

State of New Hampshire

WPPID1063



PERSONNEL APPEALS BOARD

State House Annex
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APPEAL OF JEFFREY CRAM Docket #90-0-21

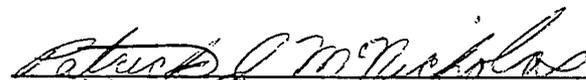
Response to Appellants' Request for Reconsideration

April 29, 1993

By letter dated March 22, 1993, SEA Director of Field Operations Thomas Hardiman, requested reconsideration of the Board's March 4, 1993 decision in the above-captioned appeal. Mr. Hardiman argued that the Board erred when it did not "grandfather" all the appellants into their labor grade when they were demoted into positions in the group hanes, and that the Board's decision did not mention the testimony of the State's witness, Ms. Nitz, regarding the appellants' current duty assignments in relationship to those duties they performed prior to demotion. Mr. Hardiman argued that the Board "has the power to correct this action that resulted in the appellants being downgraded, when in fact, they were doing more responsible work than they did prior to the downgrading in lieu of lay-off..."

In light of the Court's April 7, 1993 order in the Appeal of Lorraine Alley et al (N.H. Supreme Court Case No. 91-484), before the Board responds to the instant Request for Reconsideration, ~~the~~ Board will allow the parties twenty calendar days from the date of this order to file with the Board memoranda addressing their respective positions on the applicability of the Court's decision in Alley to the Board's March 4, 1993 decision in the Appeal of Jeffrey Cram (P.A.B. Docket #90-0-21).

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett, Commissioner


Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Thomas F. Hardiman, SEA Director of Field Operations
Susan Langle, Esq., Division of Mental Health & Developmental Services

State of New Hampshire

WPPID1021



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APPEAL OF JEFFREY CRAM
Laconia Developmental Services

Docket #91-0-21

March 4, 1993

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Rule) met Wednesday, October 28, 1992, to hear the appeal of Jeffrey Cram, an employee of the Division of Mental Health and Developmental Services, concerning an alleged downgrading of his position from Resident Care Assistant I/Medication Specialist (salary grade 7) to Resident Care Assistant I (salary grade 6). Mr. Cram was represented at the hearing by SEA Director of Field Operations, Thomas Hardiman. Laconia Developmental Services/Division of Mental Health and Development was represented by Attorney Susan K. Langle.

The appellant argued that State had improperly applied the Personnel Rules for demotion in lieu of lay-off when reducing Mr. Cram's salary from salary grade 7 to salary grade 6. Specifically, Mr. Hardiman stated in his January 30, 1991 letter of appeal:

"The employees affected by this decision ... are being told that they no longer have to use all the training that was previously required. However, they have the training and are certified to distribute medications. ... In other words, the job has changed."

He argued the appropriate rule to apply in this instance was Per 304.01(g) in effect at that time:

"Should the reallocation or reevaluation [of an employee's position] be downward, and the employee is receiving a salary which is higher than the maximum for the new class or grade, the employee's salary shall not be reduced but he will not be eligible for normal salary increments in the former grade. If the present salary is not higher than the new maximum, he shall remain at this same salary and will be eligible for salary increase benefits in the new class in accordance with Per 304.04."

The State argued the classification of Resident Care Assistant/Medication Specialist had been created solely in response to the shortage of available nursing personnel within the institution and the agency's difficulty in recruiting such personnel. Prior to 1979, the Nurse Practice Act prohibited the practice of nursing by anyone other than those persons licensed to practice professional or practical nursing in the State. Laconia State School was unable to recruit and retain sufficient nursing staff for the institution

to provide the required level of nursing care within the legal parameters established for administration of medication(s). In 1979, to address the nursing shortage at Laconia State School, the legislature amended the Nurse Practice Act¹ by expanding the list of persons exempt from the Act to include:

"Any direct care employee of the Laconia state school who has been certified capable of administering oral medications by virtue of having successfully completed a training program approved by the division of public health service, department of health and welfare, from administering oral medications pursuant to the order or prescription of a licensed physician."

By having completed the training and receiving certification as a Medication Specialist, Resident Care Assistants could be assigned those duties. All Resident Care Assistants/Medication Specialists had to complete the prescribed course of training and re-certify annually. Not all those who completed the training and re-certification were classified as Resident Care Assistants/Medication Specialists. Employees classified as Resident Care Assistants who had completed the prescribed course of training could then be classified as Resident Care Assistant/Medication Specialist. Although a Resident Care Assistant/Medication Specialist would normally be assigned to a particular building or shift, the agency could "pull" a Medication Specialist from his/her usual assignment into any other work unit or shift as needed to administer medication.

In 1989, increasing numbers of residents were moved out of the institutional setting and into community-based residences and group homes. The Nurse Practice Act was amended again to specify the standards under which authorized medications could be administered to group home residents by trained non-nursing personnel. Specifically, the amendment expanded the list of persons exempt from the Act to include employees of, or under contract with, the Division of Mental Health and Developmental Services who were certified as competent to administer certain medications to group home residents. Before Resident Care Assistants could be authorized to administer medications in a group home setting, they were required to successfully complete a course of training approved by the Board of Nursing. Authorization was also subject to following limitations:

"(1) When authorized by a registered nurse who has conducted an assessment of the client and evaluated the medication order and medications prescribed for the client;

Amendments to the act in 1981, 1983 and 1988 expanded the types of medications which employees certified as Medication Specialists could administer.

"(2) By a route other than injection, except for subcutaneous injections when the person administering the medication and the client receiving the medication have been authorized by a registered nurse; and
"(3) To clients in residential facilities and other programs to which the person administering the medication is regularly assigned."
[RSA 326:B-17 VIII (a) (1) - (3), 1989, 41:1, eff. June 11, 1989]

When Laconia Developmental Services closed and the remaining residents were placed in community-based group homes, the standard for administration of medication by Resident Care Assistants was established by RSA 326:B-17 VIII. The required course of training for Resident Care Assistants to administer medications in the group homes was defined by administrative rules promulgated by the Division of Mental Health and approved by the Board of Nursing.

The training for Medication Specialist certification in the institutional setting consisted of twenty, two-hour classroom sessions, homework assignments, a mid-term examination, final examination and practicum. Completion of the course took approximately three months. In order to participate in the training, an employee had to submit three letters of recommendation and be selected by the nurse-trainer through a personal interview process. Any employee who successfully completed the program and earned certification as a Medication Specialist had to renew their certification annually. New Hampshire Technical Institute, Hawthorne College and New England College gave college credit to those who successfully completed the program.

The forty hour training for Medication Specialist certification course previously approved by the Division of Public Health Services was replaced by an eight hour course approved by the Board of Nursing for administration of medication by non-licensed staff in community-based residential settings. All Resident Care Assistants in the group homes must complete eight-hour course, as every staff person is expected to administer medication to the residents of the group home. In the institution, under the standards established by RSA 326-B, employees did not require Medication Specialist training in order to work as Resident Care Assistants. While Resident Care Assistant/Medication Specialists could administer medication to any resident in any unit within the institution, those certified to administer medication in the group home under the community certification standard can only administer medication to those clients for whom they have been specifically trained. If a client's medication is altered, the Resident Care Assistant must be trained specifically to administer it to the client.

Mr. Hardiman argued that in spite of the reduced training requirements, the appellants actually function more independently than they had as Resident Care Assistant/Medication Specialists. He also argued that the group homes have less access to professional nursing supervision than had been available in the institution.

Ms. Langle asked the Board to find that the duties in the group home were not comparable to those in the institution, since the employees were not responsible for completion of comprehensive training and could not administer medications without prior **product/site/client** specific instruction and certification. She also asked the Board to find that the appellant was properly demoted in lieu of lay-off from Resident Care ,Assistant I/**Medication** Specialist (salary grade 7) to Resident Care Assistant I (salary grade 6).

Mr. Hardiman asked the Board to find the appellants had not been demoted in lieu of lay-off, but rather that their positions had been downgraded purely as a money-saving measure when the institution closed. He asked the Board to find that the appellants should have been "grandfathered" at their former salaries, and should have continued to receive compensation at salary grade 7. Mr. Hardiman suggested that in the alternative, the Board could order the Director of Personnel to upgrade Resident Care Assistant I positions from salary grade 6 to salary grade 7. In support of that recommendation, he argued that the duty assignments in the group home are more complex than they were in the institution, and must be **performed** with less on site supervision.

After considering the testimony and evidence, the Board voted to deny Mr. Cram's appeal. On the evidence, the Board found that two distinct **classifications**, Resident Care Assistant I/**Medication** Specialist and Resident Care Assistant I. The Resident Care Assistant I/**Medication** Specialist classification as it existed at the institution was abolished. Employees with sufficient seniority were allowed to transfer or bump into the group home settings into positions of Resident Care Assistant I, provided they met the training requirements set forth in the administrative rules for administration of medications by non-nursing personnel in the group homes. As provided by the Personnel Rules in effect at that **time**, Mr. Cram should have been placed at the step in the new salary grade closest to, but not exceeding, **his** salary at the time of demotion in lieu of lay-off.

The Board further voted to deny Mr. Hardiman's request for **reclassification** of the appellant's current position. The January 30, 1991 letter of appeal is limited to the claim that the appellant was entitled to protection of his salary under the provisions of (former) Per 304.01 (g), not that his position was improperly classified. RSA 21-1:57 only grants the Board the authority to review classification decisions issued by the Director of Personnel, and to order that the Director make a correction if the decision is found to be in error. The Board lacks the statutory authority to independently order the reclassification of a position to compensate an incumbent who has been demoted into that position in lieu of lay-off. Inasmuch as the appellant neither alleged nor offered proof that his position had been reviewed and reallocated, the request for reclassification as a remedy must be denied.

Proposed Findings of Fact:

The State's proposed findings of fact are granted.

Proposed Rulings of Law:

1 - 6 are granted.

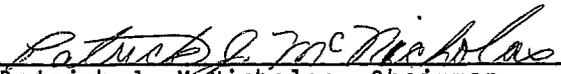
7 is granted to the extent that certification pursuant to He-M 1201 is the authorized certification. The record contains too little information about the residents or the remainder of the staff at the Tamarack Community Residence for the Board to assess the sufficiency or adequacy of the training.

8 is granted.

9 is neither granted nor denied. The request is overly broad, failing to identify specifically the rule or rules which the State applied.

10 is granted.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett

Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
Thomas F. Hardiman, SEA Director of Field Operations
Susan K. Langle, Esq., Division of Mental Health & Developmental Services