

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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Appeal of William Holscher

Docket #2007-T-009

(Termination of Employment Prior to Completion of Initial Probationary Period)

Office of Information Technology

March 15, 2007

On February 16, 2007, the parties to the above-titled appeal appeared before the Chairman of the Personnel Appeals Board for a final prehearing conference to complete scheduling and resolve any outstanding procedural issues prior to the hearing on the merits of Mr. Holscher's appeal. Attorney Marta Modigliani of the Department of Safety and Peter Croteau of the Office of Information Technology appeared on behalf of the State. Mr. Holscher, who was accompanied by his wife, appeared pro se.

Mr. Holscher argued that the Department had not provided the information that the Board had ordered it to produce at the last prehearing conference, including files, computer documents, calendars and emails. Ms. Modigliani advised the Board that she had just received the CD from her IT personnel containing copies of more than 9,000 emails to and from Mr. Holscher. She explained that at the original prehearing conference, she did not understand how long it would take to retrieve Mr. Holscher's email from the Department of Safety's Novell and Groupwise system and convert the emails to Microsoft Outlook, as Mr. Holscher had requested. Ms. Modigliani indicated that it took approximately 6 weeks for the Department to rebuild data servers, install Microsoft Outlook on her computer to allow her to review the files, and program the system to convert the data into the format that Mr. Holscher required. Ms. Modigliani indicated that although Mr. Croteau had reviewed the documents in an effort to identify and protect those messages that might contain confidential Department records, Ms. Modigliani said she had not yet had a chance to complete the same kind of review.

Although the Appellant objected, the Chair said it appeared that the Department had gone to substantially greater lengths to comply than the Board had ever anticipated. The Chair asked the State to complete its review of the CD and redact any confidential information, providing the emails by disk to Mr. Holscher by March 5, 2007. If Mr. Holscher believed there were documents missing that he would need to present his appeal, he should so notify the Board.

With respect to Mr. Holscher's remaining requests, the Chair reiterated that Mr. Holscher is entitled to records related to his termination, including all the documents from his own personnel file. Mr. Holscher is not entitled to complaints or grievances against others in the department, except to the extent that they relate directly to Mr. Holscher's termination from employment.

Mr. Holscher repeated his request for copies of any and all files on his office computer and laptop computer. After hearing Mr. Holscher's explanation of why he believed he needed those documents, the Chair indicated that the documents in question did not appear to be relevant to the appeal itself. The Chair advised Mr. Holscher to review the specific issues outlined in his letter of termination, identify those items that were relevant to the issues raised. He directed Mr. Holscher to provide a list of items that Ms. Modigliani could then review with Mr. Croteau. The Chair indicated that the parties could advise the Board of any specific items remaining in dispute.

On February 20, 2007, the Board received Mr. Holscher's "Clarification Motion." In it, Mr. Holscher said that he understood the Board had originally granted his request for "access to his office files and laptop data files" as long as he could "provide the State with a list of electronic folders from [his] laptop." Mr. Holscher indicated that he had provided a "list of file extensions from the State" but was denied those documents from his laptop. He also indicated that the State refused to turn over his "email correspondence, calendar and mail directory."

To the extent possible, discovery is intended to be an informal process undertaken by the parties in order to allow for a full and fair presentation of the relevant facts. When parties are unable to agree on evidence to be exchanged in advance of a hearing, either

party may request formal discovery. As set forth in Per-A 206.10 (c) and (d) of the Board's rules:

"(c) The requesting party shall set forth in detail those factors that it believes support its request for additional discovery.

"(d) The requesting party shall list, with specificity, those facts or documents it is seeking to discover."

The appellant has failed to demonstrate that the additional documents he seeks to discover are either relevant to the allegations contained in his letter of termination, or necessary in order for him to present his appeal.

In his October 1, 2006 "Appeal of Probationary Dismissal," the Appellant raised four separate grounds as the basis for his appeal.

1. In his notice of appeal, the Appellant indicated that he and Mr. Croteau met on August 11, 2006 to review a Letter of Counsel issued to the Appellant on August 7th, and the Appellant's response to that letter. The Appellant wrote, "...[T]o be dismissed less than one month later with no warning is arbitrary, illegal, capricious, and certainly in bad faith on its face."
2. In his notice of appeal, the Appellant indicated that the letter of termination accused him of "...failing to meet the work standard as stated herein, but not limited to the examples in this letter." The Appellant wrote, "I believe that being dismissed from my position dictates nothing more than the mere courtesy of setting forth all of the reasons for my dismissal, since it is impossible to defend against unknown examples that were not important enough to be part of my Letter of Dismissal."
3. The Appellant indicated that there were examples included in the letter of termination that pre-dated the Letter of Counsel issued to the Appellant on August 7, 2006. The Appellant argued that if those issues were significant enough to raise in the notice of dismissal, they should have been important enough to address in the Letter of Counsel. The Appellant argued that he should have had an opportunity prior to his dismissal to explain those incidents or allay

the concerns raised. In his notice of appeal the Appellant wrote, "I truly believe that this shows that the Letter of Counsel was not issued to me to improve my performance in the alleged area of concern and instead that Letter of Counsel was disciplinary in nature and not done in good faith."

4. Finally, the Appellant argued that incidents cited in his letter of dismissal were never discussed with him, he never saw the allegations in writing prior to receiving his notice of dismissal, and he was never given an opportunity to defend himself. He argued that some of the incidents were taken out of context, and none of the DMV employees mentioned in the letter of termination were aware that those incidents would be used to support the Appellant's termination. In his notice of appeal the Appellant wrote, "Those DMV employees believed those incidents to be minor in nature and had they known that they would have been utilized in this manner, they would have handled it differently."

The Appellant has failed to persuade the Board that any of these issues require additional discovery in order for the Appellant to present his case. Accordingly, the Appellant's request for additional discovery or further clarification is denied.

FOR THE PERSONNEL APPEALS BOARD



NH Personnel Appeals Board

By Its Executive Secretary, Duly Authorized

Patrick Wood, Chairman

cc: William Holscher, Appellant
Marta Modigliani, Attorney, Department of Safety