

# State of New Hampshire



## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

APPEAL OF EDWARD KIBBEE  
NH. Department of Transportation  
Docket #89-T-18  
Dated: February 1, 1990

On June 30, 1989, Edward Kibbee, a former employee of the Department of Transportation appealed his termination from employment to the New Hampshire Personnel Appeals Board. The Board, under the authority of RSA 21-I:58, scheduled a hearing on the merits of this appeal on Monday, December 11, 1989 at 11:00 am. in Room 401, State house Annex, Concord, New Hampshire. All individuals involved in this matter were directed to be present for the hearing. The Board convened to hear this matter consisted of Commissioners Johnson and Cushman.

Karen A. Levchuk, Assistant Attorney General, represented the Department of Transportation. Donald Kibbee, brother of the appellant, represented Edward Kibbee at the scheduled hearing.

At approximately 10:45 am., Edward Kibbee telephoned the Attorney General's Office indicating that because of transportation problems, he would be delayed by approximately fifteen to thirty minutes. Assistant Attorney General Levchuk concurred with appellant's verbal request that the hearing be postponed for the requested fifteen to thirty minutes.

Donald Kibbee informed the Attorney General's Office and the Board that he had stopped at his brother's home on his way to the hearing and had offered his brother transportation, but his brother refused, stating that he would not need a ride to the hearing.

At 11:45 am., three quarters of an hour after the scheduled time for hearing, and without further word from the appellant, the Board opened the hearing. The Board explained its procedures to Donald Kibbee, who noted that his brother was in possession of any of the materials which he intended to discuss and/or offer as evidence in his termination appeal. Donald Kibbee apologized for being at a disadvantage under the circumstances. He also stated that his brother had tried to secure legal counsel, but had not had sufficient notice and was therefore unable to retain an attorney.

The Board reviewed its file, noting that the appeal had originally been filed on June 30, 1989, that the Board had notified the Kibbees of docketing on July 5, 1989, and had sent notice of hearing by first class mail on November 17, 1989. The Board believes that between June 30, 1989 and the scheduled

hearing date on December 11, 1989, Mr. Kibbee had ample time to retain legal counsel had he so desired.

The Department of Transportation provided a brief chronology of events during Mr. Kibbee's employment with the Department between August 31, 1970 and his termination on June 21, 1989. As early as 1976, Mr. Kibbee had been warned for absenteeism without approved leave. This pattern continued throughout his employment. On August 17, 1987, Bureau Administrator Frank Lindh wrote to Mr. Kibbee concerning his excessive use of leave. On March 20, 1989, Frank Lindh again wrote to Mr. Kibbee informing him that he would require a doctor's certificate for any use of sick leave.

Mr. Kibbee was absent from work on May 22, 23, and 24, 1989, without calling in or reporting that he would not be at work. On May 29, 1989, a female called the Bureau saying that Kibbee would not be in. Kibbee was absent again without calling in on May 31, and June 1, 1989. On June 2, 1989, a fellow employee informed Kibbee's immediate supervisor that Ed was out sick. Kibbee was absent again from June 5 through June 9, 1989. The Department was notified on June 5, 1989 by a woman caller that Kibbee would not be in, but gave no reason for his absence. On June 12, 1989, Donald Kibbee advised the agency that his brother had a doctor's appointment and would not be at work. Ed Kibbee was again absent on June 19, June 20 and June 21, 1989, and failed to call in to report his that he would be absent,

Donald Kibbee, representing his brother, argued that someone might have called in to report the absences, and Ed's supervisor might not have gotten the message. Donald Kibbee was unsure, however, who might have made such a call or who other than Clarence Nelson might have taken such a call. Donald Kibbee stated that his brother had a drinking problem and had been admitted on June 28, 1989, to Lake Shore Hospital with a diagnosis of alcohol dependency. He stated that his brother had a difficult time admitting to his dependency on alcohol, and in all likelihood had never brought the problem to the department's attention or requested any assistance in dealing with his problem. He argued that the Board should order his brother to be reinstated and offer him "a second chance".

From the limited record before it, the Board could easily discern a pattern of chronic absenteeism. While sympathetic to the effects of alcohol dependency, the Board saw no evidence that Edward Kibbee had ever made any attempt to make the Department of Transportation aware of his problem or to seek any kind of assistance for the Department of Transportation or any other organization in dealing with the problem.

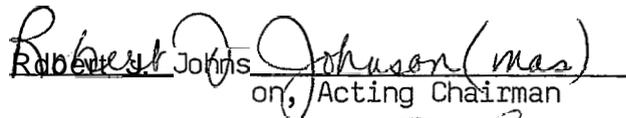
Given Mr. Kibbee's long history of absenteeism without notice, his failure to show a good faith effort in pursuing his appeal, and his failure to appear for the scheduled hearing despite his brother's best efforts to assure his presence, the Board must conclude that the termination was justified.

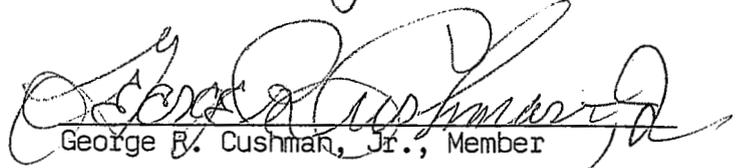
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Based upon the foregoing, the Board voted to uphold Mr. Kibbee's termination under the provisions of Per 308.03 (2)(d) for absence from work for three consecutive days without notice to the agency. Accordingly, Mr. Kibbee's appeal of his termination is denied.

For the record, the Board again lauded Donald Kibbee's efforts on his brother's behalf, both in filing the initial appeal of termination, and in representing his brother at the hearing.

THE PERSONNEL APPEALS BOARD

  
~~Robert D. Johnson~~ *Johnson (mas)*  
on, Acting Chairman

  
George B. Cushman, Jr., Member

cc: Donald Kibbee (for the Appellant)  
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