

State of New Hampshire



PERSONNEL APPEALS BOARD

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APPEAL OF FLORENCE LEMAY Department of Safety - Division of Motor Vehicles Docket #95 -T-19

July 5, 1995

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, June 7, 1995, to hear the termination appeal of Florence LeMay, a former probationary employee of the Department of Safety, Division of Motor Vehicles. Ms. LeMay appeared on her own behalf. Claude Ouellette, Human Resources Administrator, appeared on behalf of the Department of Safety. The record in this matter consists of the original appeal documents, including a copy of Ms. LeMay's termination letter, and the audio tape recording of the hearing.¹ The following persons gave sworn testimony at the hearing: Lauren P. Flanders, Account Clerk IV; Marshall L. Newland, Jr., Supervisor of Registrations; and Florence LeMay, Appellant.

Ms. LeMay argued that her March 9, 1995 termination as a probationary Counter Clerk I, was arbitrary, illegal, capricious, and/or made in bad faith. In support of that claim, Ms. LeMay testified that her termination was actually for absenteeism, not for failing to meet the work standard. Ms. LeMay argued that although she was absent 99.35 hours during the last five months of her employment with Registrations, the 99.35 hours actually represented a decline in her rate of absenteeism by approximately 50% when compared to her attendance in her previous position. LeMay argued that as the mother of an 18-month old child, her absences from work were unavoidable.

In her direct testimony, Ms. LeMay said that during the period in which she was assigned to the Rochester office, her daughter had ear infections, bronchitis, conjunctivitis and chicken pox, and that she had to stay home with her daughter when she couldn't find someone to care for the child. She testified that she had used 3 1/2 days of sick leave for herself, 2 1/2 of which were related to a miscarriage. She also testified that she had taken one day of military leave for an Air National Guard assignment during the time she was assigned to the Rochester office.

Ms. LeMay admitted that on her February 13, 1995 performance appraisal, her supervisor had remarked that Ms. LeMay was not well-organized, that she had difficulty retaining information, that she needed to listen more carefully to customers, and that she needed to spend

¹ Before the Department of Safety could offer any exhibits into evidence, Ms. LeMay asked to have the documents excluded as she had not received them from the Department of Safety at least 72 hours prior to the hearing. The Board agreed to exclude them.

more time processing work and less time talking. Ms. LeMay admitted that when acquaintances came into the office, she might have spent too much time chatting with them. She also admitted that she had made errors in her work, but did not believe those errors were a result of her being inattentive or unable to retain information. Mr. Ouellette asked the appellant if she had keyed agent numbers into the wrong batches on five or six occasions. She admitted that she had, but said that at least two of those errors were the result, of her simply not paying attention to the dates at the top and bottom of the forms. Ms. LeMay said that with more practice, she expected to become more proficient at her work.

Ms. LeMay testified that she was not sloppy in her dress or appearance, and that she always maintained a pleasant, friendly manner with the public. She testified that there were errors in her work and that her performance might not have been up to her supervisor's expectations, but that she always tried her hardest. She testified that when she received her February 13, 1995 evaluation, she decided not to comment or respond to it. She said that she knew her supervisor was unhappy with her performance, and she believed it would only make her situation worse if she disputed her supervisor's opinion. She said that she knew her job was in jeopardy and that she would have to make corrections if she expected to remain employed, but that, "Even if you try, sometimes it doesn't happen."

Lauren Flanders, Ms. LeMay's supervisor in the Rochester Office, testified that she has been employed by the Department of Safety for 16 years, working as a supervisor for the last 9 of those years. She testified that most Counter Clerks learn the basics of the job in 2 to 8 weeks. She testified that after more than 6 months on the job, Ms. LeMay still was not performing her work satisfactorily, and that she was on the phone almost weekly to her own supervisor for advice in dealing with Ms. LeMay.

Ms. Flanders testified that the Rochester office is a small, 3-person operation, and that the appellant's frequent absences placed a terrible strain on the office. She testified that she had spoken to Ms. LeMay at least 15 or 20 times about her absenteeism, telling her that if she wanted to keep her job, there had to be a significant improvement in her attendance. Ms. Flanders testified that when Ms. LeMay's daughter had contracted chicken pox, she had called the office to say that she would not be in until the following Monday.. Ms. Flanders said that she told Ms. LeMay to call if there was any change. She testified that Ms. LeMay failed to call in or report for work on Monday, and did not call until approximately 2:00 p.m. on Tuesday afternoon to say that she expected to return to work on Wednesday. Ms. Flanders testified that the appellant knew she was supposed to call in any time that she was not going to report for work as scheduled, and that in this instance, she had been instructed specifically to call "if anything changed". She said that when she spoke to Ms. LeMay about that, the appellant insisted she had been told to call when she knew she'd be returning to work.

Ms. Flanders testified that even if Ms. LeMay's attendance had been perfect, she would have recommended terminating her employment because of her poor work product. Similarly, she testified that if Ms. LeMay's work product had been excellent, she would have recommended terminating her employment for poor attendance. She testified that she had advised Ms. Lemay, verbally and in writing, that her attendance and work performance were unacceptable. She testified that Ms. LeMay never responded to her evaluation or disputed any of comments about her unsatisfactory performance and attendance.

Marshall Newland, Supervisor of Registrations, testified that he has been employed by the Department of Safety for 21 years, working the last 17 years in a supervisory capacity. He testified that most new employees begin with 2 weeks of training in Concord, but that Ms. LeMay had been assigned directly to the Rochester office to train with Ms. Flanders. He testified that Ms. Flanders is an excellent trainer and supervisor, and that he believed Ms. LeMay would get better, one-on-one training if she was assigned directly to the Rochester office. Mr. Newland testified that by the end of January, concerns about Ms. LeMay's attendance and performance were increasing. He testified that he had instructed Ms. Flanders to evaluate Ms. LeMay's performance in writing, hoping that she might "get it" and realize how serious her situation was. He testified that when there still was no improvement, the agency decided to terminate her employment.

Mr. Newland testified that he was aware of Ms. LeMay's poor attendance record during her employment with Financial Responsibility, but that she was the better qualified of the 2 in-house candidates for the position of Counter Clerk. He said that he wanted to promote from within, and made it clear to the appellant her attendance would have to improve dramatically if she wanted to remain employed. He testified that while there had been some improvement, it was not sufficient. He testified that her absenteeism coupled with the poor quality of her work left the department with no choice but to terminate her employment.

Mr. Ouellette argued that "the work standard" which Ms. LeMay failed to meet included all aspects of her performance, including her attendance. He argued that the Department of Safety repeatedly made Ms. LeMay aware that her job was in jeopardy if her attendance and the quality and quantity of her work did not improve. Mr. Ouellette argued that the appellant failed to take corrective action and therefore was discharged from her employment. He argued that the reasons for the termination were well documented, and that the action was not arbitrary, illegal, capricious, or made in bad faith.

As a probationary employee of the Department of Safety, Ms. LeMay's termination was subject to the provisions of Per 1001.02 (a) of the Rules of the Division of Personnel:

- "(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."

Ms. LeMay admitted that she was absent from work for 99.35 hours between October, 1994, and March, 1995. Ms. LeMay admitted that during that same period, only 1 day of leave was attributable to authorized, military leave. Ms. LeMay was apprised of the deficiencies in her work and her attendance, and understood that unless she took corrective action, she would be terminated from her employment. Ms. LeMay did not show sufficient improvement in either her attendance or her work performance for the Department to conclude that she was meeting or could meet the work standard, and her employment was terminated.

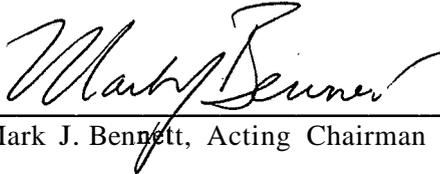
The Board found that the Department of Safety acted within its discretion in dismissing Ms. Lemay prior to completion of her probationary period. The Department properly defined the

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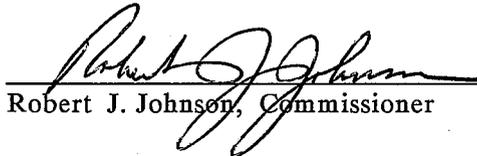
work standard as encompassing all aspects of an individual's employment, including attendance. Ms. LeMay did not meet the work standard, either with regard to her attendance or the quantity and quality of her work. The State's decision to terminate her employment was neither arbitrary, illegal, capricious, nor made in bad faith.

Therefore, the Board voted unanimously to deny Ms. LeMay's appeal.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia Lamberton, Director of Personnel
Florence LeMay, P.O. Box 234, Sanbornville, NH 03872
Claude Ouellette, Human Resources Administrator, Department of Safety
Virginia Beecher, Director, Division of Motor Vehicles