

# State of New Hampshire



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

## ***APPEAL OF DYANA LEWIS***

***Docket #2007-T-014***

***NH State Veterans Council***

***August 15, 2007***

A quorum of the New Hampshire Personnel Appeals Board (Wood and Casey) met in public session on Wednesday, June 6, 2007, under the authority of RSA 21-I:58 and Chapters Per-A 100-200, to hear the appeal of Dyana Lewis, a former probationary employee of the NH State Veterans Council. Ms. Lewis, who appeared *pro se*, was appealing her January 3, 2007 termination from employment as an Administrative Secretary. Mary E. Morin, Director of the Veterans Council, appeared on behalf of the agency. Neither party objected to composition of the Board convened to hear the appeal.

The record of the hearing in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, the audiotape recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

### Notice of Appeal received January 2, 2007 with attachments

1. January 3, 2006 letter to Dyana Lewis from Mary Morin Re: Termination during Initial Probationary Period
2. September 28, 2006 letter to Dyana Lewis from Mary Morin confirming an offer of employment
3. October 4, 2006 email between Jo-An Buntten and Mary Morin confirming approval to hire Ms. Lewis at Grade 14, Step 3
4. Supplemental Job Description – Administrative Secretary

5. Global War on Terrorism – IFS Instructions
6. Global War on Terrorism – IFS Instructions (revised)
7. Handwritten notes (author unknown)
8. November 20,2006 letter from Ron Jobel to Mary Morin re: NH FIRST
9. December 5,2006 letter from Mary Morin to Ron Jobel re: NH FIRST “super-users”
10. State Veterans Council Fuel Distribution FY 06 Prepared by Dyana Lewis
11. State Veterans Council Fuel Distribution FY 06 Prepared by Teresa Martin
12. Email from Becky Harty to Mary Morin and others re: scheduled HR Administrators Meeting
13. Bureau of Education and Training Certificate for MS-Access 2000, Part 1 issued to Dyana Lewis
14. Bureau of Education and Training Certificate for MS Outlook Issued to Dyana Lewis
15. Training Certificate for Dyana Lewis issued by Merrimack School District
16. January 2,2007 Notification of Written Examination Results for Dyana Lewis issued by Dennis McCabe for the classification of Administrative Secretary
17. March 21,2006 Notification of Written Examination Results for Dyana Lewis issued by Dennis McCabe for the classification of Clerk Interviewer
18. February 23,2004 Notification of Written Examination Results for Dyana Lewis issued by Dennis McCabe for the classification of Administrative Assistant I
19. April 4,2006 Notification of Written Examination Results for Dyana Lewis issued by Dennis McCabe for the classification of Data Control Clerk III
20. February 16,2006 Notification of Written Examination Results for Dyana Lewis issued by Dennis McCabe for the classification of Program Assistant I
21. February 9,2006 Notification of Written Examination Results for Dyana Lewis issued by Dennis McCabe for the classification of Administrative Secretary

Appellant's Exhibits:

1. GHRS Screen Prints of Examination Results and Class Specifications

2. April 2,2007 Email from Rebecca Harty to Dyana Lewis re: HR Meeting Information/Appeal
3. April 3,2007 Memorandum from Ruth Viola to Dyana Lewis re: Conversation with Dyana Lewis in November 2006 Regarding Training
4. April 12,2007 Email from Linda Cote to Dyana Lewis Re: Appeal Statement
5. Online Listing of Human Resource Administrators printed 4/12/07
6. Online Listing of Statewide Payroll Officers printed on 4/12/07
7. April 12,2007 Email from Mary Morin to Dyana Lewis re: Receipt of Materials Requested
8. (NO EXHIBIT 8 WAS OFFERED)
9. Determination on Claim for Unemployment Benefits for Dyana J. Lewis
10. (NOT ADMITTED – DUPLICATE OF ATTACHMENT 19 TO NOTICE OF APPEAL)
11. (NOT ADMITTED – DUPLICATE OF ATTACHMENT 20 TO NOTICE OF APPEAL)
12. (NOT ADMITTED – DUPLICATE OF ATTACHMENT 18 TO NOTICE OF APPEAL)
13. Appointment of Dyana Lewis as Notary Public
14. February 10,1999 Letter of Recommendation from Bruce Briand, Nashua Corporation
15. Undated Letter of Appreciation from D. Baker to Dyana Lewis.
16. March 20, 1997 Letter of Appreciation to Dyana Lewis from Garry Largy
17. Dyana Lewis "My Profile" from Oxford Health Plans LLC
18. Class Specification and Supplemental Job Description for Veterans Service Officer
19. Dyana Lewis' Application for Employment

State's Exhibits:

- A. Sworn Statement of Carter C. Higginbotham dated April 10,2007
- B. Sworn Statement of Brian S. Toney dated April 12,2007

At the request of the appellant, the witnesses were sequestered. The following persons gave sworn testimony:

Teresa Martin, Veterans Service Officer  
Carter C. Higginbotham, Veterans Service Officer  
Gerald Avery, Veterans Service Officer  
Mary Morin, Director, NH State Veterans Council  
Dyana Lewis, Appellant

Position of the Parties

Ms. Lewis argued that her termination was arbitrary, illegal, capricious and in bad faith. In support of that position, Ms. Lewis stated that her supplemental job description referred to her as the agency's "Human Resource Administrator" and "Budget Administrator," but she was never permitted to attend budget hearings, HR Administrator meetings, or formal training specific to use of the existing or proposed information technology systems for personnel, budget or payroll. Ms. Lewis said that if she failed to understand the mission of the agency, it was because Ms. Morin either failed or refused to provide information about what the Veterans' Service Officers did, and if the agency felt she lacked the skills to do the job, it should have provided the additional training she needed. Ms. Lewis argued that it was improper for the Veterans Council to assign Teresa Martin to provide training or guidance to the appellant, because Ms. Martin was not in the appellant's direct chain of command, and was not certified by the State as a trainer.

Ms. Lewis stated that Ms. Morin's instructions and expectations seemed to change on a daily basis, and that Ms. Morin violated the personnel rules by dismissing Ms. Lewis without first providing a formal written performance evaluation and written warnings with specific instructions on how to correct any alleged performance deficiencies. Ms. Lewis also suggested that the Board should question the legitimacy of the termination decision, since Ms. Morin asked the appellant to work two additional weeks after the date on the notice of termination.

Ms. Morin stated that when she became the agency's director, she focused immediately on computerizing records, including payroll, budget, procurement, and payments to veterans. Under the previous administration, she said, all records were kept manually, and because the office is understaffed, with only five service officers and one administrative support person providing services to approximately fifty-two hundred veterans statewide, computerization and electronic record-keeping represented the most effective way to reduce the amount of time spent on administrative tasks and increase the overall efficiency of the agency.

Ms. Morin said that Ms. Lewis was selected for the position of Administrative Secretary from a register of eligible candidates provided by the Division of Personnel. Ms. Morin said that the appellant interviewed well and represented herself as having outstanding administrative and computer skills. Ms. Morin said that she although she did not expect the appellant to be familiar with either GHRS or IFS, she did expect the appellant to grasp the fundamentals of the systems and learn from on-the-job training as both she and Ms. Martin had done. She did expect the appellant to begin work, proficient in secretarial and administrative tasks as they were described in the appellant's application and pre-employment interviews.

Ms. Morin argued that the appellant was resistant to training and failed to ask for help when it was appropriate. She said that although the appellant claimed to be proficient in the use of computer programs such as Microsoft Word, Excel, Access and Outlook, the appellant frequently was unable to complete her work accurately or on a timely basis. Ms. Morin argued that the formatting, spelling and grammatical errors appearing in appellant's appeal pleadings would provide an example of the quality of the appellant's work.

Ms. Morin argued that the Personnel Rules permit an agency to dismiss an employee without prior warning at any time during the initial probationary period if that employee fails to meet the work standard. She argued that the agency should not have been

expected to train the appellant to perform duties in which she claimed to be proficient and fully qualified. Ms. Morin asked the Board to note that the rules impose no requirement for an agency to provide the employee with a written performance evaluation, corrective action plan or written warning prior to dismissal during that first year of employment. Ms. Morin stated that the decision to allow Ms. Lewis to work for an additional two weeks was not evidence of indecision or confusion on the part of the agency, but was meant to benefit the appellant by keeping her on the payroll through the holidays. Ms. Morin argued that her decision dismissing the appellant for failure to meet the work standard conformed to the requirements outlined in the Personnel Rules and was lawful, appropriate, and fair under the circumstances.

Having carefully considered the pleadings submitted by the parties prior to the hearing, and evidence and arguments offered by the parties at the hearing on the merits of the appeal, the Board made the following Findings of Fact and Rulings of Law.

Findings of Fact:

1. The New Hampshire State Veterans Council is a small agency with six full-time employees serving approximately fifty-two hundred veterans in the State of New Hampshire, assisting them and their families in accessing benefits and services available to them.
2. Mary Morin, the appellant's immediate supervisor, was appointed to her position as executive director of the agency in April 2006. Before that time, the agency did its requisitions, paid its bills, managed its payroll, and tracked veterans' benefits manually. Ms. Morin made it a goal of the agency to computerize those processes, using the State's GHRS (Government Human Resources System) for payroll and human resources information processing, NHIFS (New Hampshire Integrated Financial System) for managing its financial transactions, and a variety of Microsoft Office programs to manage the remainder of the administrative tasks.
3. Teresa Martin, a veterans' services officer, was hired by the agency in May 2006. Ms. Martin had no work experience using a DOS-based system for payroll or finance,

but she and Ms. Morin began using those systems to manage transactions via the computer system until the agency could hire experienced administrative staff.

4. The agency hired Ms. Lewis on October 9, 2006, as the agency's Administrative Secretary. According to her supplemental job description, some of the duties that Ms. Lewis was expected to perform included entering payroll and expenditure information into GHRS and IFS; maintaining a veterans informational management program; preparing, submitting for approval and maintaining a variety of agency documents, financial records and client files; and reviewing most incoming correspondence and directing it to the appropriate personnel to review.
5. When Ms. Lewis was hired, the agency expected her to be proficient in the use of Microsoft Office software programs; instead, the agency found that Ms. Lewis had difficulty preparing documents and spreadsheets, using the system's mail merge function, and preparing mailing labels.
6. Ms. Lewis explained that she was familiar with a different version of Microsoft Office than the one that was installed on her computer at the office. However, when Ms. Lewis encountered differences in the programs, she had difficulty using the help functions or program tutorials to address those problems.
7. On more than one occasion, Veteran Service Officer Martin had to produce documents for use by the agency's director because Ms. Lewis was unable to produce the documents in a suitable format or in a timely manner.
8. In one instance, Ms. Lewis was asked to update information in a bulleted list for use in a brochure. Ms. Morin noticed that instead of tabbing or using the computer control buttons to line up the information, the appellant was using a ruler held up against the computer screen to align the text.
9. The agency routinely receives correspondence from the Department of Veterans' Affairs (DVA) concerning the status of various veterans, benefits paid to the veteran, or benefits payable to their dependents. All records are maintained in the veteran's name, even if the record relates to that veteran's dependent(s). When the agency received such correspondence, Ms. Lewis was expected to retrieve the veteran's record, attach the correspondence to the file, and deliver the file to the appropriate member of the staff. After Ms. Lewis joined the staff, Veteran Service Officers

noticed that files frequently could not be located, and there was a significant increase in the number of filing errors.

10. Ms. Lewis' regular duties included answering the phone and directing calls to the appropriate staff member. There are two lines reserved for use by Service Officers who are traveling. Although the appellant was instructed repeatedly not to use those lines, she continued to pick them up, even after sticky tabs were placed on the lines to remind her not to pick them up.
11. Although Ms. Lewis was instructed not to give advice to veterans regarding their rights and benefits, staff overheard Ms. Lewis on the telephone with a World War II veteran, giving inaccurate information about documents he would be required to produce in order to qualify for a property tax exemption.
12. In December 2006, while Ms. Morin and Ms. Martin were attending a budget hearing, a police officer came to the Veterans Council offices looking to speak with Ms. Morin about an e-mail "threat." Ms. Lewis believed that Ms. Morin placed her at risk by failing to apprise her of that risk. The December 2006 threat incident did not involve threats against staff or against the agency, but concerns raised about the well-being of a veteran suffering from Post-Traumatic Stress Disorder who frequently emailed messages to the agency, or forwarded email messages from another disabled veteran. Ms. Morin and others were accustomed to receiving those emails about once a month. In December, the emails increased to once a week, then once a day. Of greatest concern to Ms. Morin was the fact that the veteran had changed his email address to "@suicide.com."

### Rulings Of Law

- A. At all relevant times, Ms. Lewis was a probationary employee. Per 102.42 of the NH Code of Administrative Rules defines "probationary period" as, "...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."

- B. In accordance with Per 1002.02(a) of the NH Code of Administrative Rules, "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."
- C. In probationary terminations, the standard of review that the Board uses is found at Per-A 207.12 (a) of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board) which states, "In probationary termination appeals, the board shall determine if the appellant proves by a preponderance of the evidence that the termination was arbitrary, illegal, capricious or made in bad faith. Allegations that the appellant does not know the reason(s) for the dismissal, or evidence that the appointing authority took no formal disciplinary action to correct the employee's unsatisfactory performance or failure to meet the work standard prior to dismissing the employee, shall not be deemed sufficient to warrant the appellant's reinstatement."
- D. In accordance with Per-A 207.01 of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board), the appellant bears the burden of proof.

### Decision And Order

The appellant did not produce sufficient evidence to persuade the Board that her termination was arbitrary, illegal, capricious or made in bad faith. After observing the appellant's work product and workplace demeanor during her first few months at the State Veteran's Council, Ms. Morin concluded that the appellant was unable to meet work standards outlined in the Administrative Secretary class specification and supplemental job description. Although the appellant possessed the appropriate credentials for appointment to the position, she was unable to demonstrate satisfactory performance of the tasks assigned to her. Although the appellant might have benefited from additional training, the agency was under no obligation to provide additional training to her. The agency is small and understaffed, and reasonably expected the

---

<sup>1</sup> Although the letter of termination incorrectly cites Per 1001.02, the rule that was in effect when Ms. Lewis was hired, the successor rule, Per 1002.02, is essentially identical to the rule it replaced.

person hired to perform administrative tasks to be qualified and able to perform those tasks at the time of selection.

The appointing authority met with Ms. Lewis on more than one occasion to discuss the reasons supporting the decision to dismiss her from her position, as required by Per 1002.02 (b). Although Ms. Lewis asserted that she was entitled to first receive a written performance evaluation and one or more written warnings, the Rules impose no such requirement.

For all the reasons set forth above, the Board voted unanimously to DENY Ms. Lewis' appeal and to uphold her termination from employment as Administrative Secretary to the NH State Veterans Council prior to the completion of her initial probationary period.

THE PERSONNEL APPEALS BOARD



Patrick H. Wood, Chairman



Joseph Casey, Commissioner

cc: Karen D. Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Dyana Lewis, 16 Miriam Rd., Merrimack, NH 03054  
Mary E. Morin, Director, NH State Veterans Council, 275 Chestnut St.,  
Manchester NH 03101-2411

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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

### *APPEAL OF DYANA LEWIS*

*Docket #2007-T-014*

*NH State Veterans Council*

*Appeals Board Decision on Appellant's Motion for Reconsideration/Rehearing*

*November 15, 2007*

By letter dated September 2, 2007, received by the Board on September 6, 2007, the appellant requested reconsideration and rehearing in the above-titled appeal. Ms. Lewis, whose motion was filed pro se, gives no indication in her pleadings that a copy of her motion was provided to the NH State Veterans Council as required by Per-A 204.02 (c) of the Board's rules, so that the other party to the appeal might file a response or objection. Per-A 204.02 (d) of the Board's rules allows for the dismissal of an intentional violation of this rule. In light of Ms. Lewis' previous communications with the Board, the Board believes the violation was not intentional and has not prejudiced the NH State Veterans Council's rights in this case. Accordingly, the Board has chosen to answer the motion rather than requiring the appellant to first correct the violation.

In accordance with the provisions of Per-A 208.03 (b), "Such motion for reconsideration or rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." The Board's responses to each of the arguments raised in the appellant's motion appear in the order in which the appellant presented them. Text appearing in italics is taken directly from the appellant's motion.

- 
1. The decision was not issued within 45 days of the date of hearing, no notice of delay was issued, and the members of the Board who heard the appeal *could not adequately judge the evidence presented over 2 months prior to the termination at the hearing.*

Per-A 208.02 (b) provides the following: "If the board determines that it requires additional time for the proper consideration or determination of the facts or issues involved, it shall notify the parties to the appeal of the reasons for the delay and shall provide an estimate to the parties of the additional time required."

The rules do not require written notice, as the appellant asserts. The Board did provide notice, through a conversation between Ms. Lewis and the Board's Executive Secretary, that the decision would not be rendered within 45 days because of the Board's schedule, and assured Ms. Lewis that it would not issue a decision during a week at the end of July when she informed the Board through its Executive Secretary that she would not be home.

2. The Board assisted the State in presenting its case when the Chair *interviewed witnesses with Ms. Morin*, and did not provide similar assistance to the appellant in presenting her case.

Neither party was represented at the hearing by counsel. Those witnesses who did appear at the hearing appeared at the request of the appellant, who had earlier objected to their testimony being received by affidavit. The appellant was fully apprised of the fact that the Board members may question a witness when such questions are necessary to uncover the material facts in dispute and arrive at a fair conclusion.

3. *Mr. Wood did not notify the appellant prior to the beginning of the hearing and not until halfway through the proceedings that his spouse "works on the Veterans Committee for the State House of Representatives." This is a conflict of interest since the Appellant is appealing termination from the State Veterans Council.*

*Mr. Wood should not have presided over this case and/or notified the appellant prior to the start of the hearing.*

As the record reflects, the Chair advised both parties during the hearing that they could object to his participation if either party felt that there was a conflict of interest. Neither party objected.

4. Mrs. Morin made factual assertions at the prehearing conference and gave contradictory testimony at the hearing on the merits of the appeal. *Mrs. Steele was not interviewed as to what she had witnessed during the prehearing meeting and the meeting was not tape recorded as it should have been since Mrs. Morin completely changed her statements from the prehearing to the hearing*

As was explained to both parties at the prehearing meeting, the purpose of the meeting was to allow the parties to conclude their exchange of documents and raise any issues, such as unresolved requests for formal discovery, which would impede the progress of the hearing on the merits of the appeal. Both parties were advised repeatedly that nothing they discussed at the meeting would become part of the record of the hearing, and their respective cases would need to be argued before the Board itself during the hearing. Both parties were asked specifically if they wished the prehearing meeting to be recorded, and neither party felt that would be necessary. Written communication in the form of email between the Board's Executive Secretary and the parties summarized what occurred during and after that meeting.

5. *The appellant submitted over 30 documents as proof of the capriciousness of the termination and the state submitted no documentation at all. The State did not refute the evidence submitted by the appellant. The State prevailed when they submitted no documentation whatsoever.*

In its role as the trier of fact, the Board is obliged to weigh the evidence that it receives. In this case, the Board heard the sworn testimony of five current employees and one

former employee of the NH State Veterans Council. The Board accepted affidavits from two more employees of the State Veterans' Council. The Board reviewed the parties' pleadings, and documentary evidence that was offered by the appellant. The majority of the appellant's exhibits provided evidence of facts that were not in dispute, and they related primarily to her prior employment, positions for which she had applied, tests she had taken, training she had completed, and requests that she had made to attend additional meetings or training. The exhibits did not provide evidence to support the appellant's assertion that her termination for failure to meet the work standard during her probationary period was arbitrary, illegal, capricious, or made in bad faith.

6. Ms. Morin's request to have the appellant work an additional two weeks following notice of termination occurred after the first of the year and was not intended to keep her on the payroll through the holidays.

According to the evidence offered by the parties at the hearing, the initial meeting during which the appellant's dismissal was discussed occurred before Christmas.

7. Ms. Morin offered no evidence of the appellant's failure to meet the work standard.

The sworn testimony of the State's witnesses provided sufficient evidence to persuade the Board that the appellant failed to meet the work standard.

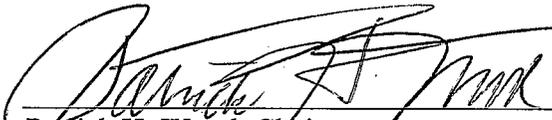
8. The appellant personally attended a hearing in another appeal to familiarize herself with the process. The appellant believes that those appearing with trained representatives are treated differently than those appellants who appear *pro se*, and the appellant would have considered hiring counsel if she had realized the Board would assist the agency by questioning the witnesses.

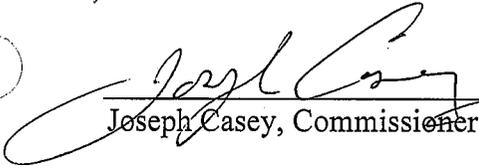
The appellant's perception that the questions favored the State does not provide a basis upon which to reconsider or rehear the appeal. If *pro se* appellants are treated differently,

it is to give them greater latitude in presenting their cases because they are unfamiliar with the process, particularly with respect to examining and cross-examining witnesses.

The appellant failed to provide evidence or argument to support a claim that the Board's decision was unlawful or unreasonable. Therefore, for all the reasons set forth above, the Board voted unanimously to DENY Ms. Lewis' request for reconsideration and rehearing, and to AFFIRM its decision, upholding the NH State Veterans Council's decision to dismiss the appellant prior to the completion of her initial probationary period for failure to meet the work standard.

THE PERSONNEL APPEALS BOARD

  
\_\_\_\_\_  
Patrick H. Wood, Chairman

  
\_\_\_\_\_  
Joseph Casey, Commissioner

cc: Karen D. Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Dyana Lewis, 16 Miriam Rd., Merrimack, NH 03054  
Mary E. Morin, Director, NH State Veterans Council, 275 Chestnut St.,  
Manchester NH 03101-2411