

State of New Hampshire



PERSONNEL APPEALS BOARD
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89-T-103

THE STATE OF NEW HAMPSHIRE

DIVISION OF PERSONNEL

PERSONNEL APPEALS BOARD

Appeal of Joy Griffith

I. Background

Joy Griffith (appellant) appeals her termination or resignation from her position as an Accounting Technician with the Division of Public Health Services, Department of Health and Welfare (Division). At all times relevant to this appeal, she was a probationary employee, or a promotional probationary employee. She commenced work as an Account Clerk III on a part time basis in July of 1987, became full time in November of that year in the position of Data Entry Operator II, and was promoted to the position of Accounting Technician as of January 1, 1988. It is from this position that she was separated on December 1, 1988.

Her probationary period had been extended by request of the Division of May 17, 1988, from July 1, 1988, to January 1, 1989,

which request was approved by the Director of Personnel on May 20, 1988. On October 28, 1988, the appellant was confronted with termination for poor work performance, which performance was said not to have improved despite the extended probationary period and numerous attempts and opportunities to effect the allegedly needed improvement.

In light of this, the appellant, by memorandum, resigned on November 1, 1988. The resignation purported to become effective as of December 1, 1988 at 4:00 p.m. This provided the advantages of not being terminated, and accruing and receiving various benefits over the course of the extra month, and thereafter, as well as receiving pay during that month, presumably while seeking new employment, whether in state service, or elsewhere.

On December 1, 1988, again by memorandum, the appellant sought to withdraw her resignation, which request was refused by the Division's Director. The instant appeal ensued.

We are asked to determine whether the appellant resigned or was terminated, and if the latter, whether that was correctly effected pursuant to the rules of the New Hampshire Division of Personnel (Personnel, referring either to the Division of Personnel, or its rules), and any other applicable law.

In this appeal the Division is represented by Attorney Martha Pyle Farrell of the Civil Bureau of the Office of the Attorney General (Department of Justice). The appellant is

represented by Attorney Michael C. Reynolds, General Counsel to the State Employee's Association of New Hampshire.

An audiotape of the entire proceeding before the Board was made. It, together with the documents contained in the Board's file on this appeal and some 20 exhibits received by agreement at the hearing, as well as the Division's Requests for Findings of Fact and Rulings of Law, constitute the record in this appeal (Record). The record was fully considered in the decision of this appeal. All testimony was received under oath and in accordance with the Board's rules (Rules), and generally in accord with the New Hampshire Rules of Evidence. Rulings of evidentiary matters and Motions occurring at the hearing are not discussed herein, unless it is felt by the Board that the reasons therefor are not clear from the Record, or require further explanation or comment in the context of the decision.

II. Hearing

The hearing was held on May 24, 1989. The appellant moved to sequester the witnesses, which motion was granted with the consent of the Division.

The appellant testified that when she started work at the Division, Peggy Smith, her supervisor, had wanted to hire her for full time work, but had been unable to do so due to a shortage of available funds. The appellant had a full time job at Bass Shoe in Laconia at the time and the Division, where she worked three days per week, was aware of it. The appellant was raising her

children on her own and was pleased to go to work full time for the Division in November, which she did until January of 1988 when she was promoted to the position of Accounting Technician, also full time.

Peggy Smith was her supervisor at and up to this time. She was given a schedule relating to the performance of her new job, and set about learning it. She felt her first month's work was good and says Peggy told her as much. There was lots to learn, and there were no written evaluations in the first month.

There was lots of "chit chat" (socializing) in the office, which distracted the appellant from her work and made the work more difficult to accomplish. She discussed this with Peggy by March of 1988, as she was upset. Peggy discussed this with her as a friend would, but became upset with the appellant on account of the complaints about socializing. The appellant says Peggy was one of the talkers affecting her work.

After her discussion with Peggy, she was treated differently. Peggy was cold. In May, the appellant met with Peggy and Trish Martin, another supervisor, and was told that if she didn't learn to socialize more she would not complete her six-month probation. The appellant felt that this was all related to her conversation with Peggy in March, and that Peggy was out to get her because the appellant had upset her.

About this time, Peggy assigned Trish to supervise the appellant, which was a new arrangement. The appellant's

probationary period was extended and she didn't think it should have been, but didn't know "how things worked" in state service.

Exhibit 4, the March 8, 1988 memorandum on work assignments from Peggy, was received by the appellant prior to the above-referenced conversation. Exhibit 5, the hand-written assignment list, were assignments given out by Trish after she took over supervision of the appellant. Trish later rearranged the jobs further, about one month before the appellant's separation from service. The appellant says Trish gave her the more complex Boards and Commissions to service. The reconciliation function takes four to five days per month, and the appellant had been doing that before March of 1988, and before the assignments given out by Peggy in that month. Trish made the assignments (Exhibit 5) in October of 1988.

Exhibit 12, the appellant's training schedule, was given to her at the commencement of her duties as an Account Technician (January). Peggy spent two days training her, then Grace, a co-worker, filled in, but that was not her specialty.

The appellant did not agree with the contents of Exhibit 14, Patricia Martin's memorandum of July 19, 1988, and feels that she was given no specific dates and times when she was alleged to have performed unsatisfactory work. When the appellant's probationary period was extended she asked for weekly meetings. These did not occur regularly, and Exhibit 16, the termination letter of October 28, 1988, took her by surprise.

She says that Trish had brought some mistakes to her attention and acknowledges that she had indeed made some, but she feels Trish was displeased with the performance of all of the Account Technicians for various reasons, such as the number of transpositional errors. She doesn't feel that the training she was given was all that good, consisting mostly of asking questions and taking notes. She feels that her speed and accuracy had improved, contrary to the assertions in Exhibit 16.

When Trish was supervising her and caught a mistake she would not correct it, but would bring it back to the appellant to be corrected. Occasionally, Trish discussed problem areas in her work with her. Previously, when directly supervised by Peggy, Peggy would point out different ways to do the work and thereby minimize the possibility of mistakes.

The appellant says no one ever offered her her old job back, or a similar position. She says she was given the option of resigning, in lieu of certain termination, that she did so, but that she would not have but for the pending termination.

At this point the appellant concluded her case. The Division made an oral motion to dismiss contending that the appellant had failed to meet her burden and had not shown that the termination was for reasons other than failing to meet work standards, or unsatisfactory performance. The Board denied this motion. It desired to hear live testimony, and afford the opportunity for cross examination to the appellant in developing

her case. Accordingly, it felt the scope of the hearing should be broader than what had transpired so far.

The Division called Margaret (Peggy) Smith, who is now responsible for its fiscal operations, having replaced Mr. Webster, her former supervisor. Her relationship with the appellant was supervisory in nature, and she had known her since July of 1987. She had related well to the appellant on a personal level and had even purchased some trinkets for her children.

Smith felt that the appellant was unable to get the necessary work done in her part time position, which she had first held. In that position her work was acceptable, but slow. The appellant had had difficulty passing the requisite tests, which she took with staff assistance. She was the best available person for the Accounting Technician position, out of a field of seven.

Smith did two weeks of one-on-one training with the appellant who had trouble getting the necessary work done. The work goals set forth on Exhibit 4 were never attained. Smith talked with the appellant daily about her job when she supervised her, and the appellant had difficulty with the "concepts" of the job. Smith encouraged the appellant to socialize and fit in - take breaks, say good morning, etc., but she did not. Smith never told her that she would not complete her probationary period without increased socializing.

She had little supervisory contact with the appellant after Trish took over the supervision. Smith concurred with Martin about the extension for the probationary period, was convinced by Martin's documentation, gave her the opportunity to resign, and encouraged her to see the Division's Human Resources Coordinator regarding another position with the Division.

Patricia (Trish) Martin next testified. She spot checks her employees' work and takes mistakes back to them for correction, and they are then expected to take the corrected work to the data processing operator for computer input, or other record correction. She set the work load for her employees and tried to assure equal load and volume. There is no established percentage rate reflecting an acceptable or unacceptable number of errors. The appellant had taken notes regarding how to perform her job, but they were disorganized. Martin had reviewed some of these with her. The appellant had a significantly greater rate and number of errors than those of her co-workers. Martin made copies of documents with errors in them and reviewed these with the appellant in progress meetings. The appellant never expressed concern about her work to Martin.

Martin felt that it was possible that the appellant could do the job, which was a reason for extending the probationary period. Whenever the appellant's speed increased, a concurrent increase in her error rate also occurred. The appellant did not check her work. She was well behind the projected goals in the

training schedule and never attained them (Exhibit 12). The appellant did not use available tools in her work and did not seem to understand it.

There were no specific numbers relating to work items to be performed in a particular period, but it was expected that work would be completed, and there were priorities (i.e. travel paperwork in three days). Ninety-eight percent of the errors returned to Martin's office from other reviewing agencies were the appellant's errors.

At this point, the Division's case concluded, the Division renewed its Motion to Dismiss. The appellant argued that Per 302.23,C,1, was not complied with, and that some of the evidence did not comport with the current collective bargaining agreement (note §16-2 thereof), with affected state employees in that records that are "unofficial" were improperly relied upon by the Division. We reject this latter argument and find it inapposite, and treat the issues in the case below.

III. Further Rulings and Order

The rules of primary pertinence to a decision in this appeal are Personnel's Rule Per 302.23 and our rule Per-A 207. The Board finds that the appellant has failed to meet her burden to produce credible evidence and prove facts sufficient for the Board to find a violation of the applicable standard (sic). Per-A 207.05(a), 101.02; in other words, that the appellant was unlawfully terminated.

In our view, on all the evidence, the appellant did not perform in a manner meeting the required work standard. Her work was slow and insufficient in quantity and quality. Errors were too numerous. Many attempts were made to provide guidance, train her, help her organize her notes, and learn procedures that would assist her in properly performing her work and meet her job requirements. Attempts were made to facilitate her harmonious integration into the work environment vis-a-vis her co-workers and supervisors.

We are not persuaded, on the evidence and the record, that the appellant was the object of animosity occasioned by her criticism of her co-workers or supervisor's gregarious activities. Rather, we feel that, though this may have concerned the appellant because of her own concerns about her job performance, her job performance was the cause of her separation from employment. We are inclined to believe that her resignation was tendered and was sufficiently voluntary to be dispositive of this appeal, but only in light of our finding that the division committed no error in electing to remove her pursuant to Per 302.23. Accordingly, we find that the appellant resigned from her position as an Accounting Technician, and state service, as of December 1, 1988, that the resignation was accepted, and that the attempt at rescission thereof was ineffective.

Despite the foregoing, we have two concerns. We are concerned about the paucity of formal evaluations of the

appellant performed, and we are concerned that more structured endeavors were not undertaken to seek a position in state service for the appellant to return to pursuant to Per 302.23,C,1. On the facts of this case, particularly as we find them from the credible testimony and the evidence, our concerns do not affect our decision.

The rules of the Division of Personnel favor formal evaluations, and accordingly, so do we. We find that the appellant was actually given very adequate feedback about her performance, and very adequate guidance as to how to improve it. We find that the requirements of Per 302.23,C,1, were met in this case. However, as to our concerns, we admonish state agencies to properly and formally evaluate their employees. The uniformity of actions by the agencies contemplated by Personnel's rules, this standardization, protects the rights of employees and agencies alike, and must be done in order to make the personnel system, including the appeal rights to this Board, fully meaningful and effective in all cases.

Secondly, while we find Per 302.23,C,1, to have been complied with in this case, we feel that some better and more demonstrable, perhaps standardized, way of doing so must be found by agencies, or the Division of Personnel, to insure that that option afforded to the State's soon to be former employees is in fact afforded them. Employees who tried to fulfill the requirements of a job but could not are still valued under our

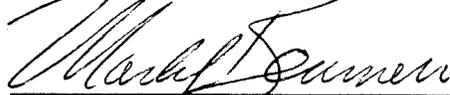
Personnel system, and the referenced rule reflects that. The records in appeals of this sort should better reflect it.

The Division has filed requests for findings and rulings. Findings requested and numbered 1-10, 12 and 13 are granted, insofar as consistent with the foregoing. Number 11 is neither granted nor denied. Rulings requested and numbered 1-3, insofar as consistent with the foregoing, are granted; number 4 is neither granted nor denied.

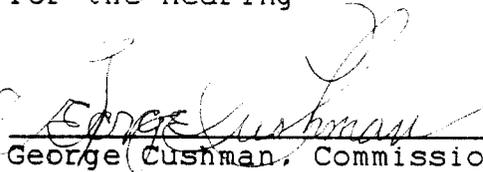
The appeal of Joy Griffith is denied.

28 December, 1989

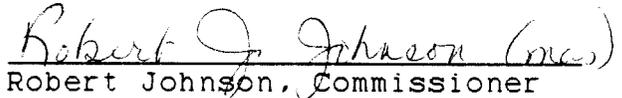
THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman
for the Hearing



George Cushman, Commissioner



Robert Johnson, Commissioner

DATED: February 26, 1990

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