

State of New Hampshire



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

APPEALS OF ALBERT HEALEU
Docket #94-D-6 (March 9, 1993 letter of warning)
Docket #93-T-26 (March 30, 1993 notice of termination)

New Hampshire Hospital

April 20, 1994

A quorum of the New Hampshire Personnel Appeals Board (McNicholas and Rule) met Wednesday, January 12, 1994, to hear the appeals of Albert "Tom" Healey, a former employee of New Hampshire Hospital. Mr. Healey was represented in his letter of warning appeal by SEA Director of Field Operations Thomas Hardiman. He was represented in his termination appeal by SEA Legal Intern Linda Chadbourne. Barbara Maloney, Director of Legal Services for New Hampshire Hospital, appeared on behalf of the State.

At the outset of the letter of warning appeal, Mr. Hardiman moved to have the hearing continued because two of the appellant's principal witnesses, Robert Cunningham and Carol Tonnesen, were both ill and unable to attend the hearing. In the alternative, Mr. Hardiman proposed that if the Board were to deny the Motion to Continue, the Board should allow the record of the hearing to remain open until such time that it could take the testimony of these two witnesses, or allow their testimony to be admitted by deposition. After deliberating briefly, the Board denied the Motion to Continue. However, the Board ruled that it would allow the appellant to submit the testimony of the two witnesses by deposition, provided that the appellant would bear the costs of the depositions, and that the depositions would be submitted to the Board not later than January 31, 1994. Otherwise, the testimony of those witnesses would be excluded. The only deposition taken and submitted by the appellant was that of Carol Tonnesen. The record was closed on January 31, 1994.

Docket #94-D-6
March 9, 1993 letter of warning

Mr. Healey was employed as a Cook II in the dietary kitchen at New Hampshire Hospital. In the dietary kitchen, patients' meals are prepared, placed on trays, loaded onto service carts, and delivered to the wards. Before the trays can be loaded onto the service cart, they are checked by a Dietician's Assistant for proper content and portion according to the dietary instructions for the individual patients. In preparing the trays, the food service area is set up so that Food

Healey
Docket #94-D-6
Docket #93-T-26

Service Workers portion out individual servings from stainless steel containers on a steam table. When the containers become depleted, the Food Service Workers tell the Dietitian's Assistant serving as the "checker", who then calls for a runner from the kitchen to take away the empty container and replace it with a full one. In his capacity as a Cook II, Mr. Healey also served as a runner, and was working in that capacity on March 8, 1993.

On the morning of March 8, 1993, Pauline Cassidy, a Food Service Worker, was serving hot cereal from the tray line. When one of the two cereal containers at her work station had been emptied, she told the checker, Dorothy Bancroft, that she was "down one". Ms. Bancroft then called for a runner to replace the empty serving container. Ms. Cassidy testified that Mr. Healey arrived at the serving line empty handed. She testified that the appellant walked up to her left side, told her not to ask for cereal "every two minutes" and forcibly shoved her out of his way by hitting her in the left arm. Ms. Cassidy testified that she told him not to hit her, and that he yelled at her to shut up. Ms. Bancroft gave essentially the same description of the incident, testifying that when Ms. Cassidy told the appellant not to hit her he yelled, "Shut your G__ d___ mouth!" She testified that Ms. Cassidy yelled back at the appellant that she would "take him in the office". She testified that she told both employees the line needed to keep moving and that they were to stop fighting. She said that things quieted down immediately. She said she assured Ms. Cassidy that the matter could be taken up later with supervisory staff.

Mr. Healey testified that he was not empty-handed when he arrived at Ms. Cassidy's location on the tray line, and that he could not possibly have hit her. The appellant testified that when Dorothy Bancroft called for more cereal, he brought a full container. He testified that the steam table on the tray line has a lip only about two inches wide, and that one can not balance a full container on the lip of the table while removing an empty pan. He testified that normally someone would remove the empty pan when the runner arrived. Mr. Healey testified that carrying a full pan requires the use of both hands, and that he could not possibly have struck Ms. Cassidy in the arm as she had testified. Mr. Healey further testified that he may have bumped Ms. Cassidy in the arm as he was trying to put the hot cereal pan in the steam table, but that he had not hit her and had not yelled at her. He admitted he had probably told her to shut up, but that there was no "incident".

After the incident was reported to Dana Lancaster, Director of Food Services, a meeting was scheduled between Mr. Healey, Mr. Lancaster, and Chef Warren Zitzow, who testified that he frequently attended such meetings with contract managers as a means of assuring the other classified employees that they were being treated fairly. When Mr. Lancaster asked Mr. Healey what had happened in the morning trayline, Mr. Healey indicated that nothing had happened and that he had witnesses who could prove that nothing happened. When Mr. Lancaster questioned him directly about hitting Ms. Cassidy, he said he may have accidentally bumped into her but that he had not hit her and had not yelled or sworn at her.

Mr. Hardiman insisted that Mr. Lancaster was so intent on disciplining the appellant that he never bothered to get his facts straight. He argued that Mr. Lancaster's investigation was incomplete, that he ignored pertinent facts during the informal settlement process, and that he had disciplined Mr. Healey for an incident which could not have occurred as it was described in the letter of warning.

On the contrary, the Board found that Mr. Lancaster knows his employees and can fairly assess their credibility. Mr. Lancaster did speak with the employees directly involved in the incident

and gave Mr. Healey a reasonable opportunity to respond to the allegations that he hit Ms. Cassidy and yelled at her. When asked why he had not interviewed all the other individuals on the serving line about what they might or might not have witnessed, Mr. Lancaster testified that he did not believe the two women were lying. The Board agrees.

Mr. Healey testified that he had arrived at the serving line with a container of hot cereal in his hands and could not possibly have struck Ms. Cassidy in the manner described in the letter of warning. He testified that Ms. Bancroft and Ms. Cassidy disliked him and had fabricated their story to get him fired.

Mr. Healey testified that he does not wear the gloves he is supposed to use in handling the food, and that this practice has gotten him into trouble before. He also testified that he had suffered a gunshot wound to the shoulder some years ago and that the resulting damage to his nervous system made his fingernails fall off. He also indicated that he sometimes will not shave his face or change his clothes before coming to work. He testified that Ms. Bancroft had criticized him because of his manner of dress and general cleanliness, and that both Ms. Bancroft and Ms. Cassidy disliked him because he is a "junkman".

Both Ms. Bancroft and Ms. Cassidy were credible witnesses. In spite of Mr. Healey's claim that the two women disliked him, there was virtually no evidence to support such a finding. The appellant failed to offer any persuasive rationale for the Board to believe that they were lying about the incident.

The only testimony Mr. Healey offered in support of his claim that he had arrived at the serving line with a container of hot cereal was the deposition of Carol Tonnesen. Although Ms. Tonnesen's testimony supports a finding that on one of his trips to the trayline Mr. Healey had arrived with a container of hot food, there is no evidence that this was Mr. Healey's only trip to refill dishes which had been emptied in the serving process. Although Ms. Tonnesen said she was unaware of any commotion on the serving line that morning, the record reflects that an incident had taken place which was sufficiently disruptive to get the attention of employee's inside the dietary office.

In spite of Mr. Hardiman's assertions that Mr. Lancaster disciplined the appellant without sufficient factual information to confirm the statements of the employees immediately involved in the incident, the Board believes that Mr. Healey's record spoke for itself. Mr. Healey freely admits that he has "a portfolio" of warnings and counselling letters. In spite of his offer of proof that no incident occurred and that he had not hit Ms. Cassidy, Mr. Healey failed to offer persuasive evidence to support his position. Faced with conflicting representations of events, Mr. Lancaster determined that Ms. Cassidy's and Ms. Bancroft's version of events was more credible. A letter of warning was prepared and issued to the appellant on March 9, 1993, citing "inappropriate behavior" as the offense giving rise to the warning.

Per 1001.03 (a) of the Rules of the Division of Personnel authorizes the use of the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance. The rule cites a variety of examples of the kinds of offenses for which an appointing authority may issue a written warning including, but not limited to, using obscene language, exhibiting uncooperative or disruptive behavior, and exhibiting physically or verbally abusive behavior in the workplace. New Hampshire Hospital has characterized Mr.

Healey's conduct as "inappropriate behavior", and has argued that New Hampshire Hospital would have been authorized to dismiss him without prior warning for his offenses in this instance.

Having considered the evidence and the credibility of the witnesses, the Board voted to uphold the letter of warning. While the offense may have been less than carefully categorized, it is nonetheless clearly identified and is an offense for which the Rules of the Division of Personnel would authorize a warning. The employer met with the employee to discuss evidence of the offense and the employee had an opportunity to refute the allegations. The nature and extent of the offense was documented in writing. The employee was notified of his right to challenge the letter of warning through the procedures for informal settlement, as well as his ultimate right to appeal his department's decision which sustained the warning.

While the Board agrees that a written warning was warranted in this instance, the Board does not agree that the incident could have led to Mr. Healey's immediate termination without prior warning. While Mr. Healey was both verbally and physically abusive, the evidence is not strong enough to support a finding that Mr. Healey injured or attempted to injure Ms. Cassidy. Therefore, he would not have been subject to immediate dismissal solely as a result of the incident on March 8, 1993.

In order to provide the clarity which the appellant is seeking, the Board voted to order that Mr. Healey's March 9, 1993 letter of warning be revised to reflect the more specific nature of the offenses which are generally outlined therein. Accordingly, the letter shall be amended to reflect that it is a warning for unsatisfactory work performance, for exhibiting uncooperative and disruptive behavior, and for exhibiting physically and verbally abusive behavior in the workplace.

Mr. Healey's March 9, 1993, letter of warning states:

'Pursuant to Per 1001.03 of the Rules and Regulations of the Division of Personnel, this is a second written warning for inappropriate behavior while on duty at New Hampshire Hospital.

"On September 3, 1992, you received a written letter of warning for removing all of your clothing and urinating in the parking lot directly in view of the Laundry Building in view of the laundry personnel.

"On March 8, 1993, during trayline, you hit Pauline Cassidy on the left arm, to get her to move out of your way. According to a witness, when Pauline yelled at you not to hit her, you yelled back at her to "shut her mouth".

"This is not the first time you have had physical contact with a fellow employee. As you may recall, this past summer, you were witnessed ripping [sic] open the blouse of a female employee to which you later admitted to it, but qualified it as a joke. Although the employee accepted your apology and the Commissioner's Office declared the issue resolved, it does not change the fact that, in less than a year, you made unwanted physical contact with fellow employees in an inappropriate manner on two occasions."

While removing all one's clothing and urinating in view of one's co-workers is clearly

inappropriate conduct, it is not sufficiently similar to striking a co-worker to be considered "the same offense" for the purposes of cumulative discipline leading to termination. Per 1001.08 (e) (1) authorizes an appointing authority to dismiss an employee by issuance of a third letter of warning for the same offense within a period of 2 years, or by issuance of a fifth written warning for different offenses within a period of 2 years. An agency may not create a "catch-all" offense to broaden its authority under the Rules of the Division of Personnel and allow it to reduce the number of warnings which are required prior to termination.

Per 1001.03 (a) contains the following language:

"An appointing authority shall be authorized to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance for offenses including but not limited to:

- (1) Failing to meet the work standard;
- (2) Arriving late for work or leaving work early;
- (3) Being absent without approved leave or proper notification;
- (4) Excessive unscheduled absences;
- (5) Using obscene language;
- (6) Exhibiting uncooperative or disruptive behavior;
- (7) Sexual harassment;
- (8) Exhibiting physically or verbally abusive behavior;

....."

Inasmuch as the purpose of warnings is to effect corrective action, the Board believes that the rule was written with the understanding that correcting a deficiency in one's performance or conduct may well require more than one warning. The first warning for a particular offense puts the employee clearly on notice that the employee's performance or behavior constitutes an offense which, if uncorrected, will ultimately lead to discipline. The second warning provides further notice to the employee that the performance or behavior cited in the previous warning has not been corrected and that a further infraction can lead to the employee's discharge from employment.

The offense cited in Mr. Healey's first warning involved his "inappropriate behavior" by disrobing and urinating in a public place where he could have been seen by co-workers, visitors or clients of the Mental Health system. While the Board is not trying to say that "inappropriate behavior" in a subsequent warning necessarily would need to involve disrobing or urinating in public, the Board believes that striking a co-worker to force her to move out of the way is disruptive, abusive and threatening behavior warranting at a minimum a letter of warning.

The Board found Mr. Hardiman's closing arguments to be unpersuasive. Mr. Lancaster's authority, as an employee under contract to New Hampshire Hospital, has been raised time and time again. Mr. Lancaster's role clearly includes managing and disciplining employees, and the Superintendent certainly has the authority to delegate those responsibilities to Mr. Lancaster through his contract. Further, the Board was not persuaded that Mr. Healey was denied due process. Mr. Lancaster interviewed the individuals who were personally involved in the incident, tested their credibility based on prior performance, and concluded that Mr. Healey was not being truthful. The Board accepts that proposition and finds that a warning was appropriate.

In voting to deny Mr. Healeys appeal of his March 9, 1993 letter of warning, the Baord ruled as follow on the Appointing Authority's Requests for Findings of Fact and Rulings of Law:

FINDINGS

1 - 7 are granted to the extent that they are consistent with the decision above.

RULINGS

1 - 3 and 5 - 6 are granted.

4 is denied.

Docket #93 -T-26 Termination from Employment

Mr. Healey was discharged from his position of Cook II by letter dated March 30, 1993, for "inappropriate behavior". The warning, which notified Mr. Healey of his termination, alleged that on the afternoon of March 30, 1993, Mr. Healey approached the dietary office where Ms. Bancroft and a co-worker were sitting. The co-worker had offered to sell Mr. Healey a jacket which she said he could pick up from her in the office. Mr. Healey approached the office holding something in his hands. Ms. Gould testified that Mr. Healey had drawn one hand rapidly along the other, and that he grimaced then dropped something onto the floor of the kitchen near the door jamb of the office. He picked up the item and both women realized it was a knife. Mr. Healey ran his thumb along the blade of the knife and said, "See how sharp it is." After twice refusing a bandaid, he then walked away from the office and held his hand over a wastebasket letting blood drip from his hand, in clear sight of the office. He picked a piece of paper waste from the basket, wiped the blood from his hand, and left the kitchen.

Ms. Bancroft asked Ms. Wendy Gould, the other employee in the office, if the appellant's action was meant to be a threat. Ms. Bancroft was clearly shaken by the incident, sufficiently so that she called her supervisor as soon as she had left work and returned home.

Mr. Healey insisted that cutting himself was an accident. He said he had brought his own knife into the kitchen area to sharpen it. He tested the blade and realized it didn't need sharpening. He said that when he attempted to close the blade on the knife, he cut himself. He testified that he accidentally dropped the knife which then skidded across the floor toward the area of the office. He said that when he picked it up, he simply remarked that the blade was very sharp. He insisted that there was nothing frightening in his remark and that he had not made the statement as any kind of a threat. He testified that he had let the blood drip from his hand into a wastebasket to avoid getting blood on himself or the jacket he was carrying.

In his testimony, Mr. Healey insisted that he had never entered the office area where Ms. Gould and Ms. Bancroft were seated. However, in written statements prepared by the witnesses on March 18, 1993, both Ms. Bancroft and Ms. Gould indicated that Mr. Healey had walked into the office. While Mr. Healey testified that he had cut himself while trying to close the blade of his knife, both women indicated in their written statements that the wound was intentional.

In her written statement dated March 18, 1993, Ms. Gould described her conversation with Ms. Bancroft immediately after the incident as follows: "Dorothy looked at me and said, He did

that on purpose, didn't he. I said yes." She concluded her statement by saying, "I have known Tom Healey for 12 years and I can't believe he cut himself in front of me. I wasn't scared by him or intimidated. He was hurt and I wanted to help. I don't know if he was trying to scare someone or ask for help."

In her written statement, Ms. Bancroft gave a similar account:

I saw blood oozing from his fingers which were still clenched in a fist. Wendy Gould offered him some bandaids which he refused. He ran his left thumb over the blade, licked his lips and said "Look how sharp this is." He picked up the jacket and Wendy again offered him a bandaid and said "don't get blood on the jacket". He walked out of the office, went to a pot 'n pan sink, turned toward the dietary office in full view of me and held hand over trash can and shook blood into it. He took a piece of dirty paper from trash can and wiped his hand and left kitchen. I was in a state of shock and disbelief that anyone would do this on purpose. Then I realized I had to tell a supervisor about this because it frightened me and he could hurt someone else. I feel as though Tom Healey meant this as a threat to me.

John Corriveau, another of Mr. Healey's co-workers was present immediately after the incident. Again, despite Mr. Healey's testimony that he had never entered the dietary office, Mr. Corriveau's written statement says the following:

On 3/16/93 at 1:30 p.m. while I was washing pots and pans, Tom Healey came out of the dietary office and came over towards me and he started shaking his hand over my trash can. I looked to see what he was doing and I saw blood on his left hand, and he was shaking the blood off his hand into the trash can. Then I said, "Tom what are you up to now." He said, "You know me, I'm always doing something foolish and getting myself in trouble." Then he turned around and left.

I have known and worked with Tom Healey for 16 years. During this time Tom has always been in and out of troubles. He has a problem getting along with people. I feel myself that Tom needs some type of professional help.

The only inconsistencies in any of the versions of this incident come from Mr. Healey's own testimony. Mr. Healey insisted he was never in the office. All three persons present place Mr. Healey in the dietary office. Mr. Healey insisted that cutting his hand was accidental. Both Ms. Gould and Ms. Bancroft characterized his injury as intentionally self-inflicted. Mr. Healey testified that he sharpened his knife in the kitchen several times a week, and that other employees in the kitchen carried pocket knives without ever getting into any trouble. When Mr. Corriveau asked the appellant what happened, he said he was "doing something foolish" and "getting himself in trouble". If the appellant's representation of events is truthful, there is no reasonable explanation for why an accidental cut would have gotten him into trouble. The only credible explanation was that the appellant went to the dietary office to see Wendy Gould, and when he realized that Ms. Bancroft was also present, he intentionally made a bizarre, threatening gesture in retaliation for Ms. Bancroft's involvement in the prior letter of warning incident.

While the incident may not have represented cause to terminate the appellant under the applicable standard, it certainly was sufficient to warrant his immediate demotion under the

Healey

Docket #94-D-6
Docket #93-T-26

provisions of Per 1001.07 (b)(2)a, in which an appointing authority is authorized to immediately demote an employee without prior warning when the offense in question involves threatening the safety of another employee or client.

On March 17, 1993, Mr. Healey was suspended without pay pending an investigation into the knife incident. That letter is perhaps the clearest indication of the Hospital's response to Mr. Healey's behavior, which had escalated over a period of months from an apparent incident of indecent exposure, through shouting at and striking a co-worker, up to engaging in a thinly veiled threat against an employee who had been instrumental establishing the facts which led to the second letter of warning. In a document dated March 29, 1993, the Hospital set forth those conditions which Mr. Healey must complete in order to correct his behavior and retain his employment. The conditions (NHH #5) were listed as follows:

Mr. Healey will request in writing a leave of absence, with or without pay, not to exceed 90 days.

The purpose of this leave is to enter into a treatment program that will meet Mr. Healey's needs. Mr. Healey must understand that inappropriate behaviors will not be tolerated, and that appropriate measures will be taken (pursuant to the Rules and Regulations of the Division of Personnel and the policies and procedures of New Hampshire Hospital) to ensure that there is a level of cooperation, self-control and decency between all staff members.

Mr. Healey will provide the name of his treatment provider to Marie Lang, Human Resources Administrator. He will also give Ms. Lang written permission to contact his treatment provider. Any information exchanged between Ms. Lang and Mr. Healey's treatment provider will be limited to verification of Mr. Healey's participation and attendance in a "program". All such information will be confidential and maintained in the employee health file. Failure to continue in an agreed upon treatment program will render this agreement null and void and will necessitate appropriate action.

Prior to returning to work, Mr. Healey will provide Dana Lancaster, Director of Food Services, a statement that he is fit for duty (pursuant to New Hampshire Hospital standards) from his treatment provider. Upon returning to work, Mr. Healey will apologize to all parties involved in the March 16, 1993 incident.

The suspension without pay will be in effect pending the outcome of this meeting, with further disciplinary action an option. A decision must be reached by 10:00 a.m. Tuesday, March 30, 1993.

The Board believes that given the circumstances of all Mr. Healey's warnings, the conduct Mr. Healey had exhibited throughout the proceedings before this Board, and the escalating nature of the incidents, culminating in a threat to a co-worker, the Board found that the Hospital had taken a cautious, compassionate, and well-reasoned approach to assisting him in continuing his employment. However, Mr. Healey rejected the plan of corrective action and was subsequently discharged.

Mr. Healey's original notice of appeal dated April 12, 1993, sets forth the following grounds for claiming his termination was invalid:

The appellant denies the allegations contained in the letter of termination.

The appellant denied he had willfully inflicted a knife wound on himself, and did not threaten any staff member.

The appellant's second letter of warning, if deemed invalid, would invalidate the termination on the grounds that he would not have received three warnings for the same offense.

At no time did the appellant raise the issue in his original pleadings that the warnings were not for the same offense, or that they could not be deemed "the same offense" for the purposes of cumulative discipline.

While the appellant has now argued that the agency has erred by creating a broad, catch-all category in order to effect his termination by issuance of a third letter of warning, that argument was not raised until the hearing before this Board on January 12, 1994.

Per-A 202.01 (b) of the Rules of the Personnel Appeals Board specifies that any notice of appeal "...shall state the action complained of, and shall contain a detailed description of why the appellant believed the action was inappropriate". If the appellant intended to offer the underlying legal argument that his termination was violative of the rules because his warnings were not "for the same offense" as required by Per 1001.08 (e)(1), that argument should have been made in a timely enough fashion for the agency to respond to that argument and make any correction which they might have deemed appropriate in light of his argument. This was not the case. In each instance, the appellant simply denied the allegations.

After considering the evidence and argument offered by the parties, the Board ruled as follows on the Requests for Findings of Fact and Rulings of Law which the parties submitted:

APPELLANT'S REQUESTS FOR FINDINGS OF FACT

- 1 is granted.
- 2 is granted, although it is not dispositive.
- 3 is granted to the extent that there may have been other eyewitnesses.
- 4 is granted to the extent that Ms. Bancroft did not see the knife in the appellant's hand at the time that he cut himself.
- 5 is granted to the extent that Ms. Gould did not feel personally threatened by Mr. Healey, and did not know initially that he had cut himself.
- 6 and 7 are denied. Ms. Bancroft's concerns about Mr. Healey's work habits are improperly characterized by the appellant as "hostility".
- 8 and 9 are granted to the extent that they are consistent with the Board's findings above.

APPELLANT'S REQUESTS FOR RULINGS OF LAW

- 1 - 4 are denied
- 5 is granted to the extent that it is consistent with the Board's ruling above.

APPOINTING AUTHORITY'S REQUESTS FOR FINDINGS OF FACT

- 1 is granted
- 2 is granted after amending the date to read "August 27, 1992"
- 3 is granted

Healey
Docket #94-D-6
Docket #93-T-26

4 is denied

5 is granted

6 is denied. Although the incident is properly described and characterized, the incident did not rise to the level of immediate dismissal without prior warning.

7 - 12 are granted

APPOINTING AUTHORITY'S REQUESTS FOR RULINGS OF LAW

1 - 3 art, granted.

4 is granted, although it is not dispositive.

5 - 8 are granted.

9 is denied.

In consideration of the foregoing, the Board voted to grant Mr. Healey's termination appeal in part. The Board does not believe the agency should be prejudiced or penalized by the appellant's failure to fully address either the content or effect of his warnings through the administrative remedies available to him. The appellant's failure to raise the argument that the warnings could not be considered "the same offense" in his original pleadings ultimately had the effect of precluding any timely review by the agency of those arguments which would be presented in hearing. While the agency must be accountable for fair and equitable administration of the rules, it should not be penalized by virtue of the appellant's failure to properly plead his case.

RSA 21-I:58 I provides that, "...In all cases, the Personnel Appeals Board may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just." Mr. Healey's termination shall be rescinded and converted to a demotion to a position which shall be at a lower salary grade than his position of Cook II, and which shall remove him from the dietary kitchen. Further, such reinstatement shall be conditional upon Mr. Healey meeting all the requirements of the March 29, 1993 list of conditions for continued employment (NHH #5). Mr. Healey's reinstatement shall be accomplished within 30 days of his completion of the conditions for continued employment. If Mr. Healey had accumulated sick leave at the time of his termination, that sick leave may be restored to his credit upon completion of the conditions for reinstatement contained herein. If there is sufficient accumulated sick leave to cover the leave of absence described in the first condition for continued employment, the appellant may apply for reimbursement of the leave of absence from that accumulated balance, but such reimbursement shall not be made until the appellant has completed 90 days of satisfactory employment without incident or warning.

The previously issued letters of warning shall be effective for the purpose of additional discipline, up to and including termination from employment, for a period of two full years of work performance. The period of his absence from the work place (March 30, 1993) until the date of reinstatement shall not be counted toward the expiration of those warnings. The agency shall assure that the following letters of warning are on file, and remain on file in Mr. Healey's personnel file at New Hampshire Hospital and the New Hampshire Division of Personnel:

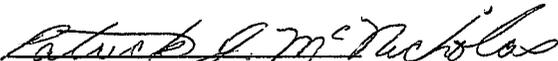
1. August 27, 1992 warning for inappropriate behavior
2. March 8, 1993 warning for unsatisfactory work, exhibiting uncooperative and disruptive behavior in the workplace, and exhibiting physically and verbally abusive behavior in the workplace

3. March 30, 1993 warning and notice of disciplinary demotion for threatening the safety of another employee or client

Although the agency shall immediately reinstate Mr. Healey to any health insurance plan for which he would be eligible, the agency shall not be required to make payment of any back pay or benefits until the appellant has satisfied all the provisions of the March 29, 1993 Conditions for Continued Employment and has worked a full 90 days without incident or warning. The full value of any award of back pay shall be subject to reduction by any amount of compensation earned or benefits received from any other source during the period, as provided by RSA 21-I:58. Such offsetting compensation shall not include any earnings from continued casual employment during the period if Mr. Healey can demonstrate that he held the position of casual employment prior to his termination, as provided in RSA 21-I:58. However, any increase in casual earnings which occurred during the period of separation may be used to calculate the offsetting amount of compensation upon reinstatement.

The appellant shall have 30 days from the date upon which he is eligible for retroactive compensation to present any dispute in the amount of compensation to the Board for review. Failure to perfect a claim within the 30 days shall result in a finding by the Board that the calculation is accurate and that the reimbursement is mutually agreeable to the parties.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Thomas F. Hardiman, SEA Director of Field Operations
Linda E. Chadbourne, SEA Legal Intern
Barbara Maloney, Director of Legal Services, New Hampshire Hospital
Marie Lang, Human Resources Administrator, New Hampshire Hospital