

# State of New Hampshire



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

## ***APPEAL OF EDWARD A. LANIYAN***

***DOCKET #99-T-21***

### ***DEPARTMENT OF HEALTH AND HUMAN SERVICES***

***August 26, 1999***

The New Hampshire Personnel Appeals Board (Wood, Rule and Johnson) meet on Wednesday, August 11, 1999, under the authority of RSA 21-I:58, to hear the appeal of Edward A. Laniyan, a former employee of the Department of Health and Human Services. Mr. Laniyan was appealing his termination from employment as an Account Clerk III, effective May 28, 1999, for allegedly failing to meet the work standard during his initial probationary period. Sandra Platt, Manager of Human Resources, appeared for the Department. The appellant appeared pro se.

The record of the hearing in this matter consists of pleadings submitted by the parties prior to the hearing, notices and orders issued by the Board, the audio tape recording of the hearing on the merits of the appeal, and documents admitted into evidence without objection, and described by the parties as follows:

#### State's Exhibits

1. Administrative Rules of the Division of Personnel, 1001.02 Dismissal During: Initial Probationary Period.
2. Personnel Action Form for Edward Laniyan showing his initial date of hire, April 10, 1998, into position number 12140 and HHS form 170 showing that he was a new hire.
3. New Employee Orientation Checklist signed by Edward Laniyan 4110198 showing that he was told about the Administrative Rules of the Division of Personnel.

4. Mr. Laniyan's voluntary application for Account Clerk III, position number 12457, dated May 11, 1998.
5. Personnel Action Form showing Mr. Laniyan transferred into position number 12457 on June 5, 1998, thereby re-starting his Initial Probationary Period.
6. Administrative Rules of the Division of Personnel Per 601.07, Probationary Period, (d).
7. Supplemental Job Description for position number 12457.
8. Performance evaluation completed for Edward Laniyan on April 26, 1999, for the period from June 5, 1998 through April 1, 1999.
9. Administrative Rules of the Division of Personnel Per 801.07, Evaluation of Probationary Employees.
10. Administrative Rules of the Division of Personnel Per 602.01, Transfer of an Employee Within an Agency.
11. DHHS Form 170 transferring Edward Laniyan into position 12490, Account Clerk III.
12. Letter from Edward Laniyan to Patricia Martin, dated April 1, 1999, notifying her of his move into the billing unit.
13. Supplemental Job Description for position number 12490, Account Clerk III.
14. Memorandum of Counsel from Lynn Beckwith to Edward Laniyan dated May 4, 1999 related to work standard issues from April 2, 1999 through April 29, 1999.
15. Letter of termination dated May 27, 1999.

#### Appellant's Exhibits

- A. Employee sign-in sheet dated 1/28/99.

The following persons gave sworn testimony:

Lynn Beckwith, Financial Administrator  
Anne Mattice, Business Administrator  
Debra Bourbeau, Business Administrator  
Edward Laniyan, Appellant

In light of the testimony and evidence received, the Board made the following findings of fact:

1. Mr. Laniyan was employed by the Department of Health and Human Services in the Keene District Office, effective April 10, 1998, as an Account Clerk III.
2. Mr. Laniyan applied for a transfer to the central office in Concord, to position #12457, Account Clerk III. He was selected for transfer effective June 5, 1998, and was assigned to the Accounts Payable Section of the Office of Finance.
3. In his Accounts Payable assignment, Mr. Laniyan was supervised by Patricia Martin.
4. In or around December, 1998, Ann Mattice, Administrator for the Accounts Payable Section, went to her supervisor, Lynn Beckwith, to report that Ms. Martin had been expressing concern about the appellant's work.
5. Financial Administrator Beckwith characterized the relationship between Mr. Laniyan and Ms. Martin as one in which they, "...did not communicate or satisfy each other's expectations."
6. Business Administrator Mattice talked with her subordinate, Ms. Martin, about having meetings with the appellant to focus on quality instead of quantity, but she concluded that the interpersonal relationship between the appellant and his supervisor was "becoming a problem," the tension was apparent, and, "...it was not going to work in that position."
7. Ms. Beckwith arranged with Ms. Mattice and Ms. Bourbeau, Business Administrator in the Billing unit, to offer Mr. Laniyan a transfer from Accounts Payable to Billing. That transfer was effective April 2, 1999.
8. On April 12, 1999, Mr. Laniyan received an annual salary increment.
9. Annual salary increments are awarded according to Per 901.03 (a) of the Rules of the Division of Personnel for "...satisfactory work performance ...documented by the performance evaluation required under Per 801."
10. On April 14, 1999, twelve days after his transfer from Accounts Payable to Billing, Mr. Laniyan met with Ann Mattice and Patricia Martin and was given an unsatisfactory performance evaluation completed by Ms. Martin covering his previous assignment.
11. On May 4, 1999, Mr. Laniyan received a letter of counsel advising him that if his work did not meet expectations by May 27, 1999, his employment would be terminated.

12. On May 27, 1999, Mr. Laniyan received a letter notifying him of his immediate termination from employment for failure to meet the work standard prior to completion of his initial probationary period.
13. Mr. Laniyan's initial probationary period, which had been extended by his voluntary transfer from the Keene District Office to the central office, was due to expire on June 5, 1999.
14. In the notice of termination, Mr. Laniyan was cited for his 1) inability to process legal liability forms (Form AE0030) within an average of three minutes per form, 2) unacceptable error rate on the county deductions report, 3) failure to forward copies of his e-mail correspondence with case workers to their own supervisors, 4) failure to take notes during training, 5) failure to request additional work from his supervisor for an hour when the electronic file server was not in service, 6) failure to follow-up on e-mails sent to case technicians, and 7) failure to master the tasks associated with his position.
15. Mr. Laniyan was not apprised of the average processing time on legal liability forms prior to his receipt of a letter of counsel on May 4, 1999.
16. Mr. Laniyan was assigned work other than processing legal liability forms and opening and sorting mail.
17. Mr. Laniyan was, from time to time, unable to work at his own work station, where the hard-copy files he needed to access were located.

#### Standard of Review

#### Per 1001.02 Dismissal During Initial Probationary Period

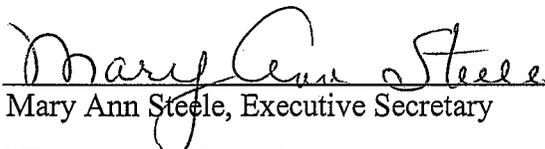
"(a) At any time during the initial probationary period an appointing authority may dismiss an employee who fails to meet the work standard provided the dismissal is not: (1) Arbitrary; (2) Illegal, (3) Capricious; or (4) Made in bad faith."

While the record makes it clear that Mr. Laniyan was still within his initial probationary period at the time of termination, his termination occurred a mere nine days prior to the expiration of his probation. Mr. Laniyan has raised enough allegations about working conditions in the Accounts Payable Unit, impediments to his performing his assigned duties in the Billing Unit, and the

manner in which he was apprised of and evaluated on work standards in both units, to persuade the Board that it had insufficient evidence to decide the appeal fairly.

Therefore, under the authority of RSA 21-I:46 IV, and Per-A 203.09 of the Rules of the Personnel Appeals Board, the Board voted to schedule the matter for further hearing on Wednesday, October 6, 1999, at 10:00 a.m. in Room 411, State House Annex, 25 Capitol Street, Concord, New Hampshire, to take the testimony of Patricia Martin, the appellant's former supervisor in the Accounts Payable Unit. Should the appellant or the State wish to call additional witnesses, they may do so, provided that they exchange lists of witnesses to be called at least 5 days prior to the scheduled hearing.

FOR THE PERSONNEL APPEALS BOARD

  
Mary Ann Steele, Executive Secretary  
NH Personnel Appeals Board

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Sandra Platt, Manager of Human Resources, Department of Health and Human Services,  
129 Pleasant St., Concord, NH 03301  
Edward A. Laniyan, 1311 Hanover St., Unit 26, Manchester, NH 03104

# State of New Hampshire



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## ***APPEAL OF EDWARD A. LANIYAN***

***DOCKET #99-T-21***

### ***DEPARTMENT OF HEALTH AND HUMAN SERVICES***

***January 18, 2000***

The New Hampshire Personnel Appeals Board (Wood, Rule and Johnson) met on Wednesday, October 6, 1999, under the authority of RSA 21-I:58, to receive additional evidence in the appeal of Edward A. Laniyan, a former employee of the Department of Health and Human Services. Mr. Laniyan, who was appealing his termination from employment as an Account Clerk III, effective May 28, 1999, appeared for a hearing on August 11, 1999. After considering the testimony and evidence presented on August 11, 1999, the Board determined that it had insufficient evidence upon which to fairly decide the appeal. Accordingly, the Board voted to schedule a further hearing in order to take the testimony of Patricia Martin, the appellant's former supervisor in the Accounts Payable Unit, concerning Mr. Laniyan's performance while he was working in Accounts Payable.

Mr. Laniyan appeared pro se. Sandra Platt, Manager of Human Resources, appeared for the Department of Health and Human Services.

The record of the complete hearing in this matter consists of pleadings submitted by the parties prior to the hearing, notices and orders issued by the Board, the audio tape recording of the hearing on the merits of the appeal, and documents admitted into evidence without objection, and described by the parties as follows:

## State's Exhibits

1. Administrative Rules of the Division of Personnel, 1001.02 Dismissal During Initial Probationary Period.
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5. Personnel Action Form showing Mr. Laniyan transferred into position number 12457 on June 5, 1998, thereby re-starting his Initial Probationary Period.
6. Administrative Rules of the Division of Personnel Per 601.07, Probationary Period, (d).
7. Supplemental Job Description for position number 12457.
8. Performance evaluation completed for Edward Laniyan on April 26, 1999, for the period from June 5, 1998 through April 1, 1999.
9. Administrative Rules of the Division of Personnel Per 801.07, Evaluation of Probationary Employees.
10. Administrative Rules of the Division of Personnel Per 602.01, Transfer of an Employee Within an Agency.
11. DHHS Form 170 transferring Edward Laniyan into position 12490, Account Clerk III.
12. Letter from Edward Laniyan to Patricia Martin, dated April 1, 1999, notifying her of his move into the billing unit.
13. Supplemental Job Description for position number 12490, Account Clerk III.
14. Memorandum of Counsel from Lynn Beckwith to Edward Laniyan dated May 4, 1999 related to work standard issues from April 2, 1999 through April 29, 1999, in position #12490.
15. Letter of termination dated May 27, 1999.

Appellant's Exhibits

A. Employee sign-in sheet dated 1/28/99.

The following persons gave sworn testimony:

Lynn Beclwith, Financial Administrator  
Anne Mattice, Business Administrator  
Debra Bourbeau, Business Administrator  
Edward Laniyan, Appellant  
Patricia Martin, Accounts Payable Supervisor

On August 26, 1999, the Board issued a preliminary decision containing the following findings of fact:

1. Mr. Laniyan was employed by the Department of Health and Human Services in the Keene District Office, effective April 10, 1998, as an Account Clerk III.
2. Mr. Laniyan applied for a transfer to the central office in Concord, to position #12457, Account Clerk III. He was selected for transfer effective June 5, 1998, and was assigned to the Accounts Payable Section of the Office of Finance.
3. In his Accounts Payable assignment, Mr. Laniyan was supervised by Patricia Martin.
4. In or around December, 1998, Ann Mattice, Administrator for the Accounts Payable Section, went to her supervisor, Lynn Beclwith, to report that Ms. Martin had been expressing concern about the appellant's work.
5. Financial Administrator Beckwith characterized the relationship between Mr. Laniyan and Ms. Martin as one in which they, "...did not communicate or satisfy each other's expectations."
6. Business Administrator Mattice talked with her subordinate, Ms. Martin, about having meetings with the appellant 'to focus on quality instead of quantity, but she concluded that the interpersonal relationship between the appellant and his supervisor was "becoming a problem," the tension was apparent, and, "...it was not going to work in that position."

7. Ms. Beckwith arranged with Ms. Mattice and Ms. Bourbeau, Business Administrator in the Billing unit, to offer Mr. Laniyan a transfer from Accounts Payable to Billing. That transfer was effective April 2, 1999.
8. On April 12, 1999, Mr. Laniyan received an annual salary increment.
9. Annual salary increments are awarded according to Per 901.03 (a) of the Rules of the Division of Personnel for "...satisfactory work performance ...documented by the performance evaluation required under Per 801."
10. On April 14, 1999, twelve days after his transfer fi-om Accounts Payable to Billing, Mr. Laniyan met with Ann Mattice and Patricia Martin and was given an unsatisfactory performance evaluation completed by Ms. Martin covering his previous assignment.
11. On May 4, 1999, Mr. Laniyan received a letter of counsel advising him that if his work did not meet expectations by May 27, 1999, his employment would be terminated.
12. On May 27, 1999, Mr. Laniyan received a letter notifying him of his immediate termination from employment for failure to meet the work standard prior to completion of his initial probationary period.
13. Mr. Laniyan's initial probationary period, whiclz had been extended by his voluntary transfer from the Keene District Office to the central office, was due to expire on June 5, 1999.
14. In the notice of termination, Mr. Laniyan was cited for his 1) inability to process legal liability forms (Form AE0030) within an average of three minutes per form, 2) unacceptable error rate on the county deductions report, 3) failure to forward copies of his e-mail correspondence with case workers to their own supervisors, 4) failure to take notes during training, 5) failure to request additional work from his supervisor for an hour when the electronic file server was not in service, 6) failure to follow-up on e-mails sent to case technicians, and 7) failure to master the tasks associated with his position.
15. Mr. Laniyan was not apprised of the average processing time on legal liability forms prior to his receipt of a letter of counsel on May 4, 1999.
16. Mr. Laniyan was assigned work other than processing legal liability forms and opening and sorting mail.
17. From time to time, Mr. Laniyan was unable to work at his own work station, where the hard-copy files he needed to access were located.

After receiving Ms. Martin's testimony, the Board made additional findings as follows:

18. When Ms. Martin found errors on payment vouchers, she would return the documents to the appellant to correct so that he could "learn from his own mistakes." In a number of instances, however, Mr. Laniyan pointed out that the errors were not his errors, but mistakes made by his co-workers or by Ms. Martin herself.
19. As early as December, 1998, Ms. Martin informed her supervisor that the appellant's work was unsatisfactory and that he would be unable to complete his probationary period successfully. She did not advise the appellant that his continued employment was in jeopardy.
20. On April 2, 1999, Mr. Laniyan was transferred from Accounts Payable to the Billing Unit
21. On April 12, 1999, Mr. Laniyan received a salary increment.
22. On April 14, 1999, Mr. Laniyan received an unsatisfactory performance evaluation.
23. On May 4, 1999, Mr. Laniyan received a counseling memorandum from Administrator Lynn Beckwith. The memorandum referred to performance deficiencies that had been identified in the Performance Evaluation that he had received two weeks earlier, and warned the appellant that if he was unable to improve his performance, his employment would be terminated on May 27, 1999.
24. On May 27, 1999, Mr. Laniyan received a letter of termination in which Administrator Beckwith wrote, "You began in this position on April 2, 1999 as a result of an internal transfer from the Accounts Payable Unit where you failed to meet the work standard after nine months of employment. It was my hope that in giving you a different position in the Office of Finance, you would improve your performance to a satisfactory level and demonstrate an ability to meet the work standard of the position."

## Rulings of Law

- A. "Probationary period means a period of full-time work during which a full-time employee is required to demonstrate satisfactory performance of the duties and responsibilities of the employee's position as listed on the supplemental job description for the position." [Per 102.42, Rules of the Division of Personnel]
- B. The probationary period shall be considered an integral part of the process of appointment for full-time employees and shall provide the appointing authority with the opportunity to: (1) Observe the new employee's work; (2) Train and aid the new employee in adjustment to the position; and (3) Remove an employee if the employee's work performance fails to meet required work standards." [Per 601.07 (a), Rules of the Division of Personnel]
- C. "At any time during the initial probationary period an appointing authority may dismiss an employee who fails to meet the work standard provided the dismissal is not: (1) Arbitrary; (2) Illegal; (3) Capricious; or (4) Made in bad faith." [Per 1001.02 (a), Rules of the Division of Personnel]
- D. "...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

Having considered all the evidence, the Board, under the authority of RSA 21-I:58, I, voted unanimously to GRANT Mr. Laniyan's appeal. Based on the evidence, the Board found that the appellant's termination from employment nine days prior to the completion of his extended probationary period was unjust under the circumstances.

The Rules of the Division of Personnel describe three distinct purposes for a probationary period: " (1) To observe the new employee's work; (2) To train and aid the new employee in adjustment to the position; and (3) To remove an employee if the employee's work performance fails to meet required work standards." Although the onus is upon the probationary employee

to demonstrate proficiency in performing the duties and responsibilities of the position to which the employee is assigned, the employer has a responsibility to the employee as well.

Performance evaluations are designed to document whether or not an employee meets the performance expectations for the position to which the employee is assigned. Ms. Martin admitted that once the decision had been made to transfer the appellant from Accounts Payable to Billing, she had no intention of completing a performance evaluation until she was directed to do so by her own supervisor. As such, the Board agrees with the appellant that the evaluation appears to have been prepared in large part to support his termination from employment, not to address areas in which his work needed to improve.

Administrator Beckwith testified during the first day of hearing that when the appellant was assigned to Accounts Payable, "Edward and Tricia did not communicate or satisfy each other's expectations." If Mr. Laniyan and Ms. Martin were unable to communicate, and the agency was aware that both employees were equally responsible for that problem, it had an obligation to address it administratively, since the appellant had to rely upon Ms. Martin for the training that he needed on the job if he were to perform satisfactorily. The fact that Mr. Laniyan was a probationary employee did not absolve the agency of its obligation to provide appropriate training and supervision.

Ms. Martin admitted that when the appellant took exception to the manner in which she brought errors to his attention, she simply stopped discussing them with him. Ms. Martin testified that she held meetings with Mr. Laniyan in December, 1998 or January, 1999 to discuss his performance. Those meetings, however, occurred only after her own supervisor directed her to "find a way to communicate" with the appellant. The evidence reflects that Ms. Martin lost patience with the appellant, that she had little time to train him, and that in the first few months of his employment with her unit, she assigned him to do filing and mailing because she had more experienced staff to do the accounting work. Ms. Martin was aware of the appellant's limited keyboarding and data processing skills. Nonetheless, when he requested training to improve those skills, his request was denied.

The agency knew before it transferred Mr. Laniyan from Accounts Payable to Billing that his keyboarding and data processing skills were insufficient for him to keep up with the flow of work. Nonetheless, they assigned him to a function in which those skills were necessary in order to perform satisfactorily.

Although Mr. Laniyan agreed to the transfer from Accounts Payable to Billing if it provided a means to avoid termination of his employment, he neither desired nor requested the transfer. He was assured, however, that the position to which he was being transferred would allow him to use his accounting skills and would provide a "fresh start." The appearance of an unsatisfactory performance appraisal from his prior position in Accounts Payable within two weeks of his transfer, the issuance of a Memorandum of Counsel approximately two weeks later, and the threat of termination if his performance did not improve immediately are not indicative of a fresh start. Rather, they tend to support the appellant's allegation that his transfer to Billing merely provided an opportunity for the appointing authority to develop its case in support of his termination.

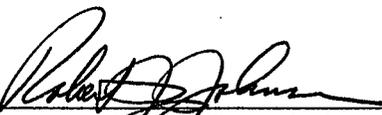
The Board finds that the appellant's performance problems and subsequent termination were attributable in large part to ineffective supervision and poor communication on the part of both the agency and the appellant. Therefore, on the totality of the evidence, the Board found that the termination was unjust.

Having considered the testimony, evidence, argument and offers of proof, and in accordance with its authority under RSA 21-I:58, I, the Board voted to order the appellant reinstated to a position within the Department of Health and Human Services for which he is qualified. He shall be assigned at the same salary grade and step that he held prior to his termination, but shall not be entitled to reinstatement of salary, benefits, leave or seniority credit. Under the conditions set forth above, Mr. Laniyan's appeal is therefore GRANTED.

THE PERSONNEL APPEALS BOARD

  
Patrick H. Wood, Chairman

  
Lisa A. Rule, Commissioner

  
Robert J. Johnson, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Sandra Platt, Manager of Human Resources, Department of Health and Human Services,  
129 Pleasant St., Concord, NH 03301  
Edward A. Laniyan, 1311 Hanover St., Unit 26, Manchester, NH 03104