

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
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## ***APPEAL OF DONNA BIRON***

***Docket #00-O-2***

***Department of Youtlz Development Services***

***December 16, 1999***

The New Hampshire Personnel Appeals Board (Wood, Johnson and Barry) met on Wednesday, December 8, 1999, to hear the appeal of Donna Biron, an employee of the Department of Youth Development Services. Ms. Biron, who was represented at the hearing by SEA Field Representative Jean Chellis, was appealing the former Personnel Director's September 27, 1999 decision that Ms. Biron did not meet the minimum qualifications for certification as a Juvenile Services Officer II. Sara Willingham, Administrator, and JoAn Bunten, Certification Supervisor, appeared on behalf of the Division of Personnel.

Without objection by either party, the appeal was heard on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of the audio tape recording of the hearing on the merits, pleadings submitted by the parties, notices and orders issued by the Board and documents admitted into evidence as follows:

### Appellant's Exhibits

1. September 27, 1999 letter from Virginia Larnberton, Director of Personnel, to Donna Biron
2. September 8, 1999 application and resume of Donna Biron for the position of Juvenile Services Officer II
3. Performance Evaluation Summaries for Donna Biron during her assignment as a Teacher Assistant dated 5/27/97, 5/10/96, 5/15/95, 4/11/94 and 4/19/93

4. Youth Counselor I class specification
5. Teacher Assistant class specification
6. Youth Counselor II class specification
7. September 22, 1999 letter from Donna Biron to the Acting Director of Personnel
8. Juvenile Services Officer II class specification

State's Exhibits

- A. Copy of PART Per 405 CERTIFICATION Rules of the Division of Personnel
- B. Class specification for Juvenile services Officer II
- C. State of New Hampshire Application for Employment completed by Donna Biron
- D. September 10, 1999 letter from Fran DeCunto, Human Resources Coordinator addressed to Donna Biron
- E. September 15, 1999 letter from Donna Biron to Personnel Director Lamberton
- F. September 27, 1999 letter from Personnel Director Lamberton to Donna Biron
- G. October 6, 1999 letter from SEA Field Representative Jean Chellis to the Personnel Appeals Board
- H. Class specification for Youth Counselor I, II and III
- I. Class specification for Teacher Assistant

The following facts are not in dispute:

1. The minimum qualifications for certification for the classification of Juvenile Services Officer II (JSO II) are as follows:  
Education: Bachelor's degree from a recognized college or university with a major study in sociology, criminology, psychology, social work, sociology, human services, or behavioral science.  
Experience: Five years' experience in probation, parole, social work, or juvenile justice.
2. Ms. Biron earned a bachelor's degree in Human Services, thereby satisfying the minimum educational requirement for certification.

3. Ms. Biron's work history at the time that she made application for the position of JSO II consisted of approximately 2 112 years as a Youth Counselor at the Youth Development Center, and approximately 5 years as a Teacher Assistant at the Youth Development Center and at the Tobey School.
4. Ms. Biron's application for JSO II was originally reviewed by Fran DeCunto, Human Resources Coordinator, at Youth Development Services. Ms. DeCunto rejected the certification request on September 10, 1999, citing insufficient experience.
5. By letter dated September 15, 1999, Ms. Biron requested Personnel Director Lamberton to review her application and resume, and to certify her application as meeting the minimum qualifications for JSO II by crediting the appellant's experience as a Teacher Assistant, YWCA Crisis Line Phone Advocate, and facilitator of a Battered Women Support Group toward the required work experience.
6. In reviewing Ms. Biron's application for certification, the Division of Personnel credited the appellant with 2 112 years of relevant experience for her work as a Youth Counselor but refused credit for work performed as a Teacher Assistant,
7. The "Basic Purpose" for the classification of Youth Counselor III is, "To implement resident/patient classification plans and to provide counseling, evaluation, and protective care services for youth assigned to a residential program at a state institution."
8. The "Basic Purpose" for the classification of Teacher Assistant is, "To provide assistance to teaching staff in planning and outlining classwork and providing for the special needs of students."
9. The "Basic Purpose" for the classification of Juvenile Services Officer II is, "To conduct investigations as directed by the court and Juvenile Parole Board, and to supervise juveniles placed on conditional release or juvenile parole; to exercise partial supervision over Juvenile Services Officers, interns and support staff as assigned."
10. The "Recommended Work Traits" for a Juvenile Services Officer II as listed on the class specification include: "Extensive knowledge of the principles and practices of juvenile justice (probation and parole) and the availability and use of community resources. Knowledge of statutes relevant to juvenile justice and adolescent development and the psychological, environmental and other causes of juvenile delinquency. Ability to coordinate and

implement family-centered services in the juvenile justice system. Ability to exercise judgment in evaluating situations and in making decisions. Ability to explain departmental policy, procedures and objectives. Ability to communicate effectively. Ability to establish and maintain effective working relationships with court officials, law enforcement agencies, juvenile parole board, collateral agencies and the general public."

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Ms. Chellis argued that there were a number of similarities between the work performed by the appellant in her positions as a Teacher Assistant and as a Youth Counselor. In the October 6, 1999 notice of appeal filed with the Board on Ms. Biron's behalf Ms. Chellis wrote:

"The major similarity between Ms. Biron's work as a teacher assistant and youth counselor is that it all involved work with at-risk juveniles who had been adjudicated delinquent. Whether Ms. Biron's exposure to the juveniles was in the school room setting or the residential cottage setting appears to be secondary to the fact that she was generally responsible for working with at-risk juveniles."

Ms. Chellis argued that the performance summaries entered into evidence describe the appellant as performing work similar to that required of a Youth Counselor. Specifically she argued that Ms. Biron: 1) participated in teachers' meetings, helping problem-solve student situations with the faculty; 2) worked well with students and was "...able to diffuse situations with her sense of humor and good judgment;" 3) maintained discipline and order in the classroom; 4) redirected students to work productively; 5) worked with the most needy students; and 6) prepared documentation for handicapped students.

Ms. Chellis argued that the refusal to accept Ms. Biron's Teacher Assistant experience as experience in the field of juvenile justice created an artificial barrier to promotion. She argued that because Ms. Biron was teaching juvenile delinquents, her experience with them should be

considered work in the field of juvenile justice. Ms. Chellis asked the Board to certify Ms. Biron's application as meeting the JSO II minimum qualifications, and to issue an expedited decision granting the appeal so that Ms. Biron's could be considered a candidate for the pending JSO II vacancy at the agency.

Ms. Willingham stated that the minimum qualifications for Juvenile Services Officer II were revised in November, 1992 to add juvenile justice to the list of acceptable work experience. She stated that before 1992, only those persons with professional experience in social work, probation or parole would have qualified for selection. Ms. Willingham said that the change was requested by the agency so that in-house Youth Counselors might meet the minimum qualifications for promotion.

Ms. Willingham argued that while Teacher Assistants and Youth Counselors may work with the same student population, the basic purpose and characteristic duties of those classifications in relationship to those students are very different. Ms. Willingham argued that Youth Counselors' primary responsibilities are to provide safety and protective care services to youth at a State facility, while Teacher Assistants are primarily responsible for providing assistance to teaching staff and providing for special needs of students. She argued that these functions are not within the field of juvenile justice, nor would they constitute social work or case management activities consistent with social work.

Ms. Willingham argued that almost all of the institutional staff at the Youth Development Center, including those in the trades, food service and clerical support work with at-risk students. However, she argued, their duties would not be considered positions in the field of juvenile justice. She also argued that the positions at issue are in entirely different occupational groupings, demonstrating the substantial differences between the positions of Youth Counselor and Teacher Assistant. Specifically, she stated that the Occupational Series Code for Teacher Assistant is "7-3-1," described by the Division of Personnel's Technical Assistance Manual as "Professional and Managerial Services, Public Information and Education Group, Educational Series." By comparison, she said that a position in the Youth Counselor classification is coded

as "3-2-1," described by the Technical Assistance Manual as Enforcement Protection and Institution Services, Institution and Resident Care Group, Juvenile Custodial Series." Ms. Willingham noted that while some of the comments highlighted on the appellant's performance evaluations as a Teacher Assistant point to work traits that would be expected of a Youth Counselor, the majority reflect that Ms. Biron's duties as a Teacher Assistant were associated with education and not juvenile justice.

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Having considered the evidence, arguments and offers of proof by the parties, the Board made additional findings as follows: .

11. The "Basic Purpose" for positions classified as Juvenile Services Officer II is, "To conduct investigations as directed by the court and Juvenile Parole Board, and to supervise juveniles placed on conditional release or juvenile parole; to exercise partial supervision over Juvenile Services Officers, interns and support staff as assigned."
12. The Youth Counselor classification is in the same occupational grouping as Juvenile Services Officer II, described as Enforcement Protection and Institution Services, Institution and Resident Care Group, Juvenile Custodial Series.
13. The Teacher Assistant classification is assigned to a different occupational grouping for positions described as Professional and Managerial Services, Public Information and Education Group, Educational Series.
14. Although Ms. Biron participated in a number of activities with at-risk students as a Teacher Assistant, those duties and responsibilities are not representative of work in Enforcement Protection and Institution Services, and are not experience in the field of juvenile justice, social work, probation or parole.

Having considered evidence, oral argument and offers of proof, the Board made the following Rulings of Law:

- A. "Each class specification shall contain the following: ... (5) The minimum qualifications to be certified for entry into the class, including: a. The amount of formal educational preparation necessary; b. The amount of equivalent schooling which may be substituted for formal schooling, such as correspondence courses, adult education courses, trade or apprenticeship training; c. The amount of experience required, including the amount of time spent in practical preparation in related positions; and d. Any license or certification requirements; (6) Any special requirements unique to the class, including any requirement for successful participation in a state examination; (7) The recommended work traits for the class, including any knowledge, skill or ability recommended for successful job performance..." [Per 301.02 (c)]
- B. "Qualification requirements for the specification for any class shall constitute the basis and source of authority for the content of examinations for the class and for the certification of the qualifications of applicants." [Per 301.02 (d)]
- C. "The director shall review all applications for employment filed under Per 401 and certify in writing to the appointing authority whether the applicants meet the minimum educational, experience, and examination requirements which are stated in the class specification and/or supplemental job description required by Per 301.03." [Per 405.01 (a)]
- D. "The director shall refuse to certify an applicant, or shall disqualify a candidate... [who] is found to lack any of the preliminary requirements for which the application is made pursuant to Per 405.01." [Per 405.02 (a)(1)]

### Decision and Order

The "Recommended Work Traits" for the classification of Juvenile Services Officer II involve extensive knowledge of the principles and practices of juvenile justice (probation and parole), knowledge of statutes relevant to juvenile justice and adolescent development, and the causes of juvenile delinquency. Although the Board does not question Ms. Bison's ability to develop those

skills and work traits, the evidence does not support a finding that her over-all work experience warrants certification as meeting all the minimum qualifications for the classification.

The Board agrees that occupational groupings should not be used as barriers to career change or promotion. However, in this case, there is persuasive evidence that the difference in occupational groupings should bear heavily on the relevancy of the appellant's experience. Both Youth Counselors and Juvenile Services Officers are found in the Juvenile Custodial Series within the Institution and Resident Care Group. Teacher Assistants, however, are in the Educational Series within the Public Information and Education Group. Although Ms. Biron has experience working with at-risk youth, the focus of her experience was education, not custodial care. Accordingly, the Board found that the Department of Youth Development Services and the Division of Personnel were correct in refusing to certify Ms. Biron's experience as a Teacher Assistant as relevant to her application for Juvenile Services Officer II.

Therefore, on all the evidence, argument and offers of proof, the Board voted unanimously to DENY Ms. Biron's appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick H. Wood, Chairman

  
Robert J. Johnson, Commissioner

  
James J. Barry, Commissioner

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