia A. Vogel, Director of Personnel  
Michael K. Brown, Esq., Department of Corrections  
Wayne Face, Route 2, Box 1838, Warner, NH 03278

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APPEAL OF WAYNE FACE  
Docket #92-T-2  
Department of Corrections

April 10, 1992

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, January 15, 1992, to hear the appeal of Wayne Face, a former employee of of the Department of Corrections. Mr. Face represented himself in his appeal of termination from employment as an Accountant for Correctional Industries on July 16, 1991. Michael K. Brown, Esq., appeared on behalf of the Department of Corrections.

Mr. Face made a verbal motion for reversal of the discharge decision, arguing that the Department of Corrections had not complied with the requirements of RSA 21-I:42 XIII for completion of an annual performance evaluation, discharging him approximately one month after an annual performance review should have occurred. Attorney Brown asked that the Board deny that motion, arguing that even if the issue of an annual review were germane to the instant appeal, it involved factual rather than procedural or legal issues. The Board took the motion under advisement.

Mr. Face made a motion to have the witnesses sequestered, arguing that all the witnesses were hostile to him and he would be more comfortable if they were not present for the proceedings. Attorney Brown argued that Peter MacDonald, one of the State's witnesses, should be allowed to remain throughout the hearing as he was there on behalf of the appointing authority. The Board voted to grant the Motion to Sequester, but agreed not to exclude Mr. McDonald from the proceedings.

Mr. Face asked that the Board exclude any documents or evidence which were not directly related to the alleged incident of willful insubordination cited in his letter of discharge. The Board ruled that the objection was premature and advised Mr. Face that he could object to documents offered into evidence at the time of introduction if he believed that they were not relevant to the charge.

The first apparent instance of insubordination occurred in September, 1989, when Mr. Face was instructed by memo from Correctional Industries Superintendent Hall to schedule telephone coverage for the Correctional Industries office from 7:00 a.m. to 4:00 p.m. Recipients of that memo were advised that the coverage must be accomplished without the use of over-time or compensatory time. Mr. Face responded by returning the memo to Hall with a handwritten note on the bottom (State's Exhibit 2) which stated:

"I am not going to assign people a change in work schedule for something which is not necessary. We do have an answering machine. Rita is voluntarily working T & Th. Ann agreed to M-W-F only if comp time was involved. Both individuals remarked that the extra time was wasted in that calls were extremely minimal."

Although the Department took no disciplinary action at that time, Superintendent Hall counselled the appellant by memo dated 9/15/89 that his response to the memo dated 9/9/89 "borders on insubordination". The appellant was advised that he would be expected to comply fully with every directive or policy regardless of his agreement or disagreement with same.

In 1988, the Department of Corrections had undertaken a plan of corrective action detailed in the January 30, 1987 Legislative Budget Assistant's audit report. On June 30, 1989, Hall reviewed internal practices for compliance with the audit, and in September, 1989, a follow-up audit was conducted by John Koch, Department of Corrections Internal Auditor. The internal audit revealed discrepancies in "Due to Treasurer" and "Inventory".

Review of the audit for compliance prompted Superintendent Hall to send a memo dated October 30, 1989 to Commissioner Powell (State's Exhibit 5) which stated, in part:

"...I find that our system of accountability would be satisfactory in private sector business with few exceptions. Since this is public sector and is scrutinized by state auditors and public officials, any deviation from recommended practices can bring unnecessary and unwarranted audits. Therefore, I have instructed Wayne Face to comply with DOC Practices and follow the letter and intent of the Internal Accounting Control report to be effective immediately. We will change our system and comply with policy in those areas we differ [sic] and implement those changes over the next 60 days so as not to totally disrupt the process. Those areas that can be changed immediately will be."

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A copy of the memo to Commissioner Powell was supplied to the appellant. An additional memo dated October 30, 1989, was sent directly to the appellant from Superintendent Hall (State's Exhibit 6) instructing him to "modify, change or implement those practices of inventory control and Financial Reporting to bring this department into compliance."

By memo dated November 28, 1989, the appellant assured Superintendent Hall that the automated accounts receivable system was being installed at that time and would be in place for "October month-end information". He also reported that without up-to-date information on increases and decreases in inventory, the automated system could not be used effectively.

Another internal audit was conducted by John Koch, DOC Auditor, and a draft audit report dated 3-23-90 was provided to the Department of Corrections. On March 25, 1990, Superintendent Hall again wrote to Commissioner Powell (State's Exhibit 8) regarding compliance with accounting practices and policies. Hall informed Commissioner Powell that "...Correctional Industries accounting practices under the control of Wayne Face do not conform to practices and policies set forth in meetings held in October, 1989." He reported that he had had instructed the appellant to comply "with the intent and letter of all audit requirements and policies." He concluded his memo to the Commissioner with a recommendation for disciplinary action up to and including the appellant's termination for willful insubordination "[u]nless Wayne can show good cause for continued failure to comply..." The Department concluded that the appellant complied with audit recommendations only when he agreed with them, and ignored those with which he disagreed.

On October 1, 1990, John Koch, Agency Audit Manager was assigned to Correctional Industries as the Chief Financial Officer. He reported directly to then Superintendent Peter McDonald, and was assigned supervisory responsibility for the appellant. Disagreements between Koch and the appellant on accounting practices increased. Again, the disagreement appeared to stem from the appellant's refusal to adopt the agency's policies and procedures when they differed from those he had used in private practice.

On November 26, 1990, McDonald wrote a memo to the appellant advising him what tasks were to be completed while McDonald was on leave, and advising him that he was expected to work closely and cooperatively with John Koch. Upon his return from leave, he met with the appellant on December 21, 1990 to discuss his work performance during McDonald's absence. He wrote a follow-up memo to the appellant on January 7, 1991 (State's 15), advising Mr. Face that he had

not demonstrated the improvement in attitude or performance which had been expected.

The appellant wrote to McDonald on January 11, 1991 (State's Exhibit 16), offering an explanation of why certain of the assigned tasks had not been completed. His memo, in pertinent part, stated the following:

"Quote on benches for courthouse - I can't make this quote and Bruce doesn't want to. Neither you nor John has been successful either so it's not right to hold this as a black mark against me. For the record, I agree totally with Bruce--this is not something we should be involved with at all. Listen to your staff and others who have expertise in manufacturing."

"Work with John Koch--Your memos do not tie in with your explicit directions to me, as verbalized to the office staff, that I was removed from all accounting and supervisory duties."

On January 17, 1991, Koch met with the appellant and informed him that he was to report directly to Koch, that his hours of work were from 8:30 to 4:30, that he was to submit leave slips for every absence, and that he needed to submit leave slips for January 14 and 15, as well as slips for being late on January 16 and 17. He also instructed the appellant to complete assignments he had been given to control production and inventory in both the Tailor Shop and Wood Shop. According to Mr. Koch's memo of January 17, 1991 (State's Exhibit 11), the meeting "deteriorated into a shouting match".

On April 19, 1991, the appellant received a first letter of warning for failure to follow written and oral directives, falsification of a request for sick leave, excessive tardiness, unsatisfactory work and lack of cooperation. The appellant was warned that if he failed to take corrective action and failed to comply with his supervisors' directives, he would be discharged for willful insubordination. Mr. Face appealed the letter of warning on April 29, 1991 to Warden Cunningham. His appeal was denied by the Warden on July 2, 1991. (State's Exhibit 21)

On July 16, 1991, the Department of Corrections issued the appellant a letter of termination for willful insubordination, citing specifically the appellant's failure to report on a daily basis to John Koch for duty assignments. The termination letter (State's exhibit #23) charged that at no time prior to the date of discharge did the appellant report to John Koch's office for duty assignments when he arrived at work.

Mr. Face admitted that he had refused to comply with Hall's staffing directive on phone coverage, arguing that in his professional capacity, he felt he had a right to question policies and procedures that he didn't believe to be correct or beneficial. He admitted that he had been late arriving at work on a number of occasions, but said he wasn't "a morning person". He testified that the growing attendance problem was directly attributable to the arrival of John Koch and his decision to assume most of the appellant's accounting duties. He testified that toward the end of his employment, he had nothing to do when he came to work but sit in his office and read the paper, making it increasingly more difficult to come to work on time and to demonstrate a positive attitude.

He testified that neither Robert Hall nor Peter McDonald had any understanding of accounting practices and procedures, and he was shocked to find production or operations personnel telling an accountant how he was supposed to keep the books. Given his background and education, which he said included 25 years of accounting experience and 12 years teaching accounting, he felt he should have had a say in how Correctional Industries was handled. He felt he had not received ethical or professional treatment when, without reason or explanation, "someone" decided to have John Koch replace him.

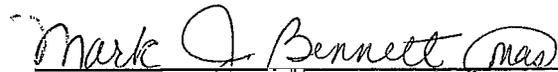
The appellant admitted to disagreeing with Koch's accounting practices and testified that he was the sort of person who didn't "follow blindly" simply because he was given a set of instructions. He admitted that in the weeks immediately preceding his discharge, he had not reported to John Koch's office as directed, arguing that at the time he was working on an assignment which he'd been given in June, 1991. He saw no purpose in checking in with Koch on a daily basis.

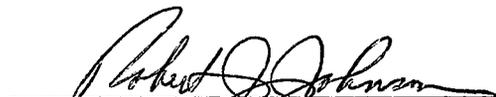
Why John Koch was assigned to Correctional Industries and who decided to make that assignment were issues of great concern to the appellant. However, they have no bearing on the propriety of the discharge decision itself. The appellant, for whatever reason, refused to comply with specific written and oral orders from his supervisors. Mr. Face was given ample warning, both verbally and in writing, that his continued refusal to submit to the direction of his supervisors would result in discipline, ultimately leading to his discharge from employment. Rather than take the corrective action required, he continued to challenge the administration by completing only those assignments he felt were appropriate. The fact that the appellant believed reporting to John Koch's office every morning was a pointless assignment did not give him license to ignore the order and refuse to comply.

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In consideration of the foregoing, the Board voted unanimously to deny Mr. Face's appeal.

THE PERSONNEL APPEALS BOARD

  
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Mark J. Bennett, Acting Chairman

  
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Robert J. Johnson

  
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Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel  
Wayne Face  
Michael K. Brown, Esq., Commissioner's Office, Department of Corrections