

State of New Hampshire

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PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
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APPEAL OF ROBERT FIELD

Docket #91-T-3

Division for Children and Youth Services

May 24, 1991

The New Hampshire Personnel Appeals Board (McNicholas and Rule) met Wednesday, April 17, 1991, to hear the termination appeal of Robert Field, a former employee of the Division for Children and Youth Services. Mr. Field was a probationary Juvenile Services Officer at the time of his discharge for failure to meet the work standard. Mr. Field, who testified on his own behalf, was represented at the hearing by SEA General Counsel Michael C. Reynolds. Attorney Paul Sanderson represented the Department of Health and Human Services/Division for Children and Youth Services (hereinafter "DCYS"). Also testifying on behalf of DCYS was Sandra Ziegra, the appellant's immediate supervisor during his employment with the agency.

Mr. Field had also appealed his non-certification for the classification "Child Protective Service Worker Trainee¹ in the Division for Children and Youth Services (Docket #90-0-6), and had requested that his two appeals be consolidated. The Board denied the motion for consolidation, but granted the appellant's request that the testimony and evidence received in each of the hearings be included in the record of the other.

Mr. Field was notified by letter dated July 20, 1990, signed by Effie Malley, former Director of DCYS, that he was to be discharged effective August 10, 1990. The letter of discharge stated that the appellant had not satisfactorily completed his probationary period as a Juvenile Services Officer **11**, and that he had been "unable to adequately provide services to the juveniles in [his] careⁿ". The letter specifically referred to the appellant's unsatisfactory performance appraisal, and the unfavorable assessment of his work performance by "employees of the Dover District Courtⁿ".

In his original request for hearing, the appellant alleged that the appointing authority relied primarily upon the "personal and inaccurate assessment of Mr. Field's performance" by the Judge of the Dover District Court. He also argued that he was put in charge of "over 100 cases" when he was first employed by the Division, and that most of those cases were "behind" and that the cases required extensive catch-up work for which the appellant received insufficient training and support. He also argued that by the end of his period of employment, he had met the "required work standardⁿ to the extent that the work standard was articulated.

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The appellant testified that DCYS had employed a "sink or swim" philosophy and provided him insufficient training and supervision to allow him to successfully complete his probationary period. He believed he was assigned the highest caseload of any of the JSO's serving in the Eastern Area, and that "...what was too often wanted was a quick intuitive decision instead of a gathering of the facts". He argued that his problems in the Dover District Court were nothing more than a personality conflict with Judge Cullinane, and that had he been transferred to another court, he could have successfully completed his probationary period. He argued that the purpose of the probationary period was to supervise and train new employees. He asked the Board to give some consideration to his supervisor's assessment of him as someone who learned from his mistakes.

Sandra Ziegler, the appellant's immediate supervisor, testified that she supervises 11 Juvenile Services Officers assigned to 13 district courts in the Eastern Area. She said Field was primarily assigned to work in Dover District Court, although he did limited work in the Durham Court. She testified that Field was the only one of 7 officers who had worked with Judge Cullinane about whom she had received any complaints. Ms Ziegler described the appellant as hard-working and dedicated. She testified, however, that he had difficulty with his courtroom presentations, and that he lacked confidence in his case plans and recommendations. Her written comments on his performance evaluation (DCYS Exhibit II) questioned "...the practical and realistic quality of some of his case plans". Ms Ziegler also testified that while the caseload in the Dover District Court is usually the highest of all the District Courts, during Field's tenure, it was unusually low. She was therefore concerned about Field's ability to deal with a full caseload if and when such a caseload was assigned.

In her evaluation of Field's performance, Ms Ziegler noted the appellant's difficulty in "...requesting supervisory assistance in case planning decisions" and wrote that he tended to seek assistance "only in a crisis situation". The evaluation in general was "below expectations", with the following categories specifically noted as "below expectations":

1. Performs responsibilities with a minimum of mistakes.
2. Work is done thoroughly and followed up as required.
3. As assigned, makes necessary oral and/or verbal presentations effectively.
4. Follows policy and procedural guidelines and instructions in an appropriate, effective way.
5. Asks for help when needed.
6. Seeks and originates input to and from others when trying to solve problems or achieve goals.
7. In the absence of specific guidelines, develops effective ways to complete assignments.
8. Makes suggestions for improvements.
9. Attempts to find solutions to problems encountered and seeks guidance when necessary.

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Ms. Ziegra testified that in addition to the agency's own concerns about the appellant's work, DCYS had received complaints from the Dover Police Department, Dover Special Education, attorneys and families of children in his caseload. She testified that the termination decision was not predicated upon the letter from Judge Cullinane. She said she had not requested the letter, but that it had been requested by and the response mailed to Barbara Ingerson in the Commissioner's Office at Health and Human Services.

The appellant argued that he was not a probationary employee at the time of termination. In support of that position, his representative cited Per 302.23 (a)(1) of the Rules of the Division of Personnel, which states:

"At the end of 5 months or sooner, probationary periods may be extended with the approval of the director, but in no case shall a probationary period exceed one year. Any interruption of service during the probationary period shall not be counted toward accumulation of required time of the probationary period."

On January 10, 1990, DCYS requested approval to extend Robert Field's probationary period for three months, stating, "This request is based upon Ms. Ziegra's uncertainty as to whether or not Mr. Field will be able to perform adequately as a Juvenile Services Officer. This additional three months will enable Ms. Ziegra to better assess Mr. Field's ability to deal more efficiently with his clients and their parents, improve his knowledge of available treatment resources and of the administrative tasks required in order to authorize payment for these resources." The extended probationary period would have expired on May 11, 1990.

On April 10, 1990, DCYS again requested an extension of Field's probationary period to August 11, 1991. That request to the Director of Personnel stated, "In January 1990, I sent you a request for extension from February 11, 1990 to May 11, 1990 which you approved on January 11, 1990. Since this extension, Mr. Field has improved in some areas. However, Ms. Ziegra feels there is still need for improvement and wishes to observe his performance for an additional three months before recommending permanent appointment."

The appellant argued that the Rules of the Division of Personnel only allow an agency to make one request that an employee's probationary period be extended, and that such request must be made "at the end of 5 months or sooner". The Board believes the appellant has read the rule too narrowly, overlooking its actual intent.

From the standpoint of administrative efficiency, it would certainly behoove an agency to request the maximum extension of an employee's probationary period, rather than seeking incremental extensions of the probationary period. However, the Board believes the intent of the rule is to limit the length of time during which an employee can be considered probationary, and to assure that the employee receives adequate notice that he/she is not meeting the required work standard. DCYS did not attempt to extend Mr. Field's

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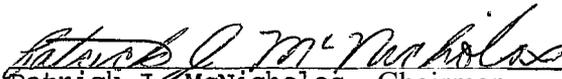
probationary period beyond the year maximum specified in the Rules, and in each instance, the request for an additional three-month extension was made at least 30 days prior to the anticipated expiration of the probationary period.

The Board found the appellant to have been a probationary employee at the time of his discharge from employment. Per 302.23 (c) of the Rules of the Division of Personnel provides that, "At any time during the probationary period an appointing authority may remove an employee whose performance does not meet the required work standard, provided that he shall report such removals to the director and to the employee. Such dismissal shall not be arbitrary, illegal, capricious or made in bad faith."

In consideration of the testimony and evidence, the Board voted unanimously to uphold the agency's termination of Robert Field for failure to meet the work standard prior to the completion of his probationary period. The appellant was apprised of the agency's concerns in supervisory meetings, through his performance appraisal, and in the letters requesting extension of his probationary period. The appellant failed to persuade the Board that his discharge was arbitrary, illegal, capricious or made in bad faith.

In so ruling, the Board noted the appellant's contention that had he been demoted into a Child Protective Service Worker Trainee position, the discharge appeal would have been moot. The Board does not agree. The appellant was not being transferred to another position in the same class [See: Per 302.23 (b)] nor was he a promotional appointee failing to qualify during the probationary period in that class [See: Per 302.23 (c)(1)]. Neither party offered any evidence to suggest that the availability of a Child Protective Service Worker trainee position, or the lack thereof, would have altered the decision to remove him from the position of Juvenile Services Officer. The availability of such a position into which he might have been demoted was merely fortuitous, and has no bearing on the propriety of the discharge decision. Accordingly, **Mr.** Field's appeal is denied.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
Paul G. Sanderson, Legal Coordinator, Div. for Children & Youth Services
Michael C. Reynolds, SEA General Counsel
Civil Bureau - Attorney General's Office

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Division for Children and Youth Services
Response to Appellant's Motion for Reconsideration

July 18, 1991

The New Hampshire Personnel Appeals Board (McNicholas and Rule) met Wednesday, July 17, 1991, to consider the appellant's June 13, 1991 Motion for Reconsideration of the Board's May 24, 1991 decision in the termination appeal of Robert Field, a former employee of the Division for Children and Youth Services. Mr. Field was a probationary Juvenile Services Officer at the time of his discharge for failure to meet the work standard.

In support of his Motion, the appellant, through his representative SEA General Counsel Michael Reynolds, reiterated one of his original arguments that the agency had no authority to request more than one extension of his probationary period, and his appeal should therefore be treated as an appeal by a permanent, full-time employee. In so doing, he argued that the Board had interpreted Per 302.23 (a)(1) too broadly, and that the agency could only request one extension of his probationary period. This issue, having been raised during the appeal on the merits, was addressed in the Board's original order. Those findings are affirmed.

The Rules provide that no employee shall be required to serve a probationary period in excess of one year. The Rules also provide that the appointing authority, at the end of five months or sooner, must notify an employee that his probationary period is being extended. The Division for Children and Youth Services adhered to that standard. The Division for Children and Youth Services first requested that the appellant's probationary period be extended by three months to allow him to demonstrate his ability to perform the work satisfactorily. Having failed to do so, the agency would have been well within its discretion in discharging him at that time. Instead, the agency provided the employee another three months in which to demonstrate that he could perform his duties satisfactorily. Having failed to do so, he was discharged.

The appellant argued that DCYS relied in its discharge decision upon the July 16, 1990 letter from Judge Cullinane, that the agency had not sought input from any of the other district court judges before whom the appellant had appeared, and failed to provide the appellant with a copy of Judge Cullinane's

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letter prior to his discharge from employment. The appellant therefore alleged that this termination effectively "allows a District Court judge, through criticisms the employee is not told about, to terminate an employee with the appointing authority taking the position that it will not try to determine if it might not be the judge who is wrong."

Upon review of the record, the Board noted that the performance evaluation which apprised Mr. Field of the many deficiencies in his work, and rated his overall performance as "below expectations" was prepared on July 9, 1990, signed by the Supervisor and Area Administrator on July 10, and signed by the appellant himself on July 10, 1990. Two weeks earlier, on June 25, 1990, he was notified by letter from the Area Administrator that he would not be recommended for promotion to permanent status. Clearly, the decision to remove the appellant from his position of Juvenile Services Officer had been made long before DCYS received Judge Cullinane's July 16th letter. The Board found the appellant's inability to meet the work standard, as described by the performance evaluation, provided sufficient grounds to sustain his discharge.

The appellant argued that the appointing authority admitted to offering the appellant insufficient training to successfully perform the duties and responsibilities of his position. There was no evidence submitted, however, which might support a finding that Mr. Field received any less training than his peers, or that probationary Juvenile Services Officer in general were unable to attain permanent status because of inadequate training. State's Exhibit II, page 19, is the recommendation that one employee serving an extended probationary period be made permanent, while Mr. Field be extended for three additional months.

The appellant argued that three weeks prior to his discharge, DCYS had assured him he would attain permanent status, and was bound by that assurance. The Board would again point to the letter of June 25, 1990 to the appellant, clearly informing him that he would not attain permanent status as a Juvenile Services Officer.

He argued that the Division of Personnel's decision refusing to certify him as a candidate for a position of Child Protective Service Worker "illegally effected his termination. Regardless of whether the appointing authority would have discharged Mr. Field entirely if there were no other positions for which he qualified, the fact remains that without the director's illegal actions, Mr. Field would not have a discharge on his record." Simply put, the agency had already notified the appellant on June 25, 1990, that he would not be made permanent upon completion of his probationary period. On July 11, 1990, the Director of the Division for Children and Youth Services requested a waiver to allow Mr. Field to be considered as a candidate for a position of

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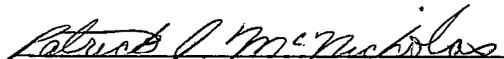
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Child Protective Services Officer, knowing that the Director of Personnel had already denied him certification for such positions. Notice of his discharge was dated July 20, 1990, with an effective date of discharge of August 10, 1990. With full knowledge that demotion to Child Protective Service Worker Trainee would not be permitted by the Division of Personnel, the agency notified the appellant of discharge.

Inasmuch as Mr. Field was a probationary employee at the time of his discharge from employment, he had the burden of proving that the agency's decision to terminate his employment was arbitrary, illegal, capricious, or made in bad faith. Having failed to do so, his appeal was denied. In requesting reconsideration of that decision, the appellant has now failed to raise any arguments or offer any evidence not already raised and addressed which could support a conclusion that the Board's findings were illegal or unreasonable based upon the record before it.

Accordingly, the appellant's Motion for Reconsideration is denied.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
Paul G. Sanderson, Legal Coordinator, Div. for Children & Youth Services
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