

State of New Hampshire

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PERSONNEL APPEALS BOARD

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

LINDA WOODS
Department of Corrections
Docket #91-T-10

Response to Appellant's Motion for Reconsideration

September 26, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Johnson) met Wednesday, September 25, 1991, to consider the Motion for Reconsideration filed September 17, 1991, by SEA General Counsel Michael Reynolds on behalf of Linda Woods, a former employee of the Department of Corrections.

The appellant argued that the resignation given by Ms. Woods must be deemed invalid in that, "both parties were in substantial error as to the reason for and necessity of a 'resignation' and it should have been deemed invalid." (Motion for Reconsideration, page 1)

Ms. woods gave Ms. Chin her verbal notice of resignation on the morning of December 8, 1990, claiming that because she had been arrested for Driving While Intoxicated, she did not consider herself to be a good role model. When offered an opportunity to meet with Ms. Chin to discuss the matter, she declined. She made no reference to a belief that such an arrest might result in her discharge from employment.

Woods gave a similar explanation to Ms. Poisson when she called her to advise that she had given Ms. Chin her resignation, She noted certain recollections from her training at the Corrections Academy. None, however, involved a belief that her arrest might be deemed grounds for discharge.

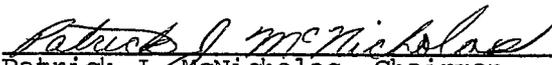
When the appellant called Ms. Chin on the morning of December 9, 1990, she said her resignation had been given "in haste" and that she had been under a lot of stress. She made no reference to emergency psychological counselling. She made no request to be placed on sick leave. She again made no mention of a mistaken belief that her arrest for DWI might result in her dismissal. She again declined an offer to meet with Ms. Chin. The Board can only conclude, then that the Department of Corrections was not "... in substantial error as to the reason for and necessity of a 'resignation'", except to the extent that Ms. Woods willfully misrepresented the basis for her decision to resign.

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The personnel action forms on which the appellant has relied in citing a date of "formal approval" of her change in employment status subsequent to her letter of December 10, 1990, bear an "effective date" of separation of 12/9/90. Neither form is signed by Commissioner Powell. The appellant's arguments concerning the weight of this evidence, as well as the delegation of authority by the Commissioner of Corrections, are consistent with those raised during the hearing on the merits and present no new information to support the request for reconsideration. The appellant's arguments concerning her state of mind and ongoing psychiatric treatment are also consistent with those raised during the hearing on the merits, and do not support a finding that the Board's order was either unreasonable or unlawful.

Having reviewed the appellant's Motion in conjunction with the Board's August 28, 1991 Order and the record before it, the Board voted to affirm its earlier order. Accordingly, the Motion for Reconsideration is denied.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson


Mark J. Bennett

cc: Virginia A. Vogel, Director of Personnel
Michael C. Reynolds, SEA General Counsel
Michael K. Brown, Staff Attorney, Department of Corrections

State of New Hampshire



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

APPEAL OF LINDA WOODS
Docket #91-T-10
N. H. Department of Corrections

August 28, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, July 10, 1991, to hear the appeal of Linda Woods, a former employee of the Department of Corrections. Ms. Woods was represented at the hearing by SEA General Counsel Michael C. Reynolds. Staff Attorney Michael K. Brown appeared on behalf of the Department of Corrections.

In her notice of appeal filed December 21, 1990, Ms. Woods asked that the hearing be closed to the public, and that the record of the proceedings be sealed. At the conclusion of the hearing, the Board voted to hold DOC Exhibit #5 under seal. That exhibit, a photocopy of one page of a Department of Corrections/Health Services log, contains several references to the names of inmates and the treatment they had requested and/or received. The Board found no compelling reason to seal the remainder of the record, however. The Chairman noted that the Board's proceedings are supposed to be open to the public, and sealing the record or closing the hearing merely for the purpose of saving the appellant from possible embarrassment would set a dangerous precedent. Accordingly, the appellant's motion to close the hearing and seal the record was denied.

Subsequent to the filing of this appeal, the Department of Corrections filed a request that the appeal be dismissed without evidentiary hearing. That motion, too, was denied.

In consideration of the fact that the appellant bears the burden of proof in this matter, the Board has limited its findings of fact to those which address the following issues:

- 1) whether or not Ms. Woods gave her verbal resignation to representative(s) of the Department of Corrections,
- 2) whether or not Ms. Woods understood that she was resigning from her employment,
- 3) whether or not Ms. Woods' resignation was given under duress,

- 4) whether or not the representative(s) of the Department of Corrections had the authority to accept such resignation if given, and
- 5) whether or not the Department of Corrections had any obligation to allow this employee (or any other employee) to withdraw a voluntary resignation once given.

Findings of Fact

On the morning of December 8, 1990, the appellant called Arleen Chin, Chief Nursing Administrator for the Department of Corrections at Ms. Chin's home. The appellant informed Ms. Chin that she had been arrested and charged with D.W.I. the previous evening, and that she was resigning from her position immediately. Ms. Chin accepted the resignation, and asked that the appellant submit a written confirmation of her resignation. She then offered to meet with the appellant to discuss the matter, but the appellant declined.

The appellant then called Glennice Poisson at the Health Services Center and informed her that she had just given Ms. Chin her resignation. Ms. Poisson telephoned Ms. Chin to verify that the resignation had been given, and to ask for authority to get coverage for the shifts which Ms. Woods had been scheduled to work.

The following morning, the appellant again telephoned both Ms. Chin at her home and Ms. Poisson at the Health Services Center. She informed Ms. Chin that she wished to withdraw her resignation and wanted to report to work. Ms. Chin told her that she had already accepted the resignation and had arranged for coverage for the shift. She also reiterated her request that a letter confirming the resignation be delivered to the Department of Corrections on Monday, and offered again to meet with the appellant to discuss her resignation. Ms. Woods again declined the offer.

When the appellant telephoned Ms. Poisson, she indicated that her resignation had been given in haste, and was only a verbal resignation. She also asked Ms. Poisson for the name of an SEA steward with whom she could discuss her resignation.

By letter dated December 10, 1990, addressed to Ms. Chin, the appellant indicated that she had not really wanted to resign, but had mistakenly believed that being arrested for D.W.I. would have been grounds for her immediate dismissal from the Department of Corrections. In that letter, she informed Ms. Chin that she wished to report back to work. She also stated that she should be allowed to use sick leave for her absence on December 8, 1990, and that since she was fully able to return to work on December 9, 1990, she should be returned to the payroll in regular pay status for that date.

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By letter to the appellant dated December 10, 1990, Ms. Chin confirmed her acceptance of the appellant's resignation, and notified the appellant that she would be expected to turn in her keys, her D.O.C. identification card, and her D.O.C. issued uniforms.

Testimony and Oral Argument

The appellant argued that she had been "experiencing extensive job stressors" and that the Department of Corrections should have sensed how "distraught" she was when she gave her resignation. The appellant testified that once she had regained her composure, she asked the Department of Corrections to "rescind" the resignation, and treat her phone call to Ms. Chin as a request for a stress-related sick day.

The appellant contended that her decision to resign was based on the mistaken belief that the Department of Corrections would discharge her immediately upon discovery of her arrest for driving while intoxicated. She also argued that she had had very little sleep following her arrest and that she was suffering from extreme embarrassment at having been arrested. She admitted that she was not still under the influence of alcohol when she called the Department of Corrections Saturday morning. She argued that the Department was fully cognizant of her long history of psychological counselling, however, and should have realized that she really did not want to resign.

Finally, the appellant argued that Ms. Chin did not have the ultimate authority to accept her verbal resignation. She contended that her request to withdraw the resignation prior to its formal acceptance by the appointing authority should render the resignation "null and void".

Decision and Order of the Board

The Board found that the appellant resigned in order to avoid discharge for cause. Even though the factual basis upon which the appellant made that decision was inaccurate, the decision was not inherently irrational, nor was there sufficient evidence to persuade the Board that she was acting irrationally when she made that decision. The appellant openly admitted that she had recently been disciplined by the Department for a medication error. She alluded to having a less than satisfactory relationship with her supervisor(s). The appellant believed that an arrest for driving while intoxicated could form the basis for her discharge. In order to avoid discharge, she resigned.

When the appellant later learned through discussion with co-workers that being arrested for D.W.I. would not be considered grounds for immediate discharge, she regretted her decision to resign and asked that it be "rescinded". The Department, however, was under no obligation to grant that request and declined to do so.

The appellant's letter of December 10, 1990, arguing that the resignation should be treated as a request for sick leave was addressed to Ms. Chin, whom the appellant obviously believed to have the authority to grant or deny the request. That letter was also copied to Commissioner Powell. The Commissioner neither affirmed acceptance of the resignation, nor agreed to treat that resignation as a request for sick leave. Accordingly, the Board found that the Commissioner, as the appointing authority, had delegated sufficient authority to Ms. Chin to either accept or reject the resignation, as well as to accept or reject the appellant's request to withdraw the resignation.

The Board found that the appellant had weighed her options before offering her resignation. She then initiated two separate calls to representatives of the Department of Corrections to resign. Neither of the telephone calls was made under the influence of alcohol. Neither Ms. Chin nor Ms. Poisson took any action which could be construed as suggesting, encouraging or coercing the appellant to resign.

The Department had already initiated disciplinary proceedings against the appellant for medication errors. The appellant's supervisor clearly did not consider her to be "suited for correctional nursing", and was admittedly relieved at the appellant's resignation. Those factors, however, have no bearing upon the fact that the resignation was given of the appellant's own free will. The Department, regardless of its motives, was under no obligation to discourage the appellant from resigning. Similarly, the Department was under no obligation to allow the appellant to withdraw her resignation once given.

The appellant argued in her original pleadings that "...she should not be discriminated against simply because her short-term medical problem was emotional/psychological rather than physical." Although she referred to an emergency phone call to her psychiatrist, she offered no corroborating evidence of such a call. Apart from a letter signed by Dr. Burstein dated December 20, 1990, which expressed his opinion that "Ms. Woods resigned in an irrational state which was brought to bear by her feelings of harassment at work," the appellant failed to offer persuasive evidence to support her claim that her resignation should have been treated as a stress-related sick day.

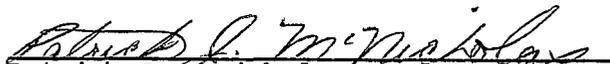
The appellant's claim that she "should not be discriminated against simply because her short-term medical problem was emotional/psychological rather than physical" would be more persuasive if she had not been undergoing treatment. In this case, her own testimony suggests that the causes of her emotional problems and her history of counselling significantly predate her employment with the Department of Corrections. Nothing in the testimony and evidence presented supports a finding that the Department should have found her to be temporarily unable to make a rational decision regarding her own employment.

The mere fact that the employee has a self-described history of psychological assessment and/or treatment does not provide grounds upon which to grant her appeal. The Board found that Ms. Woods gave her resignation with full knowledge of what she was doing. Being fully aware of what she had done the day before, she then telephoned Ms. Chin and Ms. Poisson in an attempt to undo what had already been done.

The appellant argued that she was "obviously distraught" during her conversations with Ms. Chin and Ms. Poisson, and that both women should have been aware of her state of mind. Again, the the only testimony which the appellant offered in support of this contention was her own. Without some corroborating evidence, such as testimony from one of the D.O.C. employees with whom she claimed to have spoken who might offer some evidence of either the appellant's state of mind or her misinterpretation of D.O.C. rules, the Board found the testimony unpersuasive.

After hearing the testimony and considering the evidence presented, the Board voted to deny the appeal, finding that the Department of Corrections was acting within its discretion, and neither violated nor improperly applied the Rules of the Division of Personnel in accepting Ms. Woods' verbal resignation on December 8, 1990.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson


Mark J. Bennett

cc: Michael C. Reynolds, SEA General Counsel
Michael K. Brown, Staff Attorney, Department of Corrections