

State of New Hampshire

PERSONNEL APPEALS BOARD

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Mary Ann Steele

PERSONNEL APPEALS BOARD
State House Annex
Concord, New Hampshire 03301
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88-T-103

APPEAL OF BRUCE GRAHAM

May 23, 1988

On October 27, 1987, the Personnel Appeals Board, Commissioners Platt and Cushman sitting, heard the appeal of Bruce Graham, formerly an employee at the New Hampshire Hospital. Mr. Graham was discharged from State service by letter dated August 12, 1987, for allegedly striking "a patient on the upper arm with a closed fist.", Mr. Graham was represented by SEA General Counsel Michael Reynolds. Attorney Barbara Maloney appeared on behalf of the New Hampshire Hospital (hereinafter "the Hospital").

As grounds for his appeal, Mr. Graham alleged that he was not guilty of "abuse", that the incident resulting in his termination was not investigated in accordance with New Hampshire Hospital rules, that his action was taken in self-defense, and that "there were no witnesses to the alleged incident of abuse other than" the resident and Mr. Graham.

After considering all of the evidence presented, the Board made the following findings and rulings. On August 6, 1987, Mr. Graham was working in Brown Building at the New Hampshire Hospital, completing his 11-7 shift. While on duty, Mr. Graham attempted to "redirect" one of the patients on the ward back to his room. The patient, a mentally retarded man, had a history of getting up at night. The ward staff had been advised by treatment team members that one attempt to redirect this particular patient to his room during the night might be acceptable, but that it was not necessary to make him stay in his bed all night.

Mr. Graham returned the patient to his room and directed him to remain sitting on his bed for five minutes. While still in that room, Mr. Graham struck the patient with a closed fist on the forearm. He subsequently went to the Nursing Coordinator on duty and told her, "I did it, I lost it" and informed her that he had hit the patient on the forearm with a closed fist. She checked the resident for visible injury, found none and then called the executive on call to report the incident. In his first statements to the Nursing Coordinator concerning the incident, Mr. Graham did not raise any issue about the lack of adequate lighting in the patient's room nor did he claim that his action was taken in self-defense.

On August 6, 1987, Mr. Graham was waiting to see Unit Director Robert Pliskin when Mr. Pliskin arrived at work at 8 a.m. Mr. Graham reported that he had "lost it and struck a patient." Mr. Graham then asked if he would be terminated. Mr. Pliskin asked, "Did you hit him with a closed

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fist?" When Mr. Graham responded in the affirmative, he was informed that he would be terminated.

After reviewing all of the evidence, the Board found Mr. Graham's discharge was justified. The Board found Mr. Graham's statement to two different individuals at two different times that he had "lost it" and struck a patient indicative of an intentional act rather than, as he contended at the hearing, of his instinctively putting out his hands to ward off the patient and unintentionally having his closed fist connect with the patient's arm. Such a protective reflex would not cause an individual to report that he had lost it and struck a patient. Moreover, no claim of self-defense was made until Mr. Graham was informed that his action would result in his discharge from State service. Because his action constituted Class I Abuse, Mr. Graham was properly discharged from State service.

Although Mr. Graham was the only witness to the abuse other than the victim, the Board did not find that the absence of other witnesses required his reinstatement. Mr. Graham admitted his actions and the evidence presented at the hearing supported his discharge. For the Board to find the discharge invalid notwithstanding those two factors would permit individuals to commit Class I Abuse outside the view of witnesses, report it, and not be subject to discharge.

For the foregoing reasons, the Board voted unanimously to uphold the discharge. Mr. Graham's appeal is therefore denied. All Requests for Findings of Fact and Rulings of Law consistent with this opinion are granted, all others denied.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE

Executive Secretary

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cc: Michael C. Reynolds, General Counsel
State Employee's Association

Barbara Maloney, Staff Attorney
New Hampshire Hospital

Virginia A. Vogel
Director of Personnel

State of New Hampshire



88-T-103

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APPEAL OF BRUCE GRAHAM Motion for Rehearing

January 27, 1989

On September 14, 1989, the Personnel Appeals Board, Commissioners Cushman and Platt sitting, reviewed the appellant's Motion for Rehearing filed in the above-captioned matter. The appellant argued that in striking a mentally retarded patient with his closed fist, the appellant was acting in self-defense. The Board saw and heard the appellant testify and had the opportunity to judge his credibility. As the Board noted in its May 23, 1988 order, the appellant made no claim of self-defense when he first reported the incident or prior to the time he was informed that he would be discharged. The Board found that the appellant did not act in self-defense.

The appellant also argued that New Hampshire Hospital failed to conduct an internal investigation as provided in the New Hampshire Hospital Policy and Procedure Manual. In this case, the appellant admitted striking the patient with a closed fist when he discussed the incident with the unit director. Under these circumstances, the failure to conduct a full investigation is, at most, a harmless error. Moreover, the appellant had the opportunity to present all relevant evidence to the Board, which was authorized to make any order which it deemed just. RSA 21-I:58, ■ - Based upon the evidence presented, the Board unanimously agreed that discharge was the appropriate action in this case.

For the foregoing reasons, the Board voted to deny the Motion for Rehearing.

FOR THE PERSONNEL APPEALS BOARD

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

MARY ANN STEELE
Executive Secretary

cc: Michael C. Reynolds, SEA General Counsel
Barbara Maloney, Staff Attorney, NH Hospital
Virginia A. Voyel, Director of Personnel
Sharon Sanborn, NH Human Resources Coordinator