

State of New Hampshire



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

APPEAL OF AMIDU KAMARA
Docket #94-T-26
New Hampshire Hospital

August 13, 1994

By letter dated March 4, 1994, SEA General Counsel Michael C. Reynolds requested a hearing on behalf of Amidu Kamara, a former employee of New Hampshire Hospital, to appeal his termination from employment. In his request for hearing, Mr. Reynolds asserted that Mr. Kamara had requested a leave of absence without pay to go to Africa to attend his father's funeral and attend to family matters. He argued that the appellant believed his request would receive "good faith" consideration, even though his supervisor had informed him that he would not be granted any additional leaves of absence. Mr. Reynolds asserted that although Mr. Kamara was notified of termination by letter dated January 6, 1994, Mr. Kamara did not actually realize his employment was terminated until he returned from Africa on February 28, 1994. Mr. Reynolds also asserted that when a Security Guard from New Hampshire Hospital hand delivered the termination notice to Mr. Kamara on or about January 6, 1994, Mr. Kamara did not read the entire letter because he noticed some "inaccuracies" in the first two paragraphs and returned the letter to the Security Guard without keeping a copy. He said the appellant did not realize the letter was his notice of termination. Mr. Reynolds argued that Mr. Kamara's termination violated the Rules of the Division of Personnel, that the "series of events" referred to in the letter of termination was a misrepresentation of the facts, and that even if there were permissible grounds to terminate the appellant, the circumstances of his father's death and his family obligations were such that the agency acted improperly in terminating his employment.

On July 6, 1994, Attorney Barbara Maloney filed a Motion to Dismiss on behalf of New Hampshire Hospital. Attached to that motion were supporting affidavits signed by Marie Ann Lang, New Hampshire Hospital Human Resources Administrator; Jim Drewes, Security Officer; Harold Searing, Nurse Coordinator; and Joan Drouin, Human Resources Assistant II. Ms. Maloney asked the Board to dismiss the appeal as untimely.

In support of that Motion, Ms. Maloney argued, in part, that Mr. Kamara knew his request for approved leave without pay would not be granted, and that if he failed to report to work as scheduled, his employment would be terminated. Ms. Maloney took issue with the claim that the appellant did not realize the letter hand-delivered to him was a notice of termination, since he had only read the first two paragraphs. On that point, Ms. Maloney stated:

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"...[T]he first sentence of the January 6, 1994, letter of termination states that 'this letter of termination is being given to you for an absence for a period of three (3) or more consecutive work days (11/29/93, 12/31/93, 1/1/94 and 1/2/94) without proper notification or adequate reason.' Even if Mr. Kamara did not agree with the accuracy of the letter, it was official notification that he chose not to accept. Mr. Kamara should have accepted the letter and in a timely fashion commenced the appeal process.

By letter dated July 11, 1994, Mr. Reynolds filed an objection to the Motion to Dismiss, arguing that Mr. Kamara's appeal was timely filed, having been submitted to the Board "...within fifteen days of the date he knew, or reasonably should have known, he had been terminated." He also argued that there were material facts in dispute as to when Mr. Kamara received notice of his termination.

Upon review of the documents filed to date by the parties to this appeal, the Board found the appeal to be untimely. In his March 4, 1994 request for hearing, the appellant admitted that on or about January 6, 1994, he received a hand-delivered letter from New Hampshire Hospital. A copy of that letter was attached to the request for hearing. In his request, the appellant admitted that he read the first two paragraphs of that letter. Paragraph #1 stated:

Per 1001.08 (b)(9) of the Rules and Regulations of the Division of Personnel, this letter of termination is being given to you for an absence for a period of three (3) or more consecutive work days (December 29 and 31, 1993, January 1 and 2, 1994) without proper notification or adequate reason. The effective date of the termination is January 6, 1994. I have chosen to exercise the immediate discharge option under the optional dismissal provision since you made it clear to me at our December 27, 1993 meeting that you did not intend to return to work at New Hampshire Hospital."

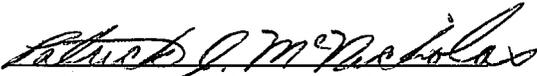
RSA 21-I:58 I states, in pertinent part:

Any permanent employee who is affected by any application of the personnel rules, except those rules enumerated in RSA 21-I:46, I and the application of 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.."

Mr. Kamara had notice of termination, effective January 6, 1994. Whether or not he agreed with the facts giving rise to the appeal, he admits to having read that portion of the letter which advised him of his termination from employment. By law, he had fifteen days in which to file an appeal. Having failed to do so, the appellant failed to preserve his right to appeal the disputed facts giving rise to his termination.

Accordingly, the Board voted unanimously to dismiss Mr. Kamara's appeal as untimely

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett, Commissioner


Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Michael C. Reynolds, SEA General Counsel
Barbara M. Maloney, NHH Director of Legal Services

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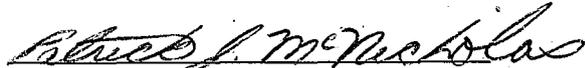
Response to Appellant's Motion for Reconsideration and State's Objection

September 14, 1994

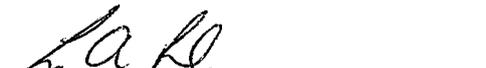
On September 2, 1994, the New Hampshire Personnel Appeals Board received a Motion for Reconsideration submitted by SEA General Counsel Michael Reynolds on behalf of Amidu Kamara, a former employee of New Hampshire Hospital. The State's objection to that motion, submitted on behalf of New Hampshire Hospital by Barbara Maloney, Director of Legal Services, was received on September 9, 1994.

The Board voted unanimously to deny the Motion for Reconsideration. In so doing, the Board voted unanimously to affirm its August 15, 1994¹ dismissing Mr. Kamara's appeal for failure to timely file.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett, Commissioner


Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Michael C. Reynolds, SEA General Counsel
Barbara M. Maloney, NHH Director of Legal Services

¹The Board's original decision in this matter, dated August 13, 1994, contains a typographical error: The actual date of publication was August 15, 1994.