

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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

### *Appeal of James Garczynski*

*Docket #01-T-5*

*Department of Youth Development Services*

*March 19, 2001*

The New Hampshire Personnel Appeals Board (Wood, Rule and Johnson) met on Wednesday, February 14, 2001, to hear the appeal of James Garczynski, a former probationary employee of the Youth Development Center. The appellant, who was represented at the hearing by SEA General Counsel Michael Reynolds, was appealing his October 11, 2000, termination from employment for allegedly failing to meet the work standard for a probationary Carpenter II. Frances DeCunto, Human Resources Administrator, appeared on behalf of the State.

The record of the hearing in this matter consists of the pleadings submitted by the parties, notices and orders issued by the Board, the audio tape recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

#### State's Exhibits

- A. Mr. Garczynski's application for employment, dated July 24, 1999
- B. Mr. Garczynski's 6-month probationary review for the period 11/1/99 to 5/1/00
- C. Mr. Garczynski's 10-month probationary review for the period 11/1/99 to 9/1/00
- D. October 11, 2000 notice of termination from Commissioner Peter Favreau to James Garczynski
- E. Quarterly Performance Summary for James Garczynski dated 8/24/00
- F. February 9, 2001 letter from Brent Edmonds, NH DRED, to Richard Rousseau, YDC, concerning inspection of certain projects at YDC

### Appellant's Exhibits

1. Thank you letter from James E. Peace to James Garczynski dated May 31, 2000
2. Letter of recommendation for James Garczynski from Sarah Hubbard dated January 29, 1990
3. Letter of recommendation for James Garczynski from Marcel Daneault dated January 28, 1990
4. Transcript for James Garczynski in Finish Woodworking and Cabinet Making from New England Technical Institute dated January 31, 1985

The following persons gave sworn testimony:

Harry Hadley, Plant Maintenance Engineer I  
Richard Rousseau, Plant Maintenance Engineer III  
James E. Peace, House Leader  
James Garczynski, appellant

Although the State had intended to call Commissioner Peter Favreau, the Commissioner was unable to attend the hearing. Therefore, with the Board's approval, the parties stipulated that the Commissioner would have testified that he met with Mr. Garczynski prior to the termination to discuss the reasons for termination and that he based his decision to terminate Mr. Garczynski's employment solely on his belief that Mr. Garczynski failed to meet the work standard during his probationary period as evidenced by his probationary performance evaluations.

### Position of the Parties

The appellant argued that the appointing authority failed to articulate a fair and reasonable work standard against which to measure the appellant's performance. The appellant argued that Mr. Hadley and Mr. Rousseau, the appellant's supervisors, resented it whenever the appellant questioned their judgment, criticized their project plans, or questioned their authority. He argued that the appellant's co-workers "sand-bagged" him because they resented the fact that he worked harder than they did. Finally, the appellant argued that the termination was procedurally flawed

because the agency failed to inform him of all the reasons that they factored into the decision to terminate his employment.

The State argued that Mr. Garczynski was a probationary employee subject to the provisions of Per 1001.02 of the Rules of the Division of Personnel for failure to meet the work standard. Ms. DeCunto argued that the agency had apprised the appellant of the work standard, that the appellant's performance was evaluated regularly, and that the appellant was informed of the deficiencies in his work that needed to be corrected. She argued that Mr. Garczynski was argumentative toward his co-workers and supervisors, and although he was clearly frustrated by having his work critiqued by Mr. Hadley, he was, nevertheless, subject to Mr. Hadley's supervision. She argued that the appointing authority had both the opportunity and the obligation to assess Mr. Garczynski's performance during his probationary period and to terminate his employment if the agency found that he was unable to meet the work standard for his position. Ms. DeCunto argued that the agency complied with the Rules of the Division of Personnel, notified Mr. Garczynski of the deficiencies in his performance, and provided opportunities for Mr. Garczynski to improve his work and his working relations. She argued that when Mr. Garczynski failed to demonstrate that he was able to meet the work standard for a Carpenter II, the agency terminated his employment in accordance with the Rules of the Division of Personnel.

After considering the evidence and arguments offered by the parties, the Board made the following findings of fact and rulings of law.

#### Findings of Fact

1. At all relevant times, Mr. Garczynski was a probationary employee serving his initial probationary period.
2. Mr. Garczynski was hired as a Carpenter II working under the direct supervision of Harry Hadley and Rick Rousseau.

3. Mr. Garczynski's supervisors testified that most of the work completed by the appellant was satisfactory, but the work was performed too slowly.
4. In his 6-month performance review, the appellant was rated below expectations in almost all of the major areas of evaluation including quantity of work, quality of work, job knowledge, communications, dependability, and cooperation.
5. The appellant, who was assigned to repair damaged chairs, decided instead to restore them.
6. Despite having been instructed time and again not to waste time restoring furniture, the appellant continued to devote days to furniture restorations instead of making the rudimentary repairs ordered by his supervisors.
7. Supervisory comments on the 6-month evaluation noted that, "Jim is very slow at doing any project, it takes days to complete jobs that others complete in hours....except for repairing furniture Jim has problems with any job he works on."
8. Mr. Garczynski's supervisors indicated that he was difficult to supervise and slow at completing assigned work, and always complained about the tools, equipment and working conditions.
9. They noted that he did not work well with co-workers, and concluded that, "Jim always wants to have the last word."
10. In his response on the 6-month evaluation, Mr. Garczynski indicated that he was deeply hurt by the criticism, and attributed the problems noted on the evaluation to the fact that, "most of the people do not want to work, excluding myself and few others."
11. In his 10 month evaluation, Mr. Garczynski showed some improvement, although the evaluation noted that he continued to work too slowly.
12. The 10-month evaluation noted that, "When asking for help Jim only hears what he wants, he does not listen to what your solutions are, he likes to argue or debate the solutions."
13. Although the appellant's work was showing some improvement, he did not meet the agency's expectations for someone appointed to a position of Carpenter II.
14. Throughout his probationary period, Mr. Garczynski continued to experience difficulty getting along with his co-workers.

## Rulings of Law

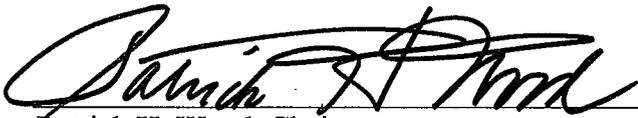
- A. "Probationary period' means a period of full-time work during which a full-time employee is required to demonstrate satisfactory performance of the duties and responsibilities of the employee's position as listed on the supplemental job description for the position." [Per 102.42, Code of Administrative Rules, Rules of the Division of Personnel]
- B. " The probationary period shall be considered an integral part of the process of appointment for full-time employees and shall provide the appointing authority with the opportunity to: (1) Observe the new employee's work; (2) Train and aid the new employee in adjustment to the position; and (3) Remove an employee if the employee's work performance fails to meet required work standards." [Per 601.07 (a), Code of Administrative Rules, Rules of the Personnel Appeals Board]
- C. "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." [Per 1001.02 (a), Code of Administrative Rules, Rules of the Division of Personnel]
- D. "No appointing authority shall dismiss a probationary employee under this rule until the appointing authority meets with the employee, prior to issuing the notice of dismissal, to discuss the appointing authority's reason(s) supporting the decision to dismiss the employee." [Per 1001.02 (b), Code of Administrative Rules, Rules of the Division of Personnel]
- E. "In probationary termination appeals, the board shall determine if the appellant proves by a preponderance of the evidence that the termination was arbitrary, illegal, capricious or made in bad faith. Allegations that the appellant does not know the reason(s) for the dismissal, or evidence that the appointing authority took no formal disciplinary action to correct the employee's unsatisfactory performance or failure to meet the work standard prior to dismissing the employee, shall not be deemed sufficient to warrant the appellant's reinstatement." [Per-A 207.12 (a) Standard of Review, Code of Administrative Rules, Procedural Rules of the Personnel Appeals Board]

Decision and Order

The appellant failed to prove by a preponderance of the evidence that the termination was arbitrary, illegal, capricious or made in bad faith. The agency demonstrated, through a series of performance evaluations and through the testimony of witnesses, that the agency had articulated a work standard sufficient for the appellant to understand what was expected of him in the performance of his duties. The appellant's suggestion that his termination was a reaction to his filing a claim for worker's compensation, his questioning their methods for disposal of paint or paint containers, or was simply an over-reaction to his challenging his supervisors is without merit and unsupported by any credible evidence.

Having considered the testimony and evidence offered by the parties, the Board voted unanimously to DENY Mr. Garczynski's appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick H. Wood, Chairman

  
Lisa A. Rule, Commissioner

  
Robert J. Johnson, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Frances DeCunto, Human Resources Administrator, Youth Development Services, 1056  
North River Road, Manchester, NH 03104  
Michael Reynolds, SEA General Counsel, PO Box 3303, Concord, NH 03302-3303

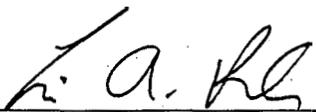
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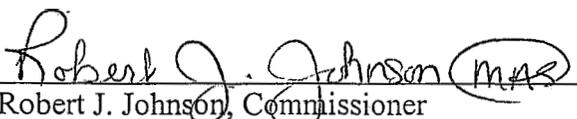
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