

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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APPEAL OF KATHY HOUGHTON

DOCKET #00-T-4

NEW HAMPSHIRE HOSPITAL

May 1, 2000

The New Hampshire Personnel Appeals Board (Wood, Rule and Johnson) met on Wednesday, February 9, 2000 and Wednesday, March 15, 2000 under the authority of RSA 21-I:58, I, to hear the appeal of Kathy Houghton, a former employee of New Hampshire Hospital. Ms. Houghton, who was represented at the hearing by SEA General Counsel Michael Reynolds, was appealing her October 13, 1999 termination from employment as a Mental Health Worker I/Emergency Medical Technician for "...continued failure to meet the work standard as evidenced by [her] inappropriate and disruptive behavior; inability to interact respectfully with customers (including co-workers); inability to communicate and problem solve in a constructive manner; and for willful insubordination." Attorney Mary McGuire 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 and documents admitted into evidence as follows:

State's Exhibits¹

- 27 EMT Reassignment Responsibilities Draft, dated 8/26/94
- 28 EMT Reassignment Letter dated 8/26/94

¹ The Appellant objected to admission of evidence that was more than 2 - 5 years old. After reviewing State's Exhibits 1 - 26, the Board excluded them, finding that they were not relevant to the instant appeal.

- 29 Annual Evaluation dated 3/23/95
- 30 Annual Evaluation dated 3/23/96
- 31 Annual Evaluation dated 3/23/97
- 32 Annual Evaluation dated 3/23/98
- 33 Letter of Warning dated 3/17/99
- 34 Letter dated 3/18/99 from Ms. Houghton to Mr. Hoffman requesting training
- 35 Payment Authority dated 3/19/99 for "Self Discipline and Emotional Control" training
- 36 Review of Job Classification Specification and Supplemental Job Description dated 3/30/99
- 37 Minutes of supervisory meetings dated 3/23/99 - 4/27/99
- 38 Letter dated 4/14/99 from Ms. Houghton to Don LaPlante titled "What Customer Service Means to Me"
- 39 Employer/Employee Educational Responsibilities form dated 5/25/99
- 40 Letter of Termination dated 10/13/99 and revised 10/14/99

Appellant's Exhibits

- A Handwritten note by Donald LaPlante about 9/10/99 incident between Kathy Houghton and Michael Cutting
- B Handwritten note by Michael Cutting dated 10/8/99 about an incident between Kathy Houghton and a co-worker named Harry
- C October 13, 1999 letter of termination

The following persons gave sworn testimony:

Marie Lang, Human Resources Administrator
Sandra Davis, Assistant Director of Nursing
Donald LaPlante, Supervisor II
Michael Cutting, Inventory Control Supervisor
Mark Chittum, Director of Finance and Support Services
Maureen Timmins, Account Clerk (SEA Steward)
Kathy Duval Desjardin, SEA Field Representative

Kathy Houghton, Appellant, former MHW/EMT

The Board also accepted a stipulation by the parties that Lu Anne Blake, a former co-worker of Ms. Houghton's, "...did not hear the alleged [disrespectful] comments of Kathy Houghton on October 7, 1999."

The letter of termination issued to Ms. Houghton on October 13, 1999, revised October 14, 1999, charged the appellant with, "continued failure to meet the work standard as evidenced by your inappropriate and disruptive behavior, inability to interact respectfully with customers (including co-workers); inability to communicate and problem solve in a constructive manner; and for willful insubordination." The notice of appeal, filed on Appellant's behalf by SEA General Counsel Michael Reynolds on October 21, 1999, asserted that Ms. Houghton did not engage in any inappropriate behavior or any other behavior that rose to the level of an "offense" under the Personnel Rules. Appellant admitted, however, that she might have sworn in a "private discussion." Appellant also argued that she was not insubordinate, that the State violated her rights under Per 1001.08 of the Rules of the Division of Personnel, and that the appointing authority's actions subsequent to her March 17, 1999 letter of warning were not in good faith. Finally, Appellant argued that the termination was unjust under the circumstances.

Having considered the testimony and evidence offered by the parties, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. Ms. Houghton was employed by New Hampshire Hospital in Central Supply at the New Hampshire Hospital Warehouse as a Mental Health Worker/Emergency Medical Technician.
2. Ms. Houghton's Supplemental Job Description listed her "Scope of Work" as follows:
"Facilitate product and equipment research, purchasing, receiving, inventorying, shelving, requisitioning and distribution of routine and emergency medical supplies and equipment to all of NH Hospital." (State's Exhibit 36)

3. Included in the Appellant's Job Description is a requirement for "Total Commitment to Quality" that says the incumbent "Participates in the process of continuous quality improvement by supporting unit/department based on quality improvement activities. Demonstrates commitment to customer service values in professional conduct and by promoting such values in assigned work area."
4. Among the specific tasks assigned to the Appellant was membership on the Infection Control Committee, where she was responsible for providing technical expertise in areas related to medical equipment and supplies.
5. Ms. Houghton was respected by Hospital staff for her technical abilities and her dedication to duty. However, Ms. Houghton's behavior toward her co-workers was frequently rude, abusive and contrary to the Hospital's goal of "customer services values in professional conduct and by promoting such values in assigned work areas."
6. On March 18, 1999, Ms. Houghton acknowledged receipt of a March 17, 1999 letter of warning issued to her for "failing to meet the work standard" as a result of her allegedly "...inappropriate and disruptive behavior; continued inability to interact respectfully with customers; inability to complete an assigned task of representing the Warehouse at Infection Control Committee meetings; and inability to communicate and problem solve in a constructive manner." (State's Exhibit 33)
7. In the letter, Ms. Houghton's former supervisor Harvey Hoffman wrote that the appellant had "...directed angry comments to the [Infection Control] committee chair in the presence of other committee members and Hospital staff," and that, "As a result of the March 11, 1999 interaction with the chair of the Infection Control Committee, you have been barred from attending any further meetings. Participating in this committee was a specific task assigned to you because of the knowledge and skills you possess in the area of medical supplies. Since you may no longer attend the Infection Control Committee meetings this causes an additional responsibility for another staff person in the Warehouse."
8. Mr. Hoffman warned Ms. Houghton in the letter that, "Your communication style and method of problem solving will no longer be tolerated. You are specifically directed not to communicate with customers in an angry, disrespectfill manner. Any future incident of this

nature will be viewed as willful insubordination and will result in your immediate termination from employment."

9. The warning directed the appellant to take specific corrective actions including: attendance at a class related to anger management and/or communication, weekly meetings with her supervisor for the following three months to discuss issues related to problem solving and/or communication, reviewing and reflecting upon the role of warehouse staff in meeting the Hospital's stated mission, and arranging for a one-on-one meeting with Ellen Griffin of Hospital Staff Development to develop a customer service competency.
10. The warning advised Ms. Houghlton that, "...failure to complete any of the above corrective actions will be construed as willful insubordination and will result in your immediate termination from employment."
11. Ms. Houghton never appealed the warning, testifying that, "I just don't like to fight with people." (Appellant's testimony)
12. The appellant documented her completion of the four specific components of the corrective action plan detailed in the March 17, 1999 written warning.
13. As proof of compliance with one of the action items, Ms. Houghlton kept minutes of meetings between herself, Mr. Hoffman and Mr. LaPlante on March 23, 1999 and March 30, 1999, and meetings between herself and Mr. LaPlante on April 6, 1999, April 14, 1999, April 23, 1999 and April 27, 1999.
14. On or about September 10, 1999, an incident involving Ms. Houghlton's immediate supervisor, Michael Cutting, occurred. Ms. Houghlton wanted help with a delivery and expected other warehouse employees who appeared to be idle to assist her. When Mr. Cutting told her they were not available, Ms. Houghton complained that she was sick of people just sitting around while she was working. She admitted saying something to the effect that, "...she was sick and tired of half this f---ing place working while the other f---ing half was playing games and having a good f---ing time."
15. Mr. Cutting subsequently reported the incident to Donald LaPlante, who spoke with Ms. Houghton the following Monday. Mr. LaPlante indicated that Mr. Cutting was extremely upset by the exchange, and Ms. Houghton said that she would apologize to him.

16. On or about October 7, 1999, Mr. LaPlante and Mr. Cutting heard Ms. Houghton in conversation with another Hospital employee, Lu Anne Blalte. Ms. Houghton asked Ms. Blake if it was true that she was leaving her position and returning as a "consultant." Ms. Blake said that was correct.
17. Mr. LaPlante and Mr. Cutting heard Ms. Houghton say, "It must be nice to sit around with your fingers up your f---ing ass and get paid more money."
18. Ms. Houghton admitted only to making a remark after leaving Ms. Blake's office about leaving the warehouse herself, coming back as a consultant and making, "the big bucks."
19. Mr. LaPlante followed Ms. Houghton to her office and informed her that when she returned from scheduled medical leave, there would be disciplinary action.
20. Ms. Houghton canceled her surgery and informed Mr. LaPlante she was not going to go out on leave not knowing if she had a job when she got back.
21. After his conversation with Ms. Houghton, Mr. LaPlante discussed the incident with Human Resources Administrator Marie Lang. At Ms. Lang's recommendation, the appellant was placed on administrative leave.
22. Ms. Houghton met on October 12, 1999 with Ms. Lang, Ms. Duval Desjardin, Mr. LaPlante and Mr. Cutting to review the incidents described in the letter of termination, to decide what corrective action, if any, might be effective, and to determine what level of discipline would be appropriate.
23. After discussing the two incidents, and taking a break to speak with Ms. Houghton, Ms. Duval Desjardin suggested that the appellant could use the services of the EAP to learn to control her behavior.
24. The appellant and her representative were advised that the suggestion would be taken under advisement, and the appellant was returned to administrative leave status.
25. Ms. Houghton met again on October 13, 1999 with Mr. Chittum, Mr. LaPlante, Mr. Cutting and Ms. Duval Desjardin.
26. Mr. Chittum advised Ms. Duval Desjardins and Ms. Houghton that their offer to have Appellant participate in counseling through EAP was not a viable solution, and that other interventions had been ineffective. Mr. Chittum then informed the appellant that her employment was terminated.

27. Mr. Chittum gave the appellant a copy of a letter of termination dated October 13, 1999.
28. Ms. Houghton took issue with language in two paragraphs of the letter.
29. Minor revisions were made by the New Hampshire Hospital Human Resources Office that did not change the basis for the termination, or the material facts supporting the termination.
30. A copy of the revised letter was not provided to the appellant until after her appeal had been filed.
31. Ms. Houghton's conduct in the September and October, 1999 incidents, as described by the letter of termination, was inappropriate and disruptive. It demonstrated the appellant's inability to interact respectfully with her fellow employees, to communicate effectively, and to employ constructive problem-solving.
32. Ms. Houghton was fully apprised of the basis for the agency's decision to take disciplinary action, as well as the evidence supporting the agency's decision to terminate her employment.
33. Ms. Houghton's conduct warranted disciplinary action and further requirements for corrective action, but is incorrectly described as "willful insubordination."

Rulings of Law

- A. "Dismissal shall be considered the most severe form of discipline. An appointing authority shall be authorized to take the most severe form of discipline by immediately dismissing an employee without warning for offenses such as, but not necessarily limited to, the following: ... (9) Willful insubordination." [Per 1001.08 (a)(9)]
- B. "An appointing authority shall be authorized to dismiss an employee pursuant to Per 1001.03 by issuance of a third written warning for the same offense within a period of 5 years." [Per 1001.08 (b)(1)]
- C. "An appointing authority shall be authorized to dismiss an employee pursuant to Per 1001.03 by issuance of a fifth written warning for different offenses within a period of 5 years." [Per 1001.08 (b)(1)]
- D. "Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal. The appeal

shall be heard in accordance with the procedures provided for adjudicative proceedings in RSA 541-A. If the personnel appeals board finds that the action complained of was taken by the appointing authority for any reason related to politics, religion, age, sex, race, color, ethnic background, marital status, or disabling condition, or on account of the person's sexual orientation, or was taken in violation of a statute or of rules adopted by the director, the employee shall be reinstated to the employee's former position or a position of like seniority, status, and pay. The employee shall be reinstated without loss of pay, provided that the sum shall be equal to the salary loss suffered during the period of denied compensation less any amount of compensation earned or benefits received from any other source during the period. "Any other source" shall not include compensation earned from continued casual employment during the period if the employee held the position of casual employment prior to the period, except to the extent that the number of hours worked in such casual employment increases during the period. 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." [RSA 21-I:58, I]

Decision and Order

Black's Law Dictionary, citing Porter v. Pepsi-Cola Bottling Co. of Columbia, 247 S.C. 370, 147 S.E.2d 620, 622, defines willful insubordination as follows:

"State of being insubordinate; disobedience to constituted authority. Refusal to obey some order which a superior officer is entitled to give and have obeyed. Term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer."

The Board found that New Hampshire Hospital honestly believed that the appellant violated a direct and legitimate order "...not to communicate with customers in an angry, disrespectful manner," thereby engaging in behavior that the agency believed could be

described as willful insubordination. However, while there is ample evidence of Ms. Houghton's inappropriate, disruptive, disrespectful behavior in the workplace, under the facts in evidence, the Board found that Ms. Houghton's conduct did not rise to the level of willful insubordination. Accordingly, the Board found that the charges contained in the letter of termination could not support her immediate dismissal without at least one additional warning for failure to meet the work standard.

Although the Board found that Ms. Houghton's apparent inability to control her temper and to develop and maintain a customer service approach to her co-workers could not be categorized as willful insubordination, Ms. Houghton's conduct represented a significant and continuing failure to meet the work standard. Despite the Board's decision that termination was inappropriate on the basis of charges outlined in the termination letter, in light of Ms. Houghton's own testimony, the Board also found that unconditional reinstatement would be equally inappropriate.

First, the Board has serious concerns about the appellant's ability to distinguish between what she described as "lack of tact" and what a reasonable person would describe as completely inappropriate workplace conduct. In describing the incident with Ms. Blalte, Ms. Houghton attempted to draw a distinction between having someone overhear her making rude, vulgar, or derogatory remarks about a co-worker and actually making those same remarks directly to that co-worker. By way of explanation, Ms. Houghton testified, "If you're overheard muttering it's different than if you go into their office and start swearing at someone. That's worse." The fact that Ms. Houghton could justify either behavior as permissible or appropriate conduct in the workplace is distressing at best.

The Board also questions Ms. Houghton's willingness and ability to accept any responsibility for her behavior or to engage in any meaningful corrective action. In order for Ms. Houghton to have complied with the corrective action plan outlined in her March 17, 1999 letter of warning, the appellant was to have met weekly with her supervisor "... to discuss any issues related to problem solving and/or communication." [State's Exhibit #33] Ms. Houghton testified that weekly meetings with Ms. LaPlante never occurred, and that the meeting minutes she composed

and submitted as evidence of her compliance with the terms of the written warning were mere fabrications.

Ms. Houghton testified that, "These discussions did not talte place. They told me what they wanted me to write." She described the meetings as "...a few minutes at my cooler [her office]... Hey, how's it going... write something up." By way of example, she referred to the last set of minutes appearing in State's Exhibit 37, describing the discussion of "insights into Don's new job" as nothing more than "...a litany of complaints fi-om Don about staff... Deals he had to make with Chittum..." When the Board aslted Ms. Houghton to explain what she believed the meetings with Mr. LaPlante had been intended to accomplish, and what she believed to have been the purpose of keeping minutes, Ms. Houghton replied that she knew Ms. McArthur, Chairperson of the Infection Control Committee, was still angry with her. She testified that the minutes were simply "some ltind of paperwork that they could show her to show that they were dealing with her complaint."

At the conclusion of the appellant's case, New Hampshire Hospital aslted permission to re-call Donald LaPlante to rebut Ms. Houghton's testimony on that point. Instead, the Board accepted the parties' stipulation that Mr. LaPlante would testify that the meetings did talte place, and that Ms. Houghton's meeting minutes accurately reflected the scope of their discussions.

It is apparent from Ms. Houghton's testimony that she felt no need to change her behavior, and viewed the corrective action as mere artifice. More importantly, Ms. Houghton's testimony raises questions about the appellant's credibility that must be weighed in deciding this appeal.

If the meetings with Mr. LaPlante did occur, then Ms. Houghton was not truthful in her testimony before this Board. If the meetings did not occur, and Ms. Houghton testified truthfully that she simply made up whatever she thought Ms. McArthur wanted to hear, then it means that Ms. Houghton deliberately engaged in subterfuge, misrepresenting her actions and those of her supervisor. It also means that Ms. Houghton gave intentionally false written statements as evidence of her compliance with the conditions of the March 17, 1999 written warning.

Clearly, the Board would be reluctant to reinstate any employee under the circumstances described above, and the Board is distressed at its few options in this case. The language of the Personnel Rules seems to present with Board with something akin to "Hobson's choice," where a decision to reinstate the employee is the only alternative. Fortunately, RSA 21-I:58, I gives the Board discretion to weigh the evidence and "... reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just."

Therefore, under the authority of RSA 21-I:58, the Board voted unanimously to order Ms. Houghton reinstated to her position of EMT/Mental Health Worker I without benefit of back pay, benefits, or seniority credit. The letter of termination issued to Ms. Houghton shall be replaced in her file with a letter of warning for continued failure to meet the work standard. The letter shall contain the admonition that any future instance of failure to meet the work standard as evidenced by inappropriate and disruptive behavior; inability to interact respectfully with customers; or inability to communicate and problem solve in a constructive manner shall be deemed grounds for immediate dismissal without further warning.

In ordering Ms. Houghton reinstated, the Board found that the appellant has serious problems dealing with other employees and supervisors. Ms. Houghton's concept of appropriate language and workplace conduct is unacceptable. Further, the appellant's obvious disdain for management practices at New Hampshire Hospital certainly could hinder efforts to re-establish and improve working relationships in the warehouse. Finally, the appellant's ability to overcome the question of her credibility may prove to be the most difficult hurdle of all. Therefore, the Board recommends that Ms. Houghton take immediate advantage of educational interventions that New Hampshire Hospital's staff development unit can provide, as well as the State's Employee Assistance Program, for help in improving her ability to communicate and relate appropriately, honestly and professionally with internal and external customers at New Hampshire Hospital.

The Board notes with some concern that warehouse staff and supervisors seem to have their own difficulties interacting in an appropriate and professional manner. The agency and its supervisors

are responsible for setting the work standard, and for ensuring that the standard is high enough to meet the needs of the State and its citizens. Until supervisors advocate and model the appropriate behavior, they will have difficulty guiding or correcting the behavior of others. Therefore, the Board strongly recommends that New Hampshire Hospital direct its warehouse staff and supervisors to participate in a course of training and/or counseling as well to improve the quality of communication and level of interaction between all personnel within the work unit.

For all the reasons set forth above, Ms. Houghton's appeal is GRANTED IN PART. The parties shall arrange for reinstatement at a mutually convenient time not more than 30 days from the date of this order under the terms and conditions set forth above.

THE PERSONNEL APPEALS BOARD


Patrick H. Wood, Chairman


Lisa A. Rule, Commissioner

Robert J. Johnson, Commissioner

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APPEAL OF KATHY HOUGHTON

DOCKET #00-T-4

NEW HAMPSHIRE HOSPITAL

Response to Appellant's Motion for Clarification

July 27, 2000

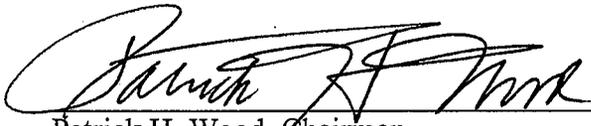
On June 1, 2000, the New Hampshire Personnel Appeals Board received from Michael Reynolds, SEA General Counsel, Appellant's Motion for Clarification of the Board's May 1, 2000 decision reinstating Ms. Houghton to her EMT/Mental Health Worker I position at New Hampshire Hospital. To date, New Hampshire Hospital has offered no response to that Motion.

In the Motion, Mr. Reynolds said he believed that Ms. Houghton had testified during her hearing that she had initiated a request for reclassification of her position prior to her termination from employment. He wrote that subsequent to the date of termination, but prior to the Board's order reinstating Ms. Houghton "without benefit of back pay, benefits, or seniority credit," the position was reclassified. He wrote that, "Ms. Houghton believes and asserts that this upgrade was in line with what she had originally proposed and that she does qualify for it presently."

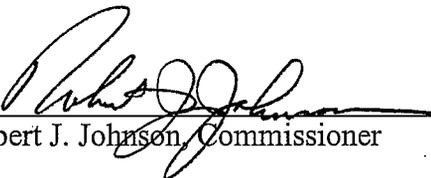
Mr. Reynolds indicated that New Hampshire Hospital had reinstated the appellant, but had assigned her as a Mental Health Worker to one of the wards, working at the same salary grade that she held at the time of termination. Mr. Reynolds said he believed that New Hampshire Hospital "would argue that they could not 'return' her to her old position, since it had been upgraded as noted above." Mr. Reynolds asked the Board to clarify whether or not New Hampshire Hospital's action was in compliance with the Board's decision, or whether Ms Houghton should be awarded the warehouse position as upgraded.

In its May 1, 2000 decision, the Board found that Ms. Houghton had "demonstrated [an] inability to interact respectfully with her fellow employees, to communicate effectively, and to employ constructive problem-solving." The Board also concluded that Ms. Houghton "has serious problems dealing with other employees and supervisors." Although the Board ordered the appellant's reinstatement as a Mental Health Worker I/EMT, the Board also warned the appellant that any conduct in the future similar to that which resulted in the original discipline would be cause for immediate dismissal without further warning. As such, and in the absence of a timely Motion for Reconsideration challenging the Board's findings of fact or rulings of law, the Board found that New Hampshire Hospital implemented the Board's order appropriately by reinstating the appellant to the job classification and salary grade that she held at the time of her termination.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



Patrick H. Wood, Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

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