

State of New Hampshire



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

APPEAL OF JOREL BOOKER
Docket #92-O-9
Division for Children and Youth Services

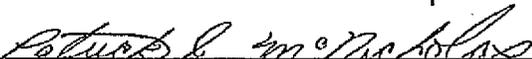
August 5, 1993

On May 19, 1993, the Personnel Appeals Board received Mr. Booker's Motion for Reconsideration of the Board's April 29, 1993 decision denying appeal for educational leave reimbursement. On May 21, 1993, the Board received the State's Objection to that Motion.

The Board reviewed the Motion and Objection in connection with the Board's decision in this matter and found that the appellant simply reiterated those arguments which were previously raised during the hearing on the merits of the appeal, and which were considered by the Board in reaching its decision to deny Mr. Booker's appeal.

The Board voted unanimously to deny the instant motion and to affirm its decision dismissing Mr. Booker's appeal.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Margo Hurley, SEA Field Representative
Paul G. Sanderson, Legal Coordinator, Health and Human Services

State of New Hampshire

WPPID1059



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

APPEAL OF JOREL BOOKER
Docket #92-0-9
(Denial of Request for Educational Leave)
Division for Children and Youth Services

April 29, 1993

The New Hampshire Personnel Appeals Board (McNicholas and Johnson) met Wednesday, February 10, 1993, to hear the appeal of Jorel Booker, a Child Protective Service Worker III in the Division for Children and Youth Services (DCYS). Mr. Booker was appealing the Division's denial of his request for educational leave. Mr. Booker was represented at the hearing by SEA Field Representative Margo Hurley. Paul G. Sanderson, Legal Coordinator, appeared on behalf of DCYS.

Mr. Booker's appeal, filed with the Board on September 27, 1991, arose from the Division's refusal to grant his application for "instructional release time of 3 hours a week (not for reimbursement) from September 3, 1991 to December 13, 1991, to take a course in family law". The appellant argued the course content related directly to his assignments as a CPSW, and that the request was completely consistent with the DCYS policy on educational leave. He argued that allowing him to use annual leave to attend the course while denying him educational leave was "...confusing at best."

On July 11, 1991, Mr. Booker forwarded a request for educational leave to his supervisor. At that time, he was employed as a Child Protective Service Worker II in the Portsmouth District Office of DCYS. He indicated on his application that he already possessed both a Bachelors and a Masters degree in Human Services, and expected to earn his J.D. in the spring of 1992. He indicated on his application that the family law course for which he was requesting leave was part of that degree program.

The appellant argued his request for educational leave was completely consistent with the Division's policy, and that granting him leave to study family law would improve his performance as a Child Protective Service Worker:

APPEAL OF JOREL BOOKER
Docket #92-0-9
(Denial of Request for Educational Leave)
page 2

"This request is consistent with the language of SR 89-94, 'such leave will improve the employee's performance on the job and be in the best interest of state service'. Additionally, this request is consistent with the 'content (of the course) is particularly relevant to the applicant's assignment with the Division', language of SR 89-94, 0892.9 (2)g, approval process." (SEA Attachment A - 9/27/91 notice of appeal)

Mr. Booker testified that both Marci Morris and Joan Whitfield, his two supervisors, had been granted educational leave to pursue their M.V. degrees. Although he knew of no Child Protective Service Workers who had been granted educational leave to study family law or to attend any other law school classes, he maintained that refusing him leave was an act of retaliation by the Department for remarks he had made to the press about problems at DCYS. (See: Appeal of Jorel Booker, Docket #92-0-11: letter of warning)

Robert Pidgeon, Deputy Director of DCYS, testified that educational leave can be approved only when the granting of such leave will have a direct and positive effect on the efficiency of government. He described the variety of duties which Child Protective Service Workers perform, and said the agency did not believe the family law course was directly related to Mr. Booker's work assignments. He testified that studies in family law could be beneficial for those assigned to the adoption unit, but that Mr. Booker was not assigned to that unit. He further testified that staff and contract attorneys are employed by the Division specifically to address the sorts of issues which a family law course would cover. Mr. Pidgeon also testified that contrary to Ms. Hurley's allegations of retaliation, the appellant's request for educational leave had been denied by both the Area Administrator and Bureau Administrator prior to publication of the article in Seacoast Sunday.

Section 0890 of the Training and Educational Leave Policy, to which the appellant referred when arguing his entitlement to "release time", states the following:

"An appointing authority, with the approval of Governor and Council, can authorize educational leave of absence to permanent State employees whenever in their opinion, results of such leave will improve the employee's performance on the job and be in the best interest of State service."

The policy goes on to say that a decision made by the "Granting Authority" is final and not subject to appeal. The Board must assume that the granting authority's "opinion" on the efficacy of educational leave is based on diverse

APPEAL OF JOREL BOOKER
Docket #92-0-9
(Denial of Request for Educational Leave)
page 3

criteria, including the employee's job performance and work attitude, available funds, staffing, and the relationship of course content to duty assignment. Clearly the appellant and the appointing authority have different opinions on whether or not granting leave to Mr. Booker to study family law would "...improve the employee's performance on the job and be in the best interest of State service."

While it seems clear to the Board that an understanding of family law and family law issues could enhance the performance of any Child Protective Service Worker, the Board is aware nonetheless that the agency can grant unpaid educational leave, but only has the authority to recommend to the Governor and Executive Council that an employee be paid for educational leave. Even if the Board were to direct the agency to make such a recommendation, the Governor and Council retain sole discretion in deciding whether or not the leave may be paid. Their decision would not constitute a decision of the appointing authority subject to review by this Board.

RSA 21-I:58 I, which the appellant cited as the statutory authority under which the Board could hear his appeal and grant him the relief requested, provides the following:

"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."

The rules adopted by the Director in effect at the time of Mr. Booker's application for paid "educational release time" stated the following:

"Per 307.05 Leave of Absence With Pay. An appointing authority may, with the approval of the governor and council, authorize salary payments in whole or part to employees whose leaves have been approved in order to permit them to attend school, visit other governmental agencies, attend as an elected delegate a session of the Constitutional Convention, or in any other approved manner to devote themselves to improvement of the knowledge or skills required in the performance of their work."

"Per 307.10 Education Leave. Permanent employees who are authorized educational leave shall be entitled to earn increment and longevity benefits, but are not entitled to holiday pay or to earn annual and sick leave while on such leave."

APPEAL OF JOREL BOOKER

Docket #92-0-9

(Denial of Request for Educational Leave)

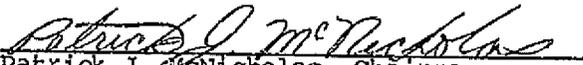
page 4

The Director's rules only address what may or may not happen if and when the Governor and Executive Council approve an agency's recommendation to grant paid educational leave. Since Mr. Booker's request for leave was not recommended by the appointing authority, the relevant personnel rules (Per 307.05 and Per 307.10) were never applied. Regardless of the Board's opinion on the relevancy of a family law course to the appellant's work assignments, or the reasonableness of the appointing authority decision to decline recommending paid educational leave for that purpose, the matter simply does not rise to the level of an appealable action under the provisions of RSA 21-I:58. The action in this instance resulted from the application of an agency policy, not a "rule" adopted by the Director of Personnel.

The DCYS policy on educational leave allows DCYS absolute discretion in granting or denying requests for educational leave. Should DCYS grant a request for educational leave, authorization for salary payments, in whole or in part, can only be granted by the Governor and Council. The Rules adopted by the Director simply state that salary payments, in whole or in part may be authorized for employees whose leaves have been approved in order to permit them to attend school, and that those who are authorized educational leave shall be entitled to earn increment and longevity benefits, but not holiday pay, annual leave or sick leave.

The Board voted to dismiss Mr. Booker's appeal, finding that he was not affected by the application of a rule adopted by the Director of Personnel, and was therefore not entitled to relief under the provisions of RSA 21-I:58.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson

cc: Virginia A. Lamberton, Director of Personnel
Paul Sanderson, Legal Coordinator, Health & Human Services
Margo Hurley, SEA Field Representative