

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
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## ***APPEAL OF ROBIN PREVE***

**Docket #01-T-10**

**Governor's Office of Emergency Management**

November 14, 2001

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The New Hampshire Personnel Appeals Board (Wood, Rule and Johnson) met on Wednesday June 13, 2001 and on July 18, 2001, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board) to hear the appeal of Robin Preve, a former employee of the Office of Emergency Management. Ms. Preve, who was represented at the hearing by Michael Reynolds, SEA General Counsel, was appealing her termination from employment effective January 10, 2001, on charges that she violated Per 1001.08 (a)(3)(c) by deliberately, willfully and consistently falsifying her pay records in an attempt to be compensated for work that she did not perform. Senior Assistant Attorney General Nancy Smith appeared on behalf of the State.

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

### State's Exhibits:

1. Preve Bi-weekly Time Report 12/1/00 – 12/14/00
2. Approval of Compensatory Overtime 12/1/00 – 12/14/00
3. Preve Bi-Weekly Time Report 12/15/00 – 12/28/00
4. Approval of Compensatory Overtime 12/15/00 – 12/28/00
5. Daily Sign In Forms – December 2000
6. System Master Access Management Report 12/1/00 – 1/3/01
7. Timesheet Audit – Robin Preve 12/1/00 – 12/28/00

8. Memorandum, 1/5/01 from Ed Murdough
9. Notes from Preve dated 1/7/01
10. Letter 1/8/01 by Murdough to Sheehan
11. Letter 1/9/01 by Sheehan to Mmdough
12. Letter 1/10/01 by Fogg to Preve
13. Personnel Rules (Per 1001.08)
14. Blank, "Approval of Compensatory Time/Overtime – Authorization" form
15. Preve handwritten notes of hours worked 12/1/01 – 12/13/01

#### Appellant's Exhibits

- A. Authorization and Approval of Compensatory Time/Overtime for the pay period 12/1/2000 - 12/14/2000 and employee sign-in sheets for Monday 12/11/00

The following persons also gave sworn testimony:

Edward R. Murdough, Deputy Director of Office of Emergency Management

Mike Nawoj, Chief of Technological Hazards

Cynthia Richard, Clerk IV

Wallene J. Foote, Program Assistant

Robin Lynn Preve, Appellant

#### Preliminary Rulings:

1. The Board granted the appellant's motion to sequester the witnesses.
2. The Board denied the appellant's request for the Board to reconsider its decision denying a portion of the Motion for Discovery. The Board affirmed its June 8, 2000, decision in which it found that the appellant had not demonstrated the relevance of departmental e-mail or timesheets to the underlying charge that the appellant had intentionally falsified information about her own overtime. Mr. Reynolds asked the Board to note his objection.

#### Position of the Parties:

The State argued that falsification of requests for overtime compensation constitutes an offense under Per 1001.08 of the Rules of the Division of Personnel for which an employee may be

dismissed without prior warning. The State argued that during the month of December 2001, Ms. Preve submitted requests for overtime compensation for hours that she claimed she had not worked, thereby willfully falsifying payroll records in order to obtain compensation to which she was not entitled. The State argued that before deciding to terminate Ms. Preve's employment, the appointing authority consulted with the Director of Personnel and attempted to meet with the appellant to discuss the evidence supporting her termination. When Ms. Preve then absented herself on sick leave, the State argued, the agency forwarded the evidence to Ms. Preve's attorney. Finally, the State argued, after considering the appellant's response to the allegations and the evidence, the appointing authority determined that there was sufficient evidence to warrant a finding that Ms. Preve had violated Per 1001.08 of the Rules and was therefore subject to immediate termination.

The appellant argued that while there may have been some errors or some discrepancies in her reporting of overtime worked, the evidence would not support the State's allegations that she had "stolen" time by falsifying either her timesheets or her overtime requests. The appellant argued that in reporting her overtime, she had done only what she had been told to do. By comparison, she argued, there were others in the agency who actually "stole" time from the agency by the manner in which they spent their workdays, engaging in behavior that was "grossly worse than what she allegedly did."

The appellant argued that there had been substantial irregularities in the management of employees within the agency, and that no one in the agency wanted the Board or the public to get a true picture of how employees within the agency were operating. The appellant argued that above and beyond their reaction to the sexual harassment claim that she had made,<sup>1</sup> her coworkers saw her as a troublemaker and resented the fact that she was "rocking their boat." The appellant argued that her termination was retaliatory in nature and was fundamentally unfair.

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<sup>1</sup> Ms. Preve had filed a sex harassment complaint that was investigated, and that was later associated with a complaint or appeal to another agency. Neither the substance of that complaint, the result of the investigation, nor any allegations associated with the sexual harassment claim were presented to or considered by this Board.

## Findings of Fact

1. At the time of her termination from employment on January 10,2001, Ms. Preve was employed as a Clerk IV in the Technical Hazards section of the Office of Emergency Management.
2. Although Ms. Preve may have been eligible from time to time to earn compensatory time for working authorized overtime assignments, her work assignments normally did not involve projects for which cash payment of overtime would have been available.
3. The Office of Emergency Management is required to update the Radiological Emergency Response Plan ("the Plan") each year.
4. As part of the Plan update process, support staff may be allowed to earn overtime by "red-lining" or performing word processing tasks required to make the approved changes to the Plan documents.
5. Before working any overtime hours, support personnel are required to complete a form titled "Approval of Compensatory Time/Overtime" requesting approval to work overtime, and they must have the form signed by a program manager who is authorized to approve the expenditure of funds for overtime on the project.
6. Ms. Preve received approval from Michael Nawoj, program manager for the Plan update, to work overtime during bi-weekly pay periods beginning on December 1,2000 and December 15,2000.
7. Cynthia Richard, the Program Assistant responsible for coordinating word processing on the Plan update, informed Mr. Nawoj that it appeared that Ms. Preve might be reporting overtime hours that she did not actually work.
8. Mr. Nawoj advised Ms. Wing, the Business Administrator for the Office of Emergency Management, advised Mr. Murdough of discrepancies in Ms. Preve's report of overtime that they considered evidence that Ms. Preve had falsified her timesheets and requests for overtime.
9. After reviewing Ms. Preve's overtime reports in comparison to the daily sign-in sheets and security access logs, Mr. Murdough informed Ms. Preve that he and Director Fogg wanted to meet with her on Monday, January 8,2001, to discuss discrepancies in her timesheets and overtime reports.

10. Mr. Murdough gave Ms. Preve a memo dated January 5, 2001, that read, "Director Fogg and I wish to meet with you at 10:00 AM on Monday, January 8, 2001. The purpose of this meeting is to discuss a situation involving your work performance. The situation has nothing to do with the ongoing investigation into your complaint of sexual harassment. You should be aware that this is a serious matter that may lead to disciplinary action. You are entitled to have representation present during the meeting."
11. Mr. Mmdougli refused to discuss the specific allegations with Ms. Preve prior to the meeting scheduled for Monday, January 8, 2001, as her attorney, Mr. Sheehan, had requested that the Agency not ask her any questions without her attorney present.
12. Mr. Murdough found Ms. Preve to be very calm when they spoke on Friday, January 5, 2001, so he was surprised to learn that later in the day, she had become upset and had left the office.
13. Ms. Richard testified that Ms. Preve was upset and shaking when she came to Ms. Richard's office that Friday afternoon, and that she said, "I'm leaving. I'm not coming back here. I'm going out on Workers Comp."
14. Wallene Foote reported that Ms. Preve had come into the Office of Emergency Management on Sunday, January 7, 2001, and had cleaned out her office.
15. When Mr. Nawoj and Ms. Wing arrived for work on January 8, 2001, they found notes that Ms. Preve had left over the weekend indicating that she was ill.
16. Ms. Preve also left a note from Family Physicians of Penacook dated January 5, 2001, that stated, "Robin Preve will miss work until 1/22/01 due to medical illness."
17. Ms. Preve made no attempt to postpone or reschedule the meeting.
18. On January 8, 2001, Mr. Murdough sent a letter to the appellant's attorney requesting him to address the allegations that Ms. Preve had falsified her overtime requests.
19. Attorney Sheehan responded by letter dated January 9, 2001, that the appellant normally left work at 4:00 p.m., and that she normally would work overtime on weekends or during the work week prior to 8:00 a.m. or during her lunch break.
20. Ms. Preve never received authorization to work through her lunch period.
21. If Ms. Preve had been allowed to work through her lunches, her claims for overtime exceeded the length of her lunch period in some instances by 30 minutes or more.

22. The sign-in sheets and electronic access records do not support Ms. Preve's claim that she worked a sufficient number of hours to justify the overtime compensation that she requested.
23. On January 10, 2001, Mr. Murdough notified Ms. Preve by mail that he had decided to terminate her employment based on his belief that the appellant "deliberately, willfully, and consistently falsified pay records in an attempt to be compensated for work that [she] did not perform."
24. Ms. Preve submitted requests for overtime compensation knowing that they were inaccurate, and that she was requesting compensation for time that she did not actually work.

### Rulings of Law

- A. "In disciplinary appeals, including termination, disciplinary demotion, suspension without pay, withholding of an employee's annual increment or issuance of a written warning, the board shall determine if the appellant proves by a preponderance of the evidence that:
  - (1) The disciplinary action was unlawful;
  - (2) The appointing authority violated the rules of the division of personnel by imposing the disciplinary action under appeal;
  - (3) The disciplinary action was unwarranted by the alleged conduct or failure to meet the work standard in light of the facts in evidence; or
  - (4) The disciplinary action was unjust in light of the facts in evidence." [Per-A 207.12 (b), Rules of the Personnel Appeals Board].
- B. "Dismissal shall be considered the most severe form of discipline. An appointing authority shall be authorized to take the most severe form of discipline by immediately dismissing an employee without warning for offenses such as... (8) Willful falsification of agency records including, but not limited to... c. Requests for payment of overtime or compensatory time..." [Per 1001.08 (a)(8)c, Rules of the Division of Personnel];
- C. "No appointing authority shall dismiss a classified employee under this rule until the appointing authority:
  - (1) Offers to meet with the employee to discuss whatever evidence the appointing authority believes supports the decision to dismiss the employee;

(2) Offers to provide the employee with an opportunity to refute the evidence presented by the appointing authority provided, liowever:

a. An employee's failure to respond to a request for a meeting witi the appointing authority shall not bar the appointing authority from dismissing an employee pursuant to this part.

b. An employee's refusal to meet with tie appointing authority shall not bar the appointing authority from dismissing an employee pursuant to this part; and

(3) Documents in writing the nature and extent of the offense." [Per 1001.08 (c), Rules of the Division of Personnel]

D. "If an appointing authority, having complied with the provisions of Per 1001.08(c), finds that there are sufficient grounds to dismiss an employee, tie appointing authority shall:

(1) Provide a written notice of dismissal, specifying the nature and extent of the offense;

(2) Notify the employee in writing tliat the dismissal may be appealed under the provisions of RSA 21-I:58, within 15 calendar days of the notice of dismissal; and

a. An appeal filed under the provisions of RSA 21-I:58 shall not stay the dismissal decision.

(3) Forward a copy of tie notice of dismissal to the director." [Per 1001.08 (d), Rules of the Division of Personnel]

In light of the length of tie hearing and the volume of information provided, the parties agreed to extending the time for the Board to render its decision beyond tie 45 days.

### Arguments

Ms. Smith argued that the evidence revealed a pattern of inaccurate claims for overtime that the appellant submitted and could not explain. She argued that the appellant claimed to have worltd through lunch periods, but never requested approval to do so, and never reported working through lunch on the overtime requests that slie submitted. Ms. Smith argued that the evidence also would not support the appellant's claim that her supervisor had directed her to misreport the actual times that she had worltd, so that work performed in the afternoon would be reported as worltd performed prior to 8 a.m. Ms. Smith argued tliat tie agency was very mindful of Ms. Preve's sexual harassment complaint and tliat in investigating the possible misreporting of

overtime, the agency had taken steps to avoid any appearance that it was retaliating against the appellant for that claim. She argued that the agency tried to investigate rather than confront, as evidenced by the fact that it had withdrawn a performance evaluation to which Ms. Preve had taken exception. She argued that when finally confronted with the evidence that the appellant had willfully falsified requests for overtime, the agency acted appropriately in scheduling a meeting with Ms. Preve to review evidence supporting her dismissal.

Ms. Smith argued that once the appellant understood the nature of the meeting that the agency had scheduled to review the allegations and the evidence, Ms. Preve absented herself and made herself unavailable for that meeting. She noted that the appellant was able to meet with her attorney, and was permitted, through his office, to respond to the specific allegations. She argued that Attorney Sheehan failed to offer a plausible explanation for the number and type of discrepancies in the appellant's requests for overtime. Therefore, she argued, the agency was authorized to dismiss the appellant for violation of Per 1001.08 of the Rules of the Division of Personnel for willful falsification of agency records.

Mr. Reynolds argued that before an agency can dismiss an employee, the agency must offer to meet with the employee and allow the employee an opportunity to refute the evidence supporting dismissal. He argued that before the meeting took place, the appellant submitted a request for sick leave along with a physician's note supporting the leave request. He argued that the agency's failure to postpone the meeting was evidence of bad faith on the agency's part, and evidence of the agency's failure to comply with the requirements of Per 1001.08 (c).

Mr. Reynolds argued that although the appellant's timesheets were "somewhat inaccurate," they did not offer evidence of any attempt by the appellant to misrepresent the hours that she worked or receive compensation for work she did not perform. He noted that the appellant had received good performance evaluations and had no warnings in her personnel file. He argued that the appellant did not commit an offense sufficient to warrant her termination from employment and that the termination was unlawful, unjust, and in violation of the Rules of the Division of Personnel. Therefore, he argued, the appellant was entitled to reinstatement with back pay and benefits.

The Board's analysis of the allegations and the evidence is limited somewhat by the lack of evidence surrounding the appellant's underlying claim of animosity toward her on the part of the agency as a result of an earlier claim of sexual harassment. The parties offered no evidence with respect to the harassment claim that the appellant had filed prior to her termination from employment. The Board acknowledges that the investigation to which the parties referred during the course of the hearing, and any action taken by the State or by the appellant as a result of that investigation, could have had a significant impact on the relationship between the parties. Apart from the parties' representation that the appellant had at some time filed a complaint of sexual harassment and had filed a subsequent complaint with the Human Rights Commission, the Board received no evidence concerning the investigation or the complaint. Therefore, the Board found insufficient credible evidence to support the appellant's claim that her termination was made in bad faith or was an act of retaliation in reaction to her sexual harassment complaint.

The Board's analysis is also limited by the fact that the agency withdrew a performance evaluation that it had prepared and had reviewed with the appellant prior to her termination. By withdrawing rather than discussing the evaluation, the agency deprived both parties of an opportunity to improve communications. The agency also demonstrated that there are a number of supervisory issues that it needs to address. The Board appreciates the agency's interest in avoiding a claim of retaliation that might have resulted from an unfavorable evaluation of the appellant's performance. However, if the performance evaluation was an honest, accurate representation of the appellant's work and her attitude in the work place, it might have helped the appellant better understand the agency's concerns. It also might have provided evidence for the Board to consider concerning the relationship between the parties, evidence that the Board might have used in weighing the agency's allegations against Ms. Preve.

#### Decision and Order

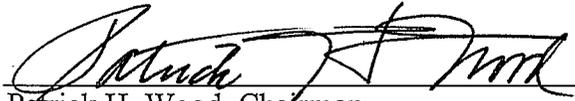
The appellant admits that the timesheets that she submitted for the period of 12/1/00 – 12/28/00 did not reflect the actual hours worked or the overtime compensation to which she may have been entitled. Ms. Preve's claim that she submitted false records because she was directed to do

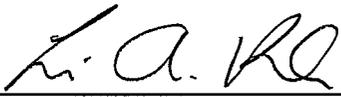
so by her supervisor is unpersuasive. As the evidence reflects, Ms. Preve frequently found fault with management of the agency. She was particularly critical of the manner in which some employees of the agency were allowed to use their leave or spend their time during working hours. Ms. Preve also was very much aware of the problems in her relationship with other staff in the agency and imagined that they would gladly be rid of her. She believed that they were all angry with her for "rocking the boat," and had even threatened, at one point, to tape record any of the conversations that she had with fellow staff members. Given those circumstances, it seems very unlikely that the appellant would make a legitimate claim for overtime by misreporting the hours that she worked simply because her supervisor told her to do so. That position is also inconsistent with Attorney Sheehan's claim that errors in the appellant's timesheets were likely due to the fact that she failed to keep records contemporaneously of the overtime that she worked. On the totality of the evidence, the Board found it more reasonable to believe that the appellant falsified requests for overtime, exaggerating the number of hours she actually worked.

The Board did not find evidence of bad faith in the agency's decision to dismiss the appellant without rescheduling the January 8, 2001 meeting. The agency met its obligation of providing Ms. Preve with an opportunity to meet and review the allegations and the evidence. When Ms. Preve failed to report for work and submitted a request for sick leave, the agency forwarded its description of the allegations and evidence to Ms. Preve's attorney. The agency reviewed Attorney Sheehan's response, offered on the appellant's behalf, and found the response unpersuasive. The agency then issued a written notice of dismissal to the appellant. The Board found that the agency complied with the requirements of Per 1001.08 (c) and was authorized, therefore, to dismiss the appellant in accordance with the provisions of Per 1001.08 (d).

The Board found that when Ms. Preve submitted timesheets and requests for overtime compensation for the period of 12/1/00 through 12/28/00, she knew that the timesheets and overtime requests were inaccurate and included requests for compensation to which she was not entitled. As such, the Board found that Ms. Preve violated Per 1001.08 (a)(8) c of the Rules of the Division of Personnel for willful falsification of agency records. Therefore, the Board voted to DENY the appeal.

THE PERSONNEL APPEALS BOARD

  
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Lisa A. Rule, Commissioner

  
Robert J. Johnson, Commissioner

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