

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### APPEAL OF STEPHANIE PLANCHET

December 28, 1988

On Tuesday, November 22, 1988, the Personnel Appeals Board, Commissioners Cushman, Brickett and Platt sitting, heard the termination appeal of Stephanie Planchet. The appellant, who was represented at the hearing by SEA General Counsel Michael Reynolds, was a probationary employee of New Hampshire Hospital at the time of her discharge from a position of Nursing Assistant trainee. Staff Attorney Barbara Maloney represented New Hampshire Hospital (hereinafter "Hospital").

The appellant in her June 24, 1988 hearing request, alleged that the termination was illegal, arbitrary and or/capricious because 1) she was not provided notification 30 days prior to the "relevant date" that she would not receive a permanent appointment and 2) the details of the termination letter addressing the appellant's work performance were inaccurate.

By order of notice dated September 13, 1988, the parties were notified that a hearing on the merits had been scheduled for Tuesday, September 27, 1988 at 2:00 p.m. The appellant, through her representative the State Employees' Association, filed a Motion to Continue by letter to the Board dated September 23, 1988. Having granted the Motion to Continue, the Board, by order dated November 7, 1988, notified the parties that the hearing had been rescheduled for Tuesday, November 22, 1988 at 10:00 a.m.

At the outset of the hearing, Attorney Maloney, on behalf of the Hospital, asked the Board to grant her pending Motion to Dismiss or in the Alternative to Uphold the Termination RE: Stephanie Planchet. The Board voted to hear the appellant's case before ruling on the motion as filed.

The appellant testified on her own behalf. She described her work as a Nursing Assistant trainee in the Thayer ICF, explaining that Thayer Building is an Intermediate Care Facility for geriatric patients. She contended that although she initially had experienced difficulty organizing and prioritizing her work, and completing her assignments on time, she believed her work had met the work standard in the last several months prior to her discharge. She testified that she had been unaware of concerns by her supervisors about the accuracy of blood pressure readings she was taking or recording for the

patients until she was asked to demonstrate her proficiency in taking such readings by her supervisor. She indicated that she was extremely nervous when asked to take a "test" blood pressure reading to insure that those readings were accurate. She argued that because she was nervous, her first reading was incorrect, but that the readings she took were more accurate in subsequent attempts. The appellant concluded that she was meeting if not exceeding the work standard.

Hospital Exhibit A was a copy of the recommendation that the appellant's nine-month probationary period, which was due to expire on March 26, 1988, be extended. The recommendation of Patricia Cutting, Unit Director, stated, "Stephanie does not complete basic assignments without frequent prompting and supervision. However, she was counseled 4 weeks ago regarding this and has shown some improvement. This is Stephanie's ward work experience and she may need more time. She also demonstrates empathy and caring approach toward residents."

Hospital Exhibit B was an attached Performance Appraisal signed by the appellant on January 26, 1988 and by her supervisor(s) on January 28, 1988. Under the heading of dependability, Ms. Planchet's performance was rated acceptable for all but "Completes work consistently" and "Completes job assignments with minimum supervision." These were rated "Marginal" and "Unacceptable" respectively. Under the heading of "Attitude", all the traits were described as "acceptable" with the exception of that which referred to constructive criticism. Here, the appellant's performance was rated as "marginal" and the supervisor's comments stated, "When given feed back regarding her job performance or task completion, Stephanie is vague, does not recall, or disputes the problems being discussed." Again, under Initiative, the supervisor described the appellant as needing to be "attentive to completing basic assignments at this time." The Final Summary reflected the supervisor's evaluation of the appellant's performance as marginal.

On the Performance Appraisal, the appellant commented, "I feel that I have made considerable improvement in the usage of my skills, particularly within the past one - one and a half (1 - 1 1/2) months, and do not feel that the entirety of this evaluation reflects in full, my capabilities. I sign this evaluation with the feeling that improvement is already under way."

Hospital Exhibit C was a January 14, 1988 letter from Shirley Tinker, R.N., 3-11 Nursing Coordinator, Thayer ICF/IMD to the appellant informing her of the results of her six-month competency evaluation. The areas addressed as needing improvement included reviewing assignment sheets at the beginning of each shift and setting priorities for the evening, gathering all necessary equipment prior to initiating a resident's care, completing all assignments consistently without relying on peers to remind her or to complete tasks for her, and completion of ward notes daily. The letter then indicated that the charge nurse would review these areas of concern with the appellant and report to Mrs. Tinker progress in each of those areas in one month.

The appellant was notified by letter dated January 20, 1988 from Mrs. Tinker (Hospital Exhibit D) that her probationary period was being extended for an additional three months. That letter stated, "As we discussed at the time of your evaluation, my belief is that you possess some of the traits and abilities that are necessary for this position (i.e., kindness, communication skills, etc.) however, your organizational skills and abilities to complete basic tasks without prompting is unacceptable at this time." Extension of the appellant's probationary period was approved by the Director of Personnel on February 8, 1988 (Hospital Exhibit E).

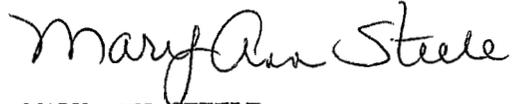
The appellant was discharged from employment by letter dated June 10, 1988 which cited as the reasons for discharge inability to complete all assignments consistently and without requiring assistance from peers, inability to organize and prioritize work assignments, spending a disproportionate amount of time with individual residents and thus not completing required tasks by the end of the shift, and the inability to take accurate blood pressures.

The Board, based upon the record before it, voted to deny the Motion to Dismiss, but to grant the Hospital's request to uphold the termination of Stephanie Planchet. The Board found that the Hospital's decision to discharge Ms. Planchet was neither arbitrary, illegal, nor capricious. The Board ruled that New Hampshire Hospital had the authority to terminate Ms. Planchet's employment at any time prior to completion of the probationary period for inability to meet the work standard and that the employee was provided adequate counseling and written notification concerning her performance as a Nursing Assistant trainee.

The appellant argued that failure of the agency to provide written notification 30 days prior to completion of the extended probationary period of recommendation for permanent appointment (See Per 302.23(d)) "[clearly implies] that the employee becomes a permanent employee, with protections such as three written warnings for the same 'offense' ordinarily required before termination." The Board found this reasoning incompatible with the provisions of Per 302.23 (c) that "At any time during the probationary period an appointing authority may remove an employee whose performance does not meet the required work standard, provided that he shall report such removals to the director and to the employee." Further, the Board found that notification prior to completion of the initial 9-month probationary period that the appellant's work did not meet the work standard and was unacceptable satisfied the requirements of Per 302.03(d).

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FOR THE PERSONNEL APPEALS BOARD



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Executive Secretary

cc: Michael C. Reynolds, SEA General Counsel

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New Hampshire Hospital

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