

State of New Hampshire



PERSONNEL APPEALS BOARD

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

Appeal of Sean McGorry Docket #95 -T-16 Department of Corrections

August 23, 1995

On June 7, 1995, the New Hampshire Personnel Appeals Board issued an order directing the appellant in the above-titled appeal, under the authority of RSA 21-I:58 and Per-A 202.02 of the Rules of the Personnel Appeals Board, to submit to the Board a statement addressing the Board's jurisdiction to hear his appeal, the relief to which the appellant believed he was entitled, and the Board's authority to grant whatever relief was requested. Per-A 202.02 is as follows:

Order for More Specific Facts. The Board shall order the appellant to furnish more specific facts upon its own motion or if it agrees with the motion of an opposing party. Unless otherwise ordered by the Board, the appellant shall respond within ten (10) days.

The appellant has failed to submit any response in over 60 days. Therefore, the Board voted unanimously to dismiss Mr. McGorry's appeal with prejudice.

THE PERSONNEL APPEALS BOARD

Handwritten signature of Mark J. Bennett in cursive.

Mark J. Bennett, Acting Chairman

Handwritten signature of Robert J. Johnson in cursive.

Robert J. Johnson, Commissioner

Handwritten signature of Lisa A. Rule in cursive.

Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Brian Shaughnessy, Esq., Normand and Shaughnessy, Counselors at Law, 15 High Street
Manchester, NH 03101-1628
John E. Vinson, Esq., Department of Corrections, 105 Pleasant St., Concord, NH 03301

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Appeal of Sean McGorry New Hampshire Department of Corrections Docket #95 -T-16

June 7, 1995

By letter dated January 30, 1995, Attorney Brian C. Shaughnessy requested a hearing on behalf of the above-named Sean McGorry to appeal his termination from employment effective February 2, 1995. Mr. Shaughnessy asserted that Mr. McGorry had been totally disabled from his occupation as a corrections officer since June 1994, and that he had been diagnosed with Post Traumatic Stress Disorder. Mr. Shaughnessy stated that although a Department of Labor Hearings Officer had found the appellant's injury and disability to be compensable, the State of New Hampshire had appealed that decision, and the parties were waiting for a hearing before the Workers' Compensation Appeals Board. He also indicated that Mr. McGorry had applied for disability retirement, but was advised by the New Hampshire Retirement System that his application could not be processed until the Department of Labor appeals process had been completed.

By letter dated February 17, 1995, in anticipation of a possible order from the Board for more specific facts, Attorney Shaughnessy asserted that the Department of Corrections' appeal of the disability determination by the Department of Labor had deprived Mr. McGorry of an opportunity to apply for disability retirement. He also argued that being administratively terminated by the Department of Corrections before a decision had been reached in the Department of Labor Appeal would result in the appellant and his family losing their State-paid health insurance.

RSA 21-I:46 and 58 establish the Board's jurisdiction to hear and decide appeals by permanent employees. They state, in pertinent part:

21-I:46 Powers and Duties of Board.

I. The personnel appeals board shall hear and decide appeals as provided by RSA 21-I:57 and 21-I:58 and appeals of decisions arising out of the application of rules adopted by the director of personnel...

21-I:58 Appeals

I. Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal. The appeal shall be heard in accordance with the procedures provided for adjudicative proceedings in RSA 541-A. If the personnel appeals board finds that the action complained of was taken by the appointing authority for any reason related to politics, religion, age, sex, race, color, ethnic background, marital status, or disabling condition, or was taken in violation of a statute or of rules adopted by the director, the employee shall be reinstated to the employee's former position or a position of like seniority,

status, and pay. The employee shall be reinstated without loss of pay, provided that the sum shall be equal to the salary loss suffered during the period of denied compensation less any amount of compensation earned or benefits received from any other source during the period.... 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. [Amended 1990, 140:2, XII, eff. June 18, 1990.1

Among the documents submitted by the appellant was his January 13, 1995 letter of termination which stated that he was being removed from his position for non-disciplinary reasons, pursuant to Per 1002.03 of the Rules of the Division of Personnel. The letter of termination claims that Mr. McGorry's separation from service for non-disciplinary reasons, which was effective February 2, 1995, followed an assessment from the appellant's treating practitioner indicating that Mr. McGorry was medically unable to perform the duties of his position. In his appeal to this Board, the appellant admitted that he was medically unable to perform the duties and responsibilities of his position, but argued that because the State knew his family would be deprived of State-paid medical insurance after separation from service, the Department of Corrections should not have terminated his employment prior to a determination of his eligibility for disability retirement.

Eligibility for State-paid health insurance is a provision of the Collective Bargaining Agreement and State law. Limitation: on the appellant's ability to apply for disability retirement is governed by RSA 100-A:6,II(c). Therefore; the Board believes that it may not have subject matter jurisdiction to hear the appeal, absent a claim that the Department of Corrections violated or misapplied the provision of Per 1002.03 of the Rules of the Division of Personnel when it terminated Mr. McGorry's employment with the Department of Corrections. Accordingly, the Board, on its own motion, under the authority of RSA 21-I:58 and Per-A 202.02 of the Rules of the Personnel Appeals Board, voted to order the appellant to furnish a statement addressing the Board's jurisdiction to hear this matter, the relief to which the appellant believes he is entitled, and the Board's authority to grant such relief. Upon receipt of that statement, the Department of Corrections shall file a written response pursuant to Per-A 202.03 of the Rules of the Personnel Appeals Board.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
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