

State of New Hampshire

PERSONNEL APPEALS BOARD
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PERSONNEL APPEALS BOARD
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Concord, New Hampshire 03301
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98-T-105

APPEAL OF DAVID JOHNSON

July 28, 1988

On April 6, 1988, the Personnel Appeals Board, Commissioners Cushman and Platt sitting, heard the appeal of David Johnson, formerly a Corrections Corporal at the New Hampshire State Prison. Mr. Johnson was discharged from his position by letter dated October 7, 1987 for continued sexual harassment. Mr. Johnson was represented at the hearing by SEA General Counsel Michael Reynolds. Attorney Michael Brown appeared on behalf of the Prison.

As grounds for his appeal, Mr. Johnson contended that although he had made "inappropriate comments" a few months prior to his termination, he had "substantially changed" his use of language and his attitudes. Because of these changes, Mr. Johnson contended that a termination was not appropriate.

After reviewing all of the evidence presented, the Board made the following findings and rulings. David Johnson was a Corrections Corporal assigned to the Special Housing Unit at the New Hampshire State Prison when discharged. In the eighteen months prior to his discharge, he had been counselled on at least 5 occasions by his supervisor for deficiencies in job performance. These deficiencies included his undermining of treatment in the unit because he felt the dangerous sexual offenders were receiving preferential treatment, his giving excessive attention to a new female employee, his interaction with fellow female workers, and his making sexually explicit comments.

In June, 1987, Mr. Johnson's supervisor observed him making an obscene gesture toward a female co-worker by rotating his torso and pointing to the zipper on his pants. Also in June, Mr. Johnson asked co-workers to participate in a survey about sexual practices and began asking questions from the survey. On another occasion, when a female co-worker seemed bothered by something, the appellant made sexually explicit comments as his proposed remedy. On yet another occasion, the appellant began pounding on the controls in the Control Room while on duty to show his displeasure with a work assignment.

Complaints of sexual harassment were filed against Mr. Johnson as a result of his actions. A Discrimination Review Committee heard the charges and the Warden of the Prison reviewed the proceedings and interviewed the appellant with his SEA representative present. Based on the appellant's actions and his lack of improvement subsequent to counselling sessions, the Warden discharged him from state service.

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Upon review of all of the evidence, the Board voted to uphold the discharge. Although the appellant attempted to discredit the proceedings before the Discrimination Review Board, the Appeals Board conducted a de novo hearing in reviewing the discipline imposed by the Warden. In upholding the action, the Board noted that the appellant had been counselled on several occasions, that his behavior had not improved, that his actions affected the working environment of all employees and that his actions were potentially dangerous given the setting.

Although Mr. Johnson testified at the hearing that he would be willing to be demoted to Corrections Guard and returned to his position with no back pay, the Board saw no reason to order reinstatement in any form. The continued pattern of inappropriate behavior even after several counselling sessions demonstrated that the appellant should not hold a position within the Corrections system.

For the foregoing reasons, the Board voted to uphold the appellant's discharge and deny the appeal.

The Board ruled as follows on the Department of Corrections Requests for Findings of Fact and Rulings of Law

Findings of Fact

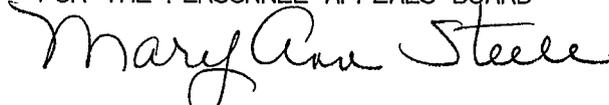
Paragraphs 1,2,3,4,5,6,8,9,10,11,14,15,16 granted

Paragraphs 7,12,13 denied

Rulings of Law

Paragraphs 1,2,3,4,5,6,7 granted

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE, Executive Secretary

cc: Michael Reynolds
SEA General Counsel

Attorney Michael Brown
Department of Corrections

Virginia A. Vogel
Director of Personnel

State of New Hampshire



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Appeal of David Johnson
Motion for Reconsideration

March 13, 1989

On October 12, 1988, the Personnel Appeals Board, Commissioner Cushman and Platt sitting, reviewed the Motion for Reconsideration filed in the above-captioned appeal. Appellant argues that the Board improperly admitted into evidence letters of warning that were more than two years old at the date of discharge. Assuming, without deciding, that said letters of warning should have been excluded from evidence, the Board found that its decision would have been the same had the letters not been admitted. The Board voted to deny the motion.

FOR THE PERSONNEL APPEALS BOARD

Mary Ann Steele
Executive Secretary

cc: Michael C. Reynolds
SEA General Counsel

Attorney Michael Brown
Department of Corrections

Virginia A. Vogel
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