

State of New Hampshire

PERSONNEL APPEALS BOARD
Edward J. Haseltine, Chairman
Gerald Allard
Loretta Platt



EXECUTIVE SECRETARY
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PERSONNEL APPEALS BOARD
State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

87-T-104

NEW HAMPSHIRE PERSONNEL APPEALS BOARD DECISION

In the Matter Of:

Anthony Limanni

April 15, 1987

On January 27, 1986, the Personnel Appeals Board, Commissioners Haseltine, Allard and Platt sitting, heard the appeal of Anthony Limanni, a former employee of the Laconia State School. Mr. Limanni was discharged from his position of Agency Personnel Officer, while still a probationary employee, by letter dated October 9, 1986. That letter cited several deficiencies in his work performance. Mr. Limanni was represented at the hearing by SEA Director of Field Operations Chris Henchey. The Laconia State School (hereinafter "State") was represented by Assistant Attorney General Emily Rice.

As grounds for his appeal, Mr. Limanni alleged that his discharge from employment was "arbitrary, capricious and made in bad faith" because his discharge "came without forewarning and without any opportunity to correct or to be aware of the deficiencies which led to his probationary termination." He contended that his discharge was due to his having taken a position in a personnel matter contrary to that taken by his supervisor. He also cited as evidence of the State's bad faith his supervisor's execution of a verification of employment form in which she indicated that his continued employment prospects were good. This form was completed several days before his discharge from employment.

After considering all of the testimony presented, the Board made the following findings of fact and rulings of law. Mr. Limanni's short, tenure at the State School was marked by several instances of work performance found unacceptable by the administration. Contrary to his assertion in his notice of appeal, Mr. Limanni was advised of deficiencies in his work performance and admitted at the hearing that he had received an oral warning on June 11, 1986 from the Acting Superintendent. This warning was based on Mr. Limanni's poor attitude toward his superiors, his failure to work within the management structure at the School and his attitude toward women employees. In July, Mr. Limanni failed to complete properly a work assignment concerning a complaint before the Human Rights Commission. Finally, although his job responsibilities included some training of staff, Mr. Limanni, in exercising those duties, presented incorrect information concerning confidentiality policies at the State School during a staff training session.

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Although Mr. Limanni contended that his discharge was due to a disagreement with his supervisor concerning another personnel action, the Board found that more than sufficient evidence was presented that Mr. Limanni had failed to meet the work standard applicable to his position. Indeed, one of Mr. Limanni's witnesses, an administrator at the State School, when asked by the Board for his opinion of the actions of Mr. Limanni's supervisor, stated that he "personally felt that she [the supervisor] went overboard to be fair."

An agency personnel officer must be able to work effectively with both administrative staff and employees. In this case, the Board heard from several witnesses and found that Mr. Limanni was unable to perform such duties in a consistently acceptable fashion.

The Board did, however, find disturbing the execution of a request for verification of employment form by Mr. Limanni's supervisor in which she indicated that his probability of employment was "good". This form was executed approximately one week prior to the State's decision to terminate Mr. Limanni. Although another incident concerning Mr. Limanni's respect for confidentiality arose subsequent to execution of that form¹, the State School had evidenced long-standing concerns with Mr. Limanni's job performance. While the execution of such a form may have been an error in judgment on the part of the supervisor, the Board found that the Board's response to such an action should not be reinstatement of a substandard employee to a position in state service.

Finally, the appellant objected to the submission by the State of an affidavit of Mr. Limanni's former supervisor on the grounds that the appellant would not have an opportunity to cross-examine her. The State informed the Board of its inability to produce this witness due to her separation from State service and her move to the State of Florida. The Board noted that hearsay could be admitted at appeals hearings and subsequently overruled the appellant's objection. In so ruling, the Board has determined that the admission of such evidence in this case was not unfair. In addition to the unavailability of this witness, the State presented sufficient testimony at the hearing to corroborate the most relevant evidence presented in the affidavit.

¹ Although the State requested that the Board find that Mr. Limanni disclosed the terms of a confidential personnel action to a former State employee, the Board limited its ruling to a finding that Mr. Limanni discussed the result of the settlement with that former employee, including offering his opinion about that result. The Board further found that the administration could properly determine such action by its personnel officer to be inappropriate.

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Based on the foregoing, the Board found that the decision of the Laconia State School to discharge Mr. Limanni was not arbitrary, capricious, or made in bad faith. The appellant having failed to sustain his burden of proof, his appeal is hereby denied.

The Board ruled as follows on the State's requests for findings of fact and rulings of law.

State's Requests for Findings of Fact:

#1 - 7, 9 - 14: Granted

Request X8 is granted to the extent discussed in this decision.

Requests for Rulings of Law:

Requests #1, 3, and 4: Granted

Request C2 is denied and the State is referred to the language of Rule Par 302.23 addressing work standard.

The relief requested in Request #5 is granted.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE
Executive Secretary

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cc: Chris Henchey, Director of Field Operations
State Employees' Association

Emily Gray Rice, Assistant Attorney General
Civil Bureau, Office of the Attorney General

State of New Hampshire

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87-7-104

APPEAL OF ANTHONY LIMANNI

July 7, 1987

By letter dated May 5, 1987, Anthony Limanni requested reconsideration of the Personnel Appeals Board's decision of April 15, 1987. As grounds for this request, Mr. Limanni argued that the testimony presented at the hearing indicated that, contrary to his supervisor's contentions, Mr. Limanni had not disclosed the terms of a confidential settlement to a former employee and that an affidavit submitted by the State was inaccurate because it did not address the execution of a verification of employment form by Mr. Limanni's supervisor shortly before his discharge.

Upon review of the record, the Board voted to deny the appellant's request for reconsideration. The Board specifically limited its finding concerning the settlement, finding that Mr. Limanni had discussed the result of the settlement, including offering his opinion about that result. Further, the Board specifically found that the request for verification of employment form had been executed by Mr. Limanni's supervisor one week prior to his discharge. Upon review of the affidavit, the Board did not find that the facts attested to therein were rendered inaccurate by the affiant's failure to address the employment verification form.

The appellant's request for reconsideration is therefore denied.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE
Executive Secretary

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cc: Chris Henchey, Field Director
State Employees' Association

Emily Gray Rice
Assistant Attorney General

Richard Crocker, Superintendent
Laconia State School