

State of New Hampshire

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

APPEAL OF MICHELLE PRITCHARD
Docket #92-T-10
Response to Appellant's Request for Reconsideration
and
Department of Labor Objection

February 27, 1992

On January 31, 1992, SEA General Counsel Michael Reynolds submitted to the Board a Motion for Reconsideration of the Board's January 22, 1992 decision dismissing Michelle Pritchard's appeal as untimely. In support of that Motion, the appellant disputed the illustration offered by the Board in its January 22, 1992 decision concerning transfers. The appellant argued:

"The Board's discovery of the importance of the principle of equal protection might be convincing were it not for the facts that its 'illustration' is wrong, and that similar 'illustrations' which would support the appellant's position are obvious." [See: Appellant's Motion for Reconsideration, January 31, 1992, page 1]

The appellant argued that the rules define "transfer" as "the change of an employee from one position to another position" and that only when the actual change of position occurred would "an action" occur from which an appeal might arise. The appellant also argued:

"Neither the appointing authority's intent nor its notice (written or otherwise) of that intent can reasonably be construed as the actual 'action' from which an appeal lies. An appointing authority might wish to inform an employee of an intent, at some unspecified date months or even years in the future, to reorganize and lay off that employee. This 'notice' by the Board's reasoning, would be an 'action' requiring an appeal within fifteen days. ..."

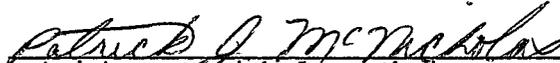
"The very uncertainty inherent in notice of a future event mandates that no appealable separation is an appealable "action" until it has occurred." [See: Appellant's Motion for Reconsideration, January 31, 1992, page 2]

If, in fact, there were any uncertainty inherent in a "future event" as the appellant has argued, the Board found it was a result of actions taken by the appellant and not by the Department of Labor. The Department of Labor intended to separate the appellant from service through a reduction in force on November 21, 1991. At the appellant's request through the Division of Personnel, the effective date of separation was moved forward one week in order to allow the appellant to transfer to another State agency rather than separate completely from service.

Applying the appellant's rationale, the actual separation from service occurred when the appellant elected not to transfer into a position at the Department of Safety. The Board does not construe the appellant's own decision to reject an offer of continued employment to be an action which may give rise to an appeal under the provisions of RSA 21-I:58.

Accordingly, the Board voted to deny the appellant's Motion for Reconsideration and to affirm its decision of January 22, 1992, dismissing Ms. Pritchard's appeal as untimely.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett


Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
Richard M. Flynn, Commissioner, Department of Labor
Michael C. Reynolds, SEA General Counsel

State of New Hampshire

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APPEAL OF MICHELLE PRITCHARD Department of Labor Docket #92-T-10

January 22, 1992

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Rule) met Wednesday, January 8, 1992, to consider the Department of Labor's Motion to Dismiss and the appellant's Objection to that Motion in the above captioned appeal.

In her original notice of appeal dated December 5, 1991, and received by the Board on that date, the appellant stated the following:

"The Department of Labor ostensibly laid off Ms. Pritchard, originally effective November 21, 1991, with the effective date later extended to November 29, 1991."

In its December 24, 1991 Motion to Dismiss, Labor Commissioner Flynn requested that the matter be dismissed arguing that the appeal was untimely. In support of that argument, the Labor Department stated:

"The appeal is untimely pursuant to RSA 21-I:46 and 21-I:58. This appeal should have been filed by November 22, 1991 and Ms. Pritchard received her lay-off notice on November 7, 1991, by a letter dated November 6, 1991. Ms. Pritchard was not given the letter of lay-off on November 6, 1991 because she was out on sick leave."

The Department further argued that the extension of the effective date of Ms. Pritchard's separation from service, and the manner in which that separation was effected should persuade the Board that the appeal is both untimely and without merit. Specifically, the Motion states:

"Ms. Pritchard was notified of her lay-off on November 7, 1991 to take effect November 21, 1991. The date of the official lay-off was extended from November 21, 1991 to November 28, 1991 at the request of Ms. Joann Buntin of the New Hampshire Division of Personnel. This request was made

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because Ms. Bunten had found Ms. Pritchard a position at the New Hampshire Department of Safety which would have started November 29, 1991. By extending the date of lay-off to November 28, 1991 we allowed Ms. Pritchard not to have a break in State service and to continue her benefits without a break.

"Ms. Pritchard chose not to take the position at the Department of Safety, thereby voluntarily terminating her relationship with the State of New Hampshire."

The appellant, in the response filed January 6, 1991, argued that the effective date and not the date of notice constituted the "action" giving rise to the appeal.

RSA 21-I:58 defines the statutory deadline for timely filing of appeals of this nature:

"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."

In the instant appeal the "action" occurred when Labor Commissioner Flynn notified Ms. Pritchard that her position had been identified for layoff, not when Ms. Pritchard ceased working at the Department of Labor, and not when she declined employment with the Department of Safety. Accordingly, the Board voted to grant the Labor Department's Motion to Dismiss, finding that Ms. Pritchard's December 5, 1991 appeal of her notice of lay-off dated November 6, 1991, and received by Ms. Pritchard on November 7, 1991, was untimely.

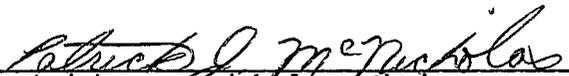
The Board found that the timely filing requirements imposed by RSA 21-I:58 are intended to ensure equal treatment of any individuals appealing an application of the Personnel Rules. The Board offers the following illustration:

Two employees in the same department are notified on the same day that they are to be transferred. The first employee's transfer is to become effective immediately because the position into which that employee is being transferred is currently vacant. The second employee's transfer is not to be effective for 30 days when a second position is to become vacant. If the Board were to construe the "action" in each case to be the date each transfer actually occurs, the first employee would have 15 days from the date of the notice in

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which to file an appeal. The second employee, however, would have a full 45 days (30 days preceding the transfer plus 15 days following the transfer) in which to prepare and file an appeal. Accordingly, the two employees would not have been provided equal protection under the law.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett


Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
Richard M. Flynn, Commissioner, Department of Labor
Michael C. Reynolds, SEA General Counsel