

# State of New Hampshire

WPPID795



## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

APPEAL OF WILLIAM NEVINS  
Docket #91-T-6  
Response to Appellant's Motion for Reconsideration  
and  
State's Objection to Motion for Reconsideration

September 11, 1991

The New Hampshire Personnel Appeals Board (Bennett and Johnson) met Wednesday, August 14, 1991, to consider the appellant's August 6, 1991, Motion for Reconsideration of the Board's July 17, 1991 decision in the matter of William Nevins' appeal of his discharge from employment with the New Hampshire Division for Children and Youth Services. The Board also considered the State's August 12, 1991 Objection to said Motion.

The Board reviewed the appellant's arguments in connection with the Board's July 17, 1991 decision, finding those arguments to be consistent with those raised at the hearing. Clearly the appellant disagrees with the Board's interpretation of the evidence. The appellant argued that the Board has either ignored evidence favorable to the appellant, such as the failure of the agency to produce any unsatisfactory performance evaluations or proof of prior disciplinary action, or that the Board interpreted the evidence in a light least favorable to him.

Attorney Sanderson, in support of the State's Objection to the Motion for Reconsideration, argued that the Board had lawfully exercised its judgment in assessing both the credibility of the witnesses and the weight of the evidence presented. Attorney Sanderson argued that the Board's decision was lawful and reasonable in light of the appellant's failure to meet his burden of proof.

The Board is mindful of the appellant's contention that evidence favorable to him was ignored in reaching the decision to uphold his discharge. Of the testimonial evidence offered during the three day hearing, the Board has only referred to that which was relevant to the offenses cited in the letter of discharge, specifically willful insubordination, refusal to accept job assignments, and fighting or attempting to injure others. In his motion, the appellant argued that, "Ms. Baker and Ms. Boyd both testified that Mr. Nevins was very professional, got along with them and fellow employees, and was helpful to the office. Furthermore, as Ms. Baker and Ms. Boyd testified, the

APPEAL OF WILLIAM NEVINS, Docket #91-T-6  
Response to Appellant's Motion for Reconsideration and  
State's Objection to Motion for Reconsideration  
page 2

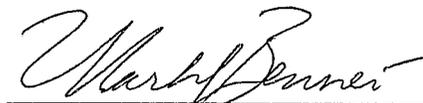
whole atmosphere at DCYS had deteriorated, due in part to a series of poor supervisors and due in part to factors beyond anybody's control at DCYS (reorganization, budget, case load, etc.)" That testimony was offered, however, by persons having no supervisory relationship with the appellant, and no direct involvement in those incidents cited as examples of willful insubordination and refusal to accept job assignments.

The Board's decision was predicated upon its assessment of the validity and seriousness of those charges under both the optional and mandatory discharge provisions of the Rules of the Division of Personnel. Therefore, testimonial evidence unrelated to those charges was omitted from the Board's order for the purposes of economy. Testimony directly related to the charge of fighting or attempting to injure others was given careful consideration, resulting in a finding that the appellant had not committed those offenses. Testimony directly related to the charges of willful insubordination and refusal to accept job assignments was given equally thoughtful consideration, resulting in findings that the appellant did commit the offenses of willful insubordination and refusal to accept job assignments.

Having carefully reviewed its decision of July 17, 1991, the Appellant's Motion for Reconsideration dated August 6, 1991, and the State's Objection, the Board voted to affirm its earlier order. The evidence, taken as a whole, supports the finding that the appellant committed the offenses of willful insubordination and refusal to accept job assignments, and that his discharge under the optional discharge provisions of the Rules of the Division of Personnel was lawful and reasonable.

Accordingly, the Board voted to deny the appellant's Motion for Reconsideration.

THE PERSONNEL APPEALS BOARD

  
\_\_\_\_\_  
Mark J. Bennett

  
\_\_\_\_\_  
Robert J. Johnson

cc: Michael C. Reynolds, SEA General Counsel  
Paul G. Sanderson, Legal Coordinator, Health & Human Services  
Virginia A. Vogel, Director of Personnel

# State of New Hampshire

WPPID759



## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

### APPEAL OF WILLIAM NEVINS Division for Children and Youth Services Docket #91-T-6

July 17, 1991

NOTE: The record in this matter, excluding the Board's decision below, is sealed by order of the Board.

The New Hampshire Personnel Appeals Board (Johnson and Bennett) met May 8, May 15, and May 29, 1991, to hear the appeal of William Nevins, a former Child Protective Service Worker II for the Division for Children and Youth Services, Keene District Office. Mr. Nevins was discharged from his employment effective September 21, 1990, on charges of willful insubordination, refusal to accept job assignments, and fighting or attempting to injure others. Mr. Nevins was represented at the hearing by SEA General Counsel Michael C. Reynolds. Paul G. Sanderson, Legal Coordinator for the Division for Children and Youth Services (hereinafter "DCYS") appeared on behalf of DCYS. Chairman McNicholas participated in the first day of hearing. On May 15, 1990, however, he was unexpectedly subpoenaed to court, and the parties agreed to have the matter heard by a quorum of the Board rather than the full three-member panel. Neither party objected to those members present hearing the appeal.

Before receiving evidence from the parties on the merits of Mr. Nevins' appeal, the Board heard oral argument on four separate motions.

#### 1) DCYS Motion to Dismiss:

Attorney Sanderson argued that the appellant's notice of appeal was deficient in that it failed to allege any specific facts in dispute. The only ground provided by the appellant in support of his request for a hearing was his claim that "...the charges [against Mr. Nevins] are essentially false...". Attorney Sanderson argued that DCYS had no way of knowing the actual grounds upon which the appellant based his request for reinstatement.

Mr. Reynolds argued that the Board need not give any further consideration to the DCYS Motion to Dismiss, having already decided to schedule the matter for a hearing on the merits.

2) SEA Motion for Summary Judgment:

Attorney Reynolds argued that none of the charges listed in the letter of termination were sufficient to warrant immediate discharge, and that the Board should order Mr. Nevins immediately reinstated. He contended that in order to prove "willful insubordination" or willful "refusal to accept job assignments", the agency would have to address Mr. Nevins' state of mind. He further argued that the agency would not be able to demonstrate even negligent refusal to perform his duties. Attorney Reynolds also suggested that the agency had maintained a "secret file" on Mr. Nevins, and had refused to turn over to the appellant his "complete" personnel file as broadly defined by the Collective Bargaining Agreement, making it impossible for him to prepare an adequate defense against the agency's allegations.

Attorney Sanderson responded that DCYS had turned over to the appellant the contents of his personnel file. He argued that some of the information which the appellant had requested consisted of supervisory notes which were not part of the actual personnel file. He further argued that the charges made by DCYS against the appellant were sufficient to support discharge under both the mandatory and optional dismissal provisions of the Personnel Rules.

3) Joint Motion for Sequestration of Witnesses:

The parties stipulated that in the interest of a full and fair hearing, witnesses for both the agency and the appellant should be sequestered and instructed by the Board not to discuss their testimony with one another.

4) Motion to Close Hearing:

Attorney Sanderson asked that the Board close the hearing to the public in order to protect the identities of juveniles in the care of DCYS whose case files would be discussed during the course of testimony.

Mr. Reynolds responded that the appellant had requested a full public hearing, and noted that in the past the Board had sealed the record and required the witnesses to identify juveniles by their initials only. He argued that the rights of the juveniles in question could be protected without denying Mr. Nevins the public hearing he had requested.

The Board granted the Joint Motion for Sequestration. The Board granted the Motion to Close Hearing in part, ordering that the record be sealed. The Board noted, however, that the decision would not be held under seal, as it would not contain any personally identifying information about youth in the care of DCYS. The Board took both the Motion to Dismiss and the Motion for Summary Judgment under advisement, informing the parties that it would rule on both motions in its written decision on the appeal.

The final preliminary matter raised by the appellant involved his appeal of alleged sexual discrimination, harassment and retaliation which he had filed with the New Hampshire Human Rights Commission. Attorney Reynolds stated that none of those allegations would be raised within the context of the instant appeal, but that there might be some "overlapping facts". Attorney Sanderson recommended that the law of the case stipulate that none of the appellant's allegations of sexual discrimination, harassment or retaliation were relevant to this case.

Mr. Nevins was discharged, without prior warning, for the following offenses:

1. Per 308.03 (2) (e): Willful insubordination  
(Optional Discharge)
2. Per 308.03 (2) (f): Refusal to accept job assignments  
(Optional Discharge)
3. Per 308.03 (1)(d): Fighting or attempting to injure others  
(Mandatory Discharge)

The alleged incidents of both refusal to accept job assignments and willful insubordination are confined to a brief period of time during late August, 1990. In order to determine the validity of those charges, as well as the seriousness of the alleged offenses, the Board must consider them within the context of Mr. Nevins' employment with DCYS, his position responsibilities, and his relationship with supervisory staff at the Keene District Office.

The appellant testified he was originally employed at the Keene District Office in 1983, as a social worker in the area of foster home placements. In 1987, he moved into the area of family services and, in that same year was invited to transfer to the adoption unit which functioned as a separate District Office located in the central offices of Health and Human Services in Concord. The unit was then physically relocated to Manchester. At that time, the appellant reported directly to Kathy Atkins, the Adoption Specialist, who in turn reported directly to the Director of DCYS.

On August 15, 1989, as part of the reorganization of the Division for children and Youth Services, adoption services were regionalized and the adoption unit was disbanded. Adoption unit employees were assigned to various DCYS District Office locations statewide. Nevins testified that he, Atkins and the remainder of the adoption workers generally disapproved of decentralizing adoption services, and saw no reason to disband the unit.

When the central adoption unit was abolished, Nevins was physically transferred to Keene, headquarters for the Western Region. Nevins said he received less than a "warm welcome" upon his arrival in Keene. He described the office as crowded, and said his assigned office space was "an airless closet" known as the "toy room".

After the transfer, instead of reporting directly to Atkins and the adoption committee, Nevins reported to Sheila Foote, the Area Unit Supervisor. The appellant testified that Foote was "an awful supervisor". He described her as being "very directive". He testified that she "seemed to be very interested in the minute details of time", and "spent a lot of time talking about where I was." He described their working relationship as tense and uncomfortable, in contrast to his previous circumstances where he said he was able to work "as a professional" in a "relaxed atmosphere".

After Foote resigned from her position at DCYS, Brad Bauer was made the acting supervisor in the Keene D.O. Nevins described Bauer as "respectful, guiding and responsive." He indicated that Bauer had little knowledge of adoptions and while "he didn't defer to [Nevins] he did ask [for the appellant's] opinion" on matters relating to adoption. Nevins also stated, "I don't recall any discussions with him about where I'd been for any particular 15 minutes" or any requirements that he produce "detailed written reports."

Because of agency concerns about the intake function at Keene, Bauer was directed to concentrate on matters related to intake during his temporary supervisory assignment. According to testimony from Bauer and his supervisor Carolyn DeBell, Bauer's supervision of Nevins was limited to approving leave and answering routine questions. Any substantive matters relating to adoptions were referred to Atkins, the appellant's former supervisor.

In July, 1990, Mary Joanna Forbes was appointed the Area Unit Supervisor in the Keene District Office. Nevins had applied for promotion to that position but was not selected. Consequently, Forbes was made the appellant's immediate supervisor.

Nevins testified that during their first supervisory meeting, he had expected Ms. Forbes to "indulge in some small talk and then discuss professional backgrounds". He said that instead she went into a very detailed and personal

discussion of her background, including the fact that she had grown up in a large family where many of the children had been adopted. Nevins said her decription of her personal history "...really didn't strike [him] as qualifications to deal with placements and adoptions". When asked to describe how he felt about Forbes as a supervisor, he testified that things "...changed as we went along," including requirements she added such as signing in and signing out, and telling him to post his calendar on the door to his office, a practice to which he objected because "social workers change appointments frequently". He said, "I had trouble keeping up with the many places I had to post ny whereabouts."

The appellant's resentment of such close scrutiny of his appointments and his appearances in the office, coupled with the events of late August, 1990, seem to have culminated in his outburst on August 30th, and the confrontation DCYS cited as grounds for immediate, mandatory discharge. While that incident did not rise to the level of fighting, which will be addressed below, Nevins' violent reaction to having been denied a request for leave is indicative of his response to supervision in general, and to management of his time in particular. That behavior also has bearing upon the propriety of his discharge under the optional discharge provisions of the Rules on charges of willful insubordination and refusal to accept job assignments.

The appellant claimed he had committed no offenses, and that any failure to comply with the directives of his supervisors was a product of his not understanding the assignment or what was expected of him. The record, however, reveals that the appellant resented close supervision, particularly by anyone he believed to be less experienced than he in the area of adoption. Although not presented as grounds for discharge, certain events during September of 1990, offer further insight into the credibility of the appellant's claim that he did not understand the assignment he refused, or the directive he disobeyed which lead to his discharge. Inasmuch as those events bear heavily on the Board's assessment of the appellant's willfulness in failing to complete job assignments or disregarding directions, the Board believes they bear some discussion before addressing the actual incidents cited in the letter of discharge.

Prior to Forbes' appointment, as early as May, 1990, concerns were raised about the size of Mr. Nevins' caseload. When Ms. Forbes was hired in July, 1990, Mr. Nevins reported that he had approximately 50 adoption cases pending. Ms. Forbes contacted Cathy Atkins for assistance in sorting out the cases and advice on how to accurately assess the status of each pending adoption, culminating in a decision by Ms. Forbes to have Nevins chart the progress of each open case. By August, 1990, it was determined that Nevins' actual active caseload involved 25 to 30, rather than 50 adoption cases.

APPEAL OF WILLIAM NEVINS

Docket #91-T-6  
page 6

On September 10, 1990, Ms. Forbes and Mr. Nevins met to develop a "caseload overview" form designed to track the progress of each adoption case. The form was discussed again during a supervisory session on September 18, 1990, at which time she asked Nevins to start filling in the form for each case in his caseload. Forbes' attached note indicated that some revisions were a result of suggestions made by Adoption Specialist Cathy Atkins.

On September 18, 1990, the appellant wrote Ms. Forbes a memo dated September 18, 1990, subject "Your Caseload Overview form", which stated:

"I received your Caseload Overview form today, 09/18/90. In our supervision meeting ending at 2:15 pm. today you directed me to being [sic] filling in this form today. Because my remaining work-time today has been occupied with efforts, per your other instructions, to locate a Family Service Aide, to transport [child] and responding to phone calls, I have been unable today to do more than read over your Caseload Overview form itself. I will begin researching the files and filling in the boxes on your form at the next available opportunity. I will next be at the Keene District Office on 09/20/90."

The following day, September 19, 1990, the appellant then wrote another memo to Ms. Forbes, informing her that he could not proceed with the assignment:

"...I have read over the chart and your attached notes. I do not understand this chart and, specifically, I do not understand the meaning of several of the numbered categories along the righthand border of the grid, and I do not understand what markings or notations or other information you wish me to write in the grid boxes. Therefore, I cannot proceed to complete this chart."

"Although I do not understand this chart, the chart does appear to be a supervisory tool. I respectfully suggest that it would be more appropriate for yourself, as the Supervisor, to review the case files and complete this chart. I do not feel that this charting is an appropriate function for a non-supervisory employee such as myself.

"Please advise."

Ms. Forbes, by memo dated September 20, 1990, informed Mr. Nevins she was confused by claim not of not understanding the form. She wrote, "...You and I worked on it in supervision on 9/10/90. And during supervision on 9/18/90 we discussed how to fill it out. You stated that you understood. You may refer to my memo of 9/13/90 regarding instructions to complete the chart. Basically find the document and record the date it was issued onto the chart. What specifically do you not understand. T.P.R., Record, Transfere [sic], case plan, etc. I will be happy to meet w/you so you can get started. I have

given you this assignment and would like you to work on it today 9/20/90 and on 9/21/90. 9/21/90 your schedule hasn't any apts."

That same day, Mr. Nevins again wrote to Ms. Forbes:

"Response to your 09/19 memo. To clarify, after reading over the Case Review Chart after our last supervision, I found I did not understand the meanings of the following numbered categories, and the expected response:

2. (Transfer from where to where?)
3. This review is on-going. Do you mean the date of starting to review the record?
4. I'm not familiar with this form [case plan form 519] as applied to Adoption case. It has not been used in adoption cases, to my knowledge.
9. I do not understand the term, "counseling."
10. I do not understand what's required here [other therapies]
13. I do not understand what response is expected in the tiny check box. (YES or NO, perhaps?)
15. Share what with foster family?

"I have posted the chart on my door, per your instruction. I have begun work on this chart assignment. I do have appointments today, 9/20, as noted on sign-out sheet and schedule calendar."

The Board found the above exchange to be fairly typical of Mr. Nevins' response to directions from his supervisor. Clearly he was unhappy about being asked to complete a chart he believed to be a "supervisory tool". He went so far as to suggest that Ms. Forbes should complete the assignment herself, informing her of his belief that "...it would be more appropriate for [Ms. Forbes], as the Supervisor, to review the case files and complete this chart".

The Board found the chart to be almost self-explanatory. In consideration of the fact Mr. Nevins and Ms. Atkins worked on creation of the form, that the form was discussed in supervisory sessions, and that written clarification was provided to the appellant, the Board believes Mr. Nevins' "misunderstanding" of the task is more appropriately classified as a conscious attempt to avoid the assignment altogether, or to delay its completion, thereby constituting a willful refusal to accept a job assignment. The Board believes the appellant demonstrated the same attitude in both failing to complete the reports required of him for presentation to Judge Cloutier, and in leaving the Keene District Office after having been specifically instructed to remain to meet with Ms. Forbes.

Per 308.03 (2) (f) Refusal to accept job assignments  
Per 308.03 (2) (e) Willful insubordination

Per 308.03(2) of the Rules of the Division of Personnel provides that:

"In cases such as, but not necessarily limited to the following, the seriousness of the violation may vary. Therefore, in some instances immediate discharge without warning may be warranted, while in other cases one written warning prior to discharge may be indicated. Repetition of any of the following offenses after one written warning has been given makes the discharge of the offender mandatory."

With regard to the charges that Mr. Nevins committed the offenses of willful insubordination and refusing to accept job assignments, the Board found sufficient evidence of these offenses to support the appellant's discharge without prior warning under the optional discharge provisions of Per 308.03(2). As such, the Board voted to uphold Mr. Nevins' discharge from his position of Child Protective Service Worker.

On July 13, 1990, the appellant had written to Cathy Atkins of the Adoption Committee and M. J. Forbes, Regional Supervisor, informing them that on July 2nd, a case had been transferred to Adoption from the Nashua District Office. He indicated that the foster parents did not wish to adopt, and the case would therefore be placed on a priority over others for assessment of adoptive needs because both the Guardian Ad Litem and Judge Cloutier had expressed their wish for an early adoption. He asked that the Adoption Committee schedule the case for presentation in September or October.

On August 22, 1990, a review hearing was held in probate court on that case. As a result of that hearing, and because of some of the information offered by the appellant to the court during that hearing, the appellant was directed to appear with his supervisor and the Area Administrator before Judge Cloutier on August 29, 1990, to address what appeared to be a delay in the handling of that case, and to answer the court's concerns arising from representations made by the appellant at the August 22nd hearing about DCYS policies on pre-adoption assessments.

On August 27, 1990, the appellant was directed by his supervisor, M. J. Forbes, to prepare an analysis of the agency's progress on that case. Specifically, the appellant was directed by his supervisor to prepare a written update on casework completed, including termination of parental rights and adoptive studies under consideration by the Division. The appellant was also instructed to provide a written summary of services provided and/or arranged for the child, support services provided or recommended for the foster parents, a timeline for the court to review which would explain how long it takes to research medical histories, and a clear case plan.

On August 28, 1990, Ms. Forbes asked the appellant how he was progressing in preparing the report, informing him that she needed to relay that information to the acting area administrator in the afternoon. The appellant told her he was working on the report and would have the information later that day. By early afternoon, the report had not been produced. Ms. Forbes, who knew she would be involved in interviews during the afternoon, left word with the clerical staff that she needed to speak with the appellant before he left the office for the day. She asked Ms. Petrin and Ms. Shea to relay the message to him, and to instruct him to remain in the office until Ms. Forbes was free to discuss the report with him. Ms. Petrin gave Mr. Nevins the message as instructed, and repeated the message before Mr. Nevins left the office for the day.

In spite of having received explicit instructions to the contrary, the appellant left the District Office, leaving his supervisor a note which read:

"M. J. -  
Must leave D.O. See you at Nash Prob. Court, 1 PM Wed.  
Please bring case plan on [ name ].  
I have court report on [ name ] and [ name ].

Bill<sup>w</sup>

When asked if he had left the office after having been directed to remain by the staff, he testified "I believed she had what she needed ... The secretary didn't know where she was or when, if ever, I could meet with her. ... I didn't understand I was being given a clear direction to remain."

That afternoon, his supervisor reached him by telephone and reiterated her request for the written report. He asked if she really wanted it, and she affirmed that she did. The information which the appellant had prepared for presentation to the court on August 29, 1990, did not contain an update on the work completed to date (i.e., date of termination of parental rights, adoptive studies being considered), the timeline for medical history, the dates on which various evaluations had or would be performed, or a clear case plan.

In describing the types of information Ms. Forbes had required him to provide, Mr. Nevins said he "wasn't clear if she understood that we had already provided the court report... I thought the court report was the case plan..." Later in his testimony, however, Nevins referred to the two sample case plan formats Forbes had offered him for use in preparing his report. If, in fact, Nevins believed the court report was the "clear case plan" which Ms. Forbes had requested, why would he bother to waste his time combining one document he described as "defunct" with another he considered an unapproved draft if he really believed the completed document had already been submitted to the court.

Prior to the scheduled hearing, the appellant communicated to **Ms** Forbes his opinion that the child was "delayed" and had severe "emotional problems". **Ms** Forbes specifically instructed him not to make such a representation to the court as there were no professional evaluations to support that opinion. In spite of receiving specific instructions to the contrary, the appellant did discuss the child's "emotional problems" as a cause for the child's recent seizures. In her memo of August 30, 1990 to the appellant (DCYS 2, page 3) **Ms** Forbes indicated her belief that the appellant's discussion of same "...appeared to be D.C.Y.S. justification for asking the court to order an evaluation and appeared unnecessary to me."

The Board found that the appellant's willful disregard for the instructions of his supervisor, and his failure to produce the reports as he had been directed both verbally and in writing constitute refusal to accept job assignments. **Mr** Nevins was instructed to produce or procure specific documents for presentation in an adoption case. Whether or not he believed those documents to be necessary or even appropriate has no bearing upon the fact that his supervisor directed him to prepare a report which contained specific components. The report which the appellant produced did not contain all the components, despite explicit instructions on what was to be included.

The Board further found that the appellant's departure from the Keene District Office on August 28, 1990, in spite of specific instructions to remain in the office until his supervisor could meet with him, constitutes willful insubordination. The appellant knew that he had been directed not to leave the office until he had met with **Ms** Forbes.

The appellant argued that in order to sustain a discharge for either refusing to accept job assignments or willful insubordination, the Board must consider whether or not **Mr** Nevins' actions were willful. Counsel for the appellant argued that, "Willful insubordination is when an employee is told to do something and the employee stands there and says no." The Board, however, is not of the opinion that a professional employee, when given specific instructions on how to proceed with a task needs to "stand there and say no" to commit the offense of willful insubordination or refusal to accept job assignments.

There are a variety of ways one can say "no", including a repeated insistence that one does not understand what is expected of him. Without any formal training in adoption or case management, the Board easily understood the instructions **Ms** Forbes had given **Mr** Nevins regarding the August 29th court appearance. **Mr** Nevins was given a list of documents and reports to produce or procure which he failed to supply as required. Similarly, **Mr** Nevins was specifically instructed to remain at the Keene District Office until **Ms** Forbes could meet with him. Those instructions were clear, unequivocal, and not easily misunderstood. **Mr** Nevins left anyway, offering no excuse for his departure. The Board can only consider these actions to be willful.

Per 308.03(2) of the Rules of the Division of Personnel provides for immediate discharge when the seriousness of the offense warrants discharge without prior warning. In the instant appeal, Mr. Nevins was aware that the hearing on August 29, 1990, represented Ms. Forbes' first appearance as an employee of the Division for Children and Youth Services before the probate court. He was also aware that the case being considered had drawn the attention of the court in a sufficiently negative fashion that the court had required that him to appear with both his immediate supervisor and the area administrator. His failure to produce the report which his supervisor required represents an offense of sufficient magnitude to warrant his immediate discharge.

Similarly, Mr. Nevins' willful disregard of his supervisor's instructions to remain in the office until meeting with her also constitutes a sufficiently serious offense to warrant his discharge. The appellant was aware of his supervisor's directions and simply ignored them, having decided "...she already had what she needed" and claiming he didn't understand he "was being given a clear direction to remain."

Per 308.03 (1) (d) Fighting or attempting to injure others:

In support of its charge that Mr. Nevins had violated Per 308.03(1)(d), and was therefore subject to immediate, mandatory discharge, DCYS argued that on August 30, 1990, after having been refused a request for annual leave, Mr. Nevins "lunged towards [his supervisor, M. J. Forbes], stopping one foot from her face. Mary Forbes stated that [he] screamed at her questioning if there had been policy changes or did she have the right to deny [the annual leave] request. Ms. Forbes states that during the conversation [Mr. Nevins was] physically active, waving [his] arms and lunging towards her. Ms. Forbes states that she felt physically threatened that [he was] abusive by yelling at her." DCYS also claimed that Mr. Nevins had used obscene language in his confrontation with Ms. Forbes.

On all the evidence, the Board found that Mr. Nevins' behavior was indeed threatening and might, under the provisions of civil law, be considered assault. However, in the Board's opinion, the incident did not rise to the level of fighting or attempting to injure others, and therefore was insufficient to warrant his immediate discharge under the mandatory discharge provisions of Per 308.03 (1)(d).

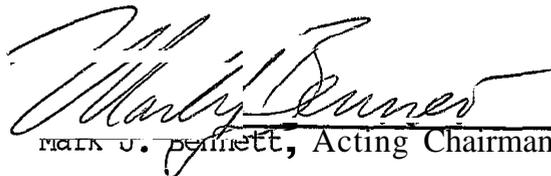
On all the evidence, the Board found that the appellant refused to complete a report for presentation in Nashua Probate Court in accordance with his supervisor's specific and repeated instructions regarding that report. The Board also found that the appellant left his office after repeated instructions to remain until he and his supervisor could meet to review that report. The Board found these to be willful acts constituting grounds for discharge without prior warning as provided in Per 308.03 (2) (b) and (c).

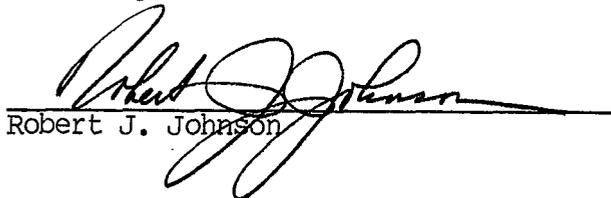
In appeals of disciplinary matters, the appellant bears the burden of proof. The Board was not persuaded that the appellant either misunderstood the nature of the assignments, or the importance of same. Similarly, the Board found the appellant's characterization of the atmosphere in the Keene District Office as hostile or "poisoned", his representation that "Sheila Foote was an awful supervisor", and his assertion that "M. J. Forbes knew nothing about adoption" did not give him license to disregard any directions or instructions he considered inappropriate or unnecessary. The rationale offered by the appellant for his actions failed to persuade the Board that those actions were not willful, or that they were not of such a serious nature as to warrant his discharge.

The appellant also argued that both the optional and mandatory discharge provisions of the Rules allow for immediate discharge. He contended that his discharge came nearly a month after the offenses cited, was not immediate, and therefore must be overturned. On all the evidence, it is clear that DCYS does not allow discharge decisions to be made at the District Office level. The appellant's supervisor lacked the authority to make an "immediate" discharge decision, and could only take the charges up through the chain of command to the level of Director for the Division for Children and Youth Services. It would appear that the decision to discharge the appellant was as "immediate" as that particular bureaucratic structure would allow.

In consideration of the foregoing, the Board voted to deny Mr. Nevins' appeal, finding that the Division for Children and Youth Services appropriately exercised its discretion in discharging the appellant for refusal to accept job assignments and willful insubordination.

THE PERSONNEL APPEALS BOARD

  
MARK J. BENNETT, Acting Chairman

  
Robert J. Johnson

cc: Michael C. Reynolds, SEA General Counsel  
Paul G. Sanderson, DCYS Legal Coordinator  
Virginia A. Vogel, Director of Personnel