

state of New Hampshire



PERSONNEL APPEALS BOARD

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

APPEAL OF LORRAINE SEVIGNY December 28, 1988

On Tuesday, December 13, 1988, the New Hampshire Personnel Appeals Board, Commissioners Brickett, Cushman and Platt sitting, heard the termination appeal of Lorraine Sevigny, a former employee of Laconia Developmental Services (hereinafter "the agency"). The appellant, who was represented by SEA General Counsel Michael Reynolds, requested a hearing before the Board to appeal her discharge for refusal to work mandated overtime. The letter of appeal dated November 7, 1988, alleged that her October 25, 1988 notice of discharge violated Laconia Developmental Services' policy for mandating overtime hours.

At the hearing, Martha Pyle Farrell of the Attorney General's Office requested the Board's permission to appear on behalf of the agency. The Board denied her request, ruling that the agency had not shown good cause why Ms. Farrell had not timely filed an appearance with the Board within five days of the hearing date as required by the Board's procedural rules. Human Resource Coordinator Lisa Currier represented Laconia.

After receiving exhibits filed by the agency and testimony from both the agency and the appellant, the Board made the following findings. The October 25, 1988 letter of termination from Harold Kelleher, Administrator for the South Campus of Laconia Developmental Services, alleged that Ms. Sevigny had refused to work mandated overtime on four separate occasions. Such refusal had resulted in issuance of a verbal warning on July 11, 1988. On September 2, 1988, the appellant had received a written warning for refusal to work overtime on August 30, 1988. That letter informed the appellant that another incidence or refusal to work mandated overtime would result in her discharge from employment. On October 22, 1988, the appellant was mandated to work overtime in Dube ICF, and refused to do so. She was formally notified of her termination under the Optional Discharge provision of Per 308.03 (2).

Ms. Sevigny had been out of work because of an injury and when returning had informed her supervisor Ms. Hughes, Living Unit Coordinator in Dube ICF, that her physician had recommended she not work more than 40 hours a week. At that point, Ms. Hughes had advised the appellant to get a written note from the physician and suggested that with a physician's note, the appellant might not be mandated to work overtime. Ms. Hughes testified that the other employees of the unit were aware of difficulties Ms. Sevigny had with working overtime and tried to provide her the opportunity to volunteer for shorter overtime assignments whenever possible to avoid mandated overtime. Ms. Sevigny had never worked overtime when ordered to do so, however.

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The agency, in its initial submissions to the Board, had included a May 27, 1988 memo from Joyce Slayton to all Facility Administrators and Living Unit Coordinators concerning efforts to recruit and hire staff at the direct care level, and the on-going efforts between the agency and the State Employees' Association to arrive at the most equitable solution to the problem of mandating overtime. On July 8, 1988, in a memo to all staff in King and Dube ICF, Administrator Harold Kelleher notified employees of the procedures which would be used to determine in what order employees would be required to work overtime. In part, the memo stated, "Records will be kept of staff who voluntarily work overtime. If a person has voluntarily worked overtime during the preceding two weeks, [he] will not be mandated to work overtime during the following week." On November 4, 1988, Joyce Slayton, in a memo to Facility Administrators, stated, "a correction needs to be made to the memos distributed to all staff regarding mandatory overtime. Please be sure that all staff receive and understand the following: ...If anyone has volunteered overtime during any week (Friday - Thursday), they will be excused from mandated overtime that same week unless because of vacancies and/or absences, all staff have worked overtime and the rotation has to be repeated."

Ms. Hughes, testified that mandatory overtime was utilized by the agency when staffing levels fell below the required minimum, and the agency had exhausted all other avenues for meeting those staffing levels. South Campus Administrator Harold Kelleher explained that mandated overtime had to be used in some instances when employees scheduled to work a shift were absent because of staff development training sessions.

The appellant corroborated Ms. Hughes and Mr. Kelleher's testimony that she had been asked to provide a physician's note concerning her ability to work overtime, but had chosen not to do so. When asked by the Board why she had not attempted to secure the note, she said she never believed it would result in her being discharged. She also indicated that she was afraid a letter from her physician detailing her physical conditions might convince the agency that she was not fit for duty. When asked by the Board if she had ever approached her supervisor or Mr. Kelleher about the nature of her difficulties in working overtime assignments, she testified that she had not. When questioned concerning her understanding of the manner in which mandated overtime assignments were made, she corroborated both Ms. Hughes' and Mr. Kelleher's testimony.

After considering the testimony and evidence presented, the Board concluded that Mr. Sevigny was aware of the agency's authority to require an employee to work overtime when volunteers for such assignments were unavailable. She further had been fully apprised that refusal to work another mandated overtime assignment would result in her termination. Ms. Sevigny was aware that the agency had been using a rotation of available staff when determining who would be required to work overtime, and that the rotation had resulted in her being required to work overtime on October 22, 1988. Ms. Sevigny fully understood at the time of hire that she might be required to work overtime, and had been

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warned that continued refusal to work overtime could result in her discharge. When given the opportunity to provide the agency with proof that she could not or should not work more than 40 hours a week, she had failed to do so.

Based upon the foregoing, the Board voted unanimously to uphold the agency's decision to discharge Ms. Sevigny from her position at Laconia Developmental Services, denying Ms. Sevigny's request for reinstatement.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE

Executive Secretary

cc: Michael C. Reynolds, SEA General Counsel

Lisa Currier, Human Resource Coordinator
Laconia Developmental Services

Virginia A. Vogel
Director of Personnel