

The State of New Hampshire

WHDOP 01/11/02 NH 219
Supreme Court

No. 2001-499, Appeal of the New Hampshire Department of Adjutant General

TO THE CLERK OF NH PERSONNEL APPEALS BOARD 01-T-1

i hereby certify that the Supreme Court has issued the following order in the above-entitled action:

November 27, 2001.

The court on October 9, 2001, made the following order:

State's motion to substitute counsel is granted. Appeal from administrative agency is declined. See Rule 10(1).

The appeal and any documents that were filed in this matter were provided to each justice.

Under Supreme Court Rule 10, the supreme court may in its discretion decline to accept an appeal from an administrative agency. No appeal, however, is declined except by unanimous vote of the court with at least three justices participating.

No justice who considered this matter voted to accept this appeal. Accordingly, the appeal was declined. If any justice who reviewed this case believed the appeal should have been accepted, this case would have been scheduled for briefing.

Brock, C.J., and Broderick, Nadeau, Dalianis, and Duggan, JJ., concurred.

Date of clerk's notice of decision: November 27, 2001

*File -
Hingeland, S.*

January 11, 2002

Attest: *Carol A. Belmain*
Carol A. Belmain, Deputy Clerk

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

In Case No. 2001-499, Appeal of the New Hampshire Department of Adjutant General, the court on October 9, 2001, made the following order:

State's motion to substitute counsel is granted. Appeal from administrative agency is declined. See Rule 10(1).

The appeal and any documents that were filed in this matter were provided to each justice.

Under Supreme Court Rule 10, the supreme court may in its discretion decline to accept an appeal from an administrative agency. No appeal, however, is declined except by unanimous vote of the court with at least three justices participating.

No justice who considered this matter voted to accept this appeal. Accordingly, the appeal was declined. If any justice who reviewed this case believed the appeal should have been accepted, this case would have been scheduled for briefing.

Brock, C.J., and Broderick, Nadeau, Dalianis, and Duggan, JJ., concurred.

**Eileen Fox,
Clerk**

Date of clerk's notice of decision: November 27, 2001

Distribution:
NH Personnel Appeals Board 01-T-1
Dennis C. O'Connell, Esquire
Orville B. Fitch, II, Esquire
Michael C. Reynolds, Esquire
Laura Mitchell, Supreme Court
File

OFFICE OF THE CLERK OF THE SUPREME COURT



State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF STEPHEN SLINGERLAND

Docket #01-T-1

Adjutant General's Department - Pease Fire Department

Decision On:

State's Motion for Reconsideration

Appellant's Motion for Reconsideration/Rehearing

August 1, 2001

On April 18, 2001, the Board received the State's Motion for Reconsideration and the Appellant's Motion for Reconsideration/Rehearing in the above-titled appeal. On April 20, 2001, the Board also received the Appellant's Response to State's Motion for Reconsideration.

In support of its motion for reconsideration, the State argued that the Board's decision reinstating the appellant was unreasonable, unlawful and unjust. Specifically, the State argued:

1. That the Board had employed a new interpretation of an existing rule by finding that although the appellant had received three warnings for the same offense, the agency should have issued another, final warning prior to termination;
2. That the Board acted unreasonably by substituting its judgment for that of the appointing authority in matters of discipline; and

3. That the Board's decision reinstating the appellant with back-pay following a two-week suspension appeared to ignore the fact that the appellant had not appealed the first two warnings and that, prior to termination, he failed to offer a response or a rebuttal to the appointing authority's decision to dismiss him from his employment.

Although the appellant agreed that the agency's decision to dismiss him for continued lateness was unjust, he argued that the termination was also illegal. The appellant argued that the appointing authority failed to apprise him of all the evidence that it had considered in effecting his termination, thereby violating rules adopted by the Director of Personnel. The appellant argued that under the provisions of RSA 21-I:58, he was entitled to reinstatement to a position of "like seniority, status, and pay" without loss of pay. The appellant argued that by ordering a two-week suspension and a reduction in the appellant's seniority for the length of that suspension, the Board's decision violated the requirements of RSA 21-I:58, I.

The Board found that the arguments raised in both the State's and the appellant's motions were essentially the same arguments raised by the parties and considered by the Board in reaching its decision. Having considered the motions in light of the Board's decision in this matter, the Board voted to affirm its finding that termination was too severe a remedy for his continued lateness in this case. The Board also voted to affirm its decision to modify or amend any decision of the appointing authority [RSA 21-I:58] by ordering the suspension without pay and the reduction in Mr. Slingerland's seniority as a result of those offenses. Therefore, the Board voted to DENY both the State's and the appellant's requests to modify its decision to reinstate the appellant.

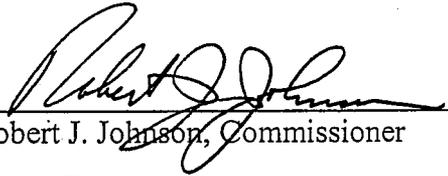
In its March 19, 2001 order, the Board directed the agency to reinstate the appellant within 30 days of the date of its order at a time mutually convenient to the parties. The Board also decided that the appellant would not be entitled to compensation for any additional delay beyond the 30 days, provided that the State acted reasonably in effecting his reinstatement. In this instance, the appellant argues that the agency has refused to reinstate him in accordance with the Board's

order, and asks the Board to find that the order should not apply until such time as the employer is willing to let Mr. Slingerland return to work. That request is GRANTED.

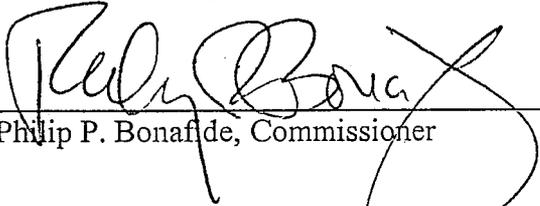
THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chair



Robert J. Johnson, Commissioner



Philip P. Bonafide, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301
Attorney Dennis O'Connell, Adjutant General's Office, State Military Reservation, 1
Airport Road, Concord, NH 03301
Attorney Michael Reynolds, SEA General Counsel, PO Box 3303, Concord, NH 03302-
3303

State of New Hampshire



PERSONNELAPPEALSBOARD
25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF STEPHEN SLINGERLAND

Docket #01-T-1

Adjutant General's Department - Pease Fire Department

Decision On:

State's Motion for Reconsideration

Appellant's Motion for Reconsideration/Rehearing

August 1, 2001

On April 18, 2001, the Board received the State's Motion for Reconsideration and the Appellant's Motion for Reconsideration/Rehearing in the above-titled appeal. On April 20, 2001, the Board also received the Appellant's Response to State's Motion for Reconsideration.

In support of its motion for reconsideration, the State argued that the Board's decision reinstating the appellant was unreasonable, unlawful and unjust. Specifically, the State argued:

1. That the Board had employed a new interpretation of an existing rule by finding that although the appellant had received three warnings for the same offense, the agency should have issued another, final warning prior to termination;
2. That the Board acted unreasonably by substituting its judgment for that of the appointing authority in matters of discipline; and

3. That the Board's decision reinstating the appellant with back-pay following a two-week suspension appeared to ignore the fact that the appellant had not appealed the first two warnings and that, prior to termination, he failed to offer a response or a rebuttal to the appointing authority's decision to dismiss him from his employment.

Although the appellant agreed that the agency's decision to dismiss him for continued lateness was unjust, he argued that the termination was also illegal. The appellant argued that the appointing authority failed to apprise him of all the evidence that it had considered in effecting his termination, thereby violating rules adopted by the Director of Personnel. The appellant argued that under the provisions of RSA 21-I:58, he was entitled to reinstatement to a position of "like seniority, status, and pay" without loss of pay. The appellant argued that by ordering a two-week suspension and a reduction in the appellant's seniority for the length of that suspension, the Board's decision violated the requirements of RSA 21-I:58, I.

The Board found that the arguments raised in both the State's and the appellant's motions were essentially the same arguments raised by the parties and considered by the Board in reaching its decision. Having considered the motions in light of the Board's decision in this matter, the Board voted to affirm its finding that termination was too severe a remedy for his continued lateness in this case. The Board also voted to affirm its decision to modify or amend any decision of the appointing authority [RSA 21-I:58] by ordering the suspension without pay and the reduction in Mr. Slingerland's seniority as a result of those offenses. Therefore, the Board voted to DENY both the State's and the appellant's requests to modify its decision to reinstate the appellant.

In its March 19, 2001 order, the Board directed the agency to reinstate the appellant within 30 days of the date of its order at a time mutually convenient to the parties. The Board also decided that the appellant would not be entitled to compensation for any additional delay beyond the 30 days, provided that the State acted reasonably in effecting his reinstatement. In this instance, the appellant argues that the agency has refused to reinstate him in accordance with the Board's

order, and asks the Board to find that the order should not apply until such time as the employer is willing to let Mr. Slingerland return to work. That request is GRANTED.

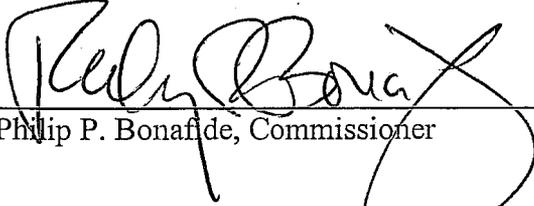
THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chair



Robert J. Johnson, Commissioner



Philip P. Bonafide, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301
Attorney Dennis O'Connell, Adjutant General's Office, State Military Reservation, 1
Airport Road, Concord, NH 03301
Attorney Michael Reynolds, SEA General Counsel, PO Box 3303, Concord, NH 03302-
3303

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF STEPHEN SLINGERLAND

Docket #01-T-1

Adjutant General's Department - Pease Fire Department

March 19, 2001

The New Hampshire Personnel Appeals Board (Rule, Johnson and Bonafide) met on November 8, 2000, and December 20, 2000, under the authority of RSA 21-I:58 and the Rules of the Personnel Appeals Board (NH CAR Per-A.100-200) to hear the appeal of Stephen Slingerland, a former employee of the Adjutant General's Office. Mr. Slingerland, who was represented at the hearing by SEA General Counsel Michael Reynolds, was appealing his termination from employment, effective July 14, 2000, from his position as a Firefighter at the Pease Fire Department. Attorney Dennis O'Connell appeared on behalf of the State.

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

State's Exhibits

1. March 28, 2000 Written Warning issued to Stephen Slingerland by Lt. Brad Eingleliardt for excessive unscheduled absences caused by arriving late for duty;
2. May 18, 2000 Written Warning issued to Stephen Slingerland by Lt. Brad Eingleliardt for arriving late for duty;

3. July 9,2000 letter to Stephen Slingerland fi-om Assistant Fire Chief Richard Dudley advising of a meeting to be held on Friday, July 14,2000 to discuss evidence supporting Mr. Slingerland's termination from employment as a result of reporting late to duty on July 2, 2000;
4. July 14,2000 Written Warning issued to Stephen Slingerland by Assistant Chief Richard Dudley for arriving late for duty;
5. July 14,2000 Letter of Termination issued to Stephen Slingerland by Fire Chief William Brown;
6. June 7, 2000 Pease Fire Department Shift Swap Form;
7. Summary of late arrivals by Stephen Slingerland between December 21, 1996 and July 2, 2000, the reasons given for lateness, the person responsible for counseling/warning Mr. Slingerland, and the action taken;
8. Notes prepared by Richard Dudley concerning 's performance/conduct between November 16, 1998 and July 17,2000;
9. Lt. Brad Englehardt's performance notes for Stephen Slingerland for the period between August 3, 1998 May 21,2000; and
10. Pease Fire Department Standard Operating Procedures, CEF SOP 23-2001-17, pp. 1-2, effective December 8, 1999, and CEF SOP 32-2001-006, pp. 1-2, effective January 17,2000.

Appellant's Exhibits

- A. E-Mail message dated November 2,2000 fi-om Eddie Acres to William Brown concerning completion of swap-time fonn's by Stephen Slingerland and Teny McDonnell; and
- B. E-Mail message dated November 2,2000 from Rich Dudley to William Brown concerning Stephen Slingerland reporting to duty on July 2,2000.

The following persons gave sworn testimony:

Lt. Brad Englehardt
Chief William Brown
Firefighter Ronald Tranchemontagne
Firefighter Sean O'Connell
Capt. Terry McDonnell
Firefighter Charles Skidmore (SEA Steward)

Stephen Slingerland, Appellant

Having carefully considered the evidence and argument offered by the parties, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. At the time of his dismissal, Stephen Slingerland was employed as a firefighter with the Pease Fire Department.
2. Mr. Slingerland received a written warning dated March 28, 2000, issued under the provisions of Per 1001.03(a) of the Code of Administrative Rules for "excessive unscheduled absences cause by arriving late for duty" (State's Exhibit 1).
3. In the written warning, the appellant was instructed to talte the following corrective action. "To correct the problem of being late for duty, you must talte it upon yourself to take necessary actions to arrive on time. You are expected to report to Roll Call ready for duty at 0700. In any situation other than Roll Call, you are expected to report directly to the Station Captain and Assistant Chief on duty at the appropriate time required" (State's Exhibit 1).
4. Mr. Slingerland did not appeal the March 28, 2000 warning and it stands as a valid basis for additional disciplinary action, up to and including termination from employment.
5. Mr. Slingerland received a second written warning dated, May 18, 2000, issued under the provisions of Per 1001.03(a) of the Code of Administrative Rules, for "arriving late for duty" (State's Exhibit 2).
6. In the written warning, the appellant was instructed to talte the following corrective action. "To correct the problem of being late for duty, you must talte it upon yourself to take necessary actions to arrive on time. You are expected to report to Roll Call ready for duty at 0700. In any situation other than Roll Call, like this Space Shuttle launch, you are expected to report directly to the Station Captain and Assistant Chief on duty at the appropriate time required of you" (State's Exhibit #2).
7. Mr. Slingerland did not appeal the second written warning that was issued on May 18, 2000, and it stands as a valid basis for additional disciplinary action, up to and including termination from employment.

8. The Pease Fire Department has three regular shifts consisting of an Assistant Chief, a Station Captain, two Lieutenants, and seven Firefighters.
9. Under normal operating conditions, the Department requires a minimum staffing complement of nine per shift.
10. With prior administrative approval, employees are permitted to alter their schedules by arranging to swap a shift or a portion of a shift with an employee from another shift.
11. According to Capt. McDonnell, when firefighters arrive for a shift swap, their first responsibility is to check "the board" in the station to determine the truck to which the employee has been assigned for the shift.
12. After the firefighter stows his gear on the appropriate vehicle, he notifies the employee being replaced on the shift that he is relieved of duty.
13. Depending on the work activities that have been scheduled, the Assistant Chief and the Station Captain may be away from the station house during the shift when a firefighter is scheduled to report for duty on a shift swap.
14. Firefighters who testified at the hearing indicated that they consider themselves to be on duty as soon as they enter the fire station.
15. Mr. Slingerland requested and received approval for a shift swap with Capt. McDonnell for the morning of July 2, 2000, so that Mr. Slingerland could attend a Little League baseball game.
16. Mr. Slingerland was scheduled to relieve Capt. McDonnell at 2:45 p.m. so that Capt. McDonnell could report for work at his second job by 3:00 p.m.
17. Capt. McDonnell's commute between the two jobs takes him less than five minutes, and he can arrive at the second job as late as 3:07 p.m. without being considered late for duty.
18. Capt. McDonnell remembered that on the afternoon of his shift swap with Mr. Slingerland, he changed his clothes and stowed his gear while he was waiting for Mr. Slingerland to arrive at the station to relieve him.
19. He remembered seeing Assistant Chief Dudley "pacing" inside the station that afternoon while he was waiting.
20. Capt. McDonnell believed that Mr. Dudley was hoping to catch Mr. Slingerland arriving late for duty so that he could "write him up" again.

21. According to Mr. Slingerland's watch and the clock inside his van, it was 2:44 p.m. as he was pulling into the parking lot at the Pease Fire Station on July 2, 2000, the afternoon of the shift swap.
22. Instead of checking the assignment listings and reporting his arrival directly to Assistant Chief Dudley, Mr. Slingerland met Capt. McDonnell at the door of the station and chatted with him while helping Capt. McDonnell carry gear out to his car.
23. When Mr. Slingerland entered the station house after Capt. McDonnell had left, Assistant Chief Dudley told Mr. Slingerland that he was late.
24. Mr. Slingerland asked "what time piece" the Assistant Chief was using this time to clock his arrival.
25. Capt. McDonnell received 9 minutes of compensatory time for July 2, 2000. He had never before received compensatory time as a result of s shift swap.
26. Capt. McDonnell believed that the only time compensatory time is earned in such small increments is when someone has to be held over at the end of his shift because someone on the next shift is late reporting for duty.
27. Charles Sltidmore, the Union Steward for the Adjutant General's Office, appeared with Mr. Slingerlaid as his representative at a pre-termination meeting convened by Chief Brown on July 14, 2000. During that meeting, the appellant received both the written warning and the notice of termination.
28. After giving Mr. Slingerland the written warning, Chief Brown asked the appellant if he understood the letter and the charges contained in the warning.
29. Mr. Slingerland asked which clock had been used to time his arrival at work, and said that in his opinion, he should not have been considered late reporting for duty.
30. Chief Brown indicated that he was not interested in hearing any further discussion about the accuracy of the cloclts at the station.
31. Chief Brown then gave Mr. Slingerland the notice of termination and asked if Mr. Slingerland understood the charges.
32. Chief Brown did not apprise Mr. Slingerland of any conversations that he might have had with Assistant Chief Dudley, Captain Acres, or Lieutenant Englehardt prior to the

termination meeting, or of any documents that he might have received from them concerning Mr. Slingerland's employment.

33. Neither Mr. Slingerland nor his SEA Steward Charles Skidmore challenged the facts as alleged by Chief Brown in the written warning or notice of termination, nor did they offer evidence or argument to persuade Chief Brown that the charges were false.
34. Mr. Slingerland and his SEA Steward had discussed beforehand how to proceed at the termination meeting and had decided that the best course would be to offer no response.

Rulings of Law

- A. "An appointing authority shall be authorized to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance or misconduct..." [Per 1001.03 (a), Code of Administrative Rules, Rules of the Division of Personnel]
- B. "An appointing authority shall be authorized to dismiss an employee who has received multiple warnings for the offenses described in this part as stated below..." [Per 1001.08 (b)]
- C. "An appointing authority shall be authorized to dismiss an employee pursuant to Per 1001.03 by issuance of a third written warning for the same offense within a period of 5 years." [Per 1001.08 (b)(1), Code of Administrative Rules, Rules of the Division of Personnel]
- D. "...If the personnel appeals board finds that the action complained of was taken by the appointing authority for any reason related to politics, religion, age, sex, race, color, ethnic background, marital status, or disabling condition, or on account of the person's sexual orientation, or was taken in violation of a statute or of rules adopted by the director, the employee shall be reinstated to the employee's former position or a position of like seniority, status, and pay. The employee shall be reinstated without loss of pay, provided that the sum shall be equal to the salary loss suffered during the period of denied compensation less any amount of compensation earned or benefits received from any other source during the period. "Any other source" shall not include compensation earned from continued casual employment during the period if the employee held the position of casual employment prior to the period, except to the extent that the number of hours worked in such casual employment increases during the period. In all cases, the personnel appeals board may

reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just." [RSA 21-I:58, I]

Mr. Slingerland testified that he arrived at 2:44 p.m. in the parking lot at the fire station, and had only 40 feet or so to walk to the fire station itself so that he could relieve Capt. McDonnell at 2:45 p.m. Mr. Slingerland and Capt. McDonnell indicated that they met as Capt. McDonnell was preparing to exit the building. Capt. McDonnell told Mr. Slingerland where he was assigned for the remainder of the shift, and Mr. Slingerland helped to carry Capt. McDonnell's gear out to his car, where the two chatted briefly. Mr. Slingerland testified that he did not see Assistant Chief Dudley until after Capt. McDonnell had left. Mr. Slingerland entered the station and was confronted by Assistant Chief Dudley who told him that he was late. Assistant Chief Dudley noted the appellant's time of arrival as 2:54 p.m. nine minutes after the shift swap was to have occurred.

The appellant argued that he was not late reporting for duty and could not have been terminated from his employment on that basis. Mr. Slingerland suspected that he had irritated Assistant Chief Dudley and Chief Brown by "going over their heads" on administrative issues such as scheduling and requests for leave, and he believed that the agency was looking for any excuse to fire him. Mr. Slingerland also believed that Assistant Chief Dudley resented his level of education and experience, and resented the interest that co-workers had shown in some of the appellant's ideas about changing policies and procedures in the fire department. Mr. Slingerland said that he had discussed his concerns with Chief Brown and had asked to be transferred to another shift. Chief Brown concluded that there was no evidence to support Mr. Slingerland's suspicion that Assistant Chief Dudley was "out to get him," and the transfer was not approved.

The appellant argued that the evidence would not support a finding that Mr. Slingerland was late reporting for duty on July 2nd. He argued that there was an element of bad faith in the decision to terminate his employment, that there were mitigating factors that the Board should weigh in all three of the written warnings, and that the termination itself violated the personnel rules in that the agency failed to apprise Mr. Slingerland of everything that may have been factored into the decision to terminate his employment.

The State argued that it had terminated Mr. Slingerland's employment by issuance of a third and final warning for lateness, and that the three warnings were the only evidence necessary to support the decision to dismiss him. The State argued that although Mr. Slingerland had been counseled repeatedly about the importance of arriving on time for duty, he continued to arrive late for work. When counseling proved to be ineffective in persuading Mr. Slingerland to be more punctual, the appointing authority issued formal written warnings for lateness, advising the appellant that in order to avoid additional discipline, up to and including termination from employment, he needed to report for duty on time. Specifically, he was instructed to report to Roll Call ready for duty at 0700; otherwise, he was expected to report "directly to the Station Captain and Assistant Chief on duty at the appropriate time..." (State's Exhibits 1 and 2).

The State argued that Mr. Slingerland could not be on time for duty by simply showing up in the parking lot by 2:45 p.m. for the shift swap. Reporting for duty, the State argued, required the appellant to report for duty physically and mentally prepared for work. To do so, the State argued, meant reporting for duty in uniform, checking the duty board for his work location for the shift, and putting his turn-out gear on the vehicle to which he'd been assigned. By failing to do so, the State argued, the appellant was late reporting for duty and subject to disciplinary action up to and including his termination from employment.

Standard of Review

[Per-A 207.12 (b), Code of Administrative Rules, Rules of the Personnel Appeals Board]
"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."

Decision and Order

The evidence reflects that Mr. Slingerland was on-site one minute before his scheduled time to report for the shift swap. Although his co-workers said that they would have considered him to have reported on time, the written warnings issued to the appellant in March and May of 2000, clearly instructed the appellant to report directly to the Station Captain or Assistant Chief in any reporting situation other than morning Roll Call. The appellant ignored those instructions and, as a result, failed to take the corrective action by which he might have avoided additional disciplinary action. Therefore, the Board found that while the appellant was on site at or by 2:45 p.m., he did not report his arrival to either the Station Captain or Assistant Chief by 2:45 p.m. Consequently, he was late reporting for duty and was subject to disciplinary action as described by Per 1001.03 and Per 1001.08 of the Rules of the Division of Personnel.

The Board found that the disciplinary action was lawful and that the termination was effected in accordance with the Rules of the Division of Personnel [Per-A 207.12 (a) and (b)]. However, in light of the facts in evidence, the Board is not persuaded that the termination was warranted [Per-A 207.12 (c)] or that the termination was just [Per-A 207.12 (d)].

The evidence reflects that the agency imposed upon Mr. Slingerland a standard for reporting for duty that was not applied to other employees on the same shift. While the Board understands that more stringent controls were necessary to address Mr. Slingerland's continuing tardiness, the Board found that it was fundamentally unfair for the agency to dismiss a long-tenured employee on the basis of a third incident of lateness without a much clearer warning of the consequences of the appellant's failure to take corrective action. While it appears that none of the other firefighters has a record of tardiness comparable to Mr. Slingerland's, the appointing authority admitted that it had never dismissed, demoted, or suspended a firefighter for lateness. Although Chief Brown testified that he believed further discipline would have been ineffective, the Board believes that the agency had an obligation to provide one final warning prior to termination.

By the same token, the Board also found that substantial discipline was warranted. The appellant demonstrated an almost cavalier disregard for the directions of his superiors. Having been warned that continued late arrivals would place him at risk of termination, particularly when one considers the apprehension that Mr. Slingerland expressed about his relationship with Assistant Chief Dudley and Chief Brown, the appellant should have been far more conscientious about reporting for duty at the time, and in the manner, prescribed by his superiors. Instead, as the State observed, the appellant seemed to trivialize the problem and provided little evidence of any meaningful effort to acknowledge or correct the problem.

In this case, the Board found that termination was too severe a remedy. Suspending the appellant without pay, however, would have imposed a very severe penalty while providing a clear warning to the appellant that continued tardiness would not be tolerated and that any subsequent offense would result in the appellant's immediate termination from employment without further warning.

RSA 21-I:58 provides that, "In all cases, the personnel appeals board may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just." Accordingly, the Board voted to reinstate Mr. Slingerland to his position as a firefighter after reducing his termination to a two-week suspension without pay. Mr. Slingerland shall be reinstated within 30 days of the date of this order at a time mutually convenient to the parties. The appointing authority may determine, in its sole discretion, the shift to which the appellant will be assigned. Provided that the State acts reasonably in effecting the reinstatement, the appellant shall not be entitled to compensation for any additional delay beyond the 30 days in restoring him to his position. Upon his reinstatement, the appellant shall be awarded back pay, but that amount shall be reduced by compensation that he would have earned during the period of suspension, and further reduced, as set forth in RSA 21-I:58, by any compensation or benefits received by the appellant from any other source during the period of termination. Finally, the agency shall adjust Mr. Slingerland's seniority date, increment date, and leave accrual date to reflect the two week suspension without pay.

For the reasons set forth above, and under the conditions as described by this order, the Board voted unanimously to GRANT Mr. Slingerland's appeal in part, ordering him reinstated with a two-week suspension without pay.

THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chair



Robert J. Johnson, Commissioner



Philip P. Bonafide, Commissioner

cc: Thomas Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301
Attorney Dennis O'Connell, Adjutant General's Office, State Military Resewation, 1
Airport Road, Concord, NH 03301
Attorney Michael Reynolds, SEA General Counsel, PO Box 3303, Concord, NH 03302-
3303

For the reasons set forth above, and under the conditions as described by this order, the Board voted unanimously to GRANT Mr. Slingerland's appeal in part, ordering him reinstated with a two-week suspension without pay.

THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chair



Robert J. Johnson, Commissioner



Philip P. Bonafide, Commissioner

cc: Thomas Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301
Attorney Dennis O'Connell, Adjutant General's Office, State Military Reservation, 1
Airport Road, Concord, NH 03301
Attorney Michael Reynolds, SEA General Counsel, PO Box 3303, Concord, NH 03302-
3303