

State of New Hampshire

PERSONNEL APPEALS BOARD
Edward J. Haseltine, Chairman
Gerald Allard
Loretta Platt



EXECUTIVE SECRETARY
Mary Ann Steele

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

9/16

APPEAL OF PETER DELFAUSSE, MD.

September 15, 1988

Dr. Peter Delfausse, a former employee of New Hampshire Hospital, filed an appeal from a decision not to grant him certain termination benefits upon his resignation from his unclassified position as a psychiatrist. Appellant alleges that he acted to his detriment in justifiable reliance upon representations made to him by his immediate supervisor's administrative assistant concerning termination benefits. Appellant alleges that he was informed that he would be paid the equivalent of 39 days pay upon termination, but that instead he received the equivalent of only 12 days pay (pursuant to RSA 94:9). On appeal he seeks payment for the balance of 27 days, plus his fees and costs.

Assuming that the Appellant's allegations are true, the Board finds that it lacks subject matter jurisdiction over this appeal. Therefore, the appeal must be dismissed.

RSA 21-I:58, ■ provides in part that "[a]ny permanent employee who is... affected by any action... may appeal the decision to the personnel appeals board..." In construing this section, the Board looks to the statutory scheme as a whole of which section 58 is a part. RSA 21-I:49 provides in part:

The classified service to which the personnel provisions of this chapter shall apply shall comprise all positions in the state service now existing or hereafter established, except:

V. Those officers whose salary is specified or provided by special statute. The Board construes the appeal statutes to be "personnel provisions" of chapter 21-I that apply to the classified service, and not to officers, such as Appellant, whose salary was specified or provided by special statute. See RSA 94:1-a, ■. The term "permanent employee" is elsewhere used in obvious reference to classified employees. See, e.g., RSA 21-I:55; RSA 98-A:3.

In addition, the rules of the Division of Personnel accord with this construction. "Permanent employee" is defined as an employee who has satisfactorily completed a working-test period and whose permanent appointment has been recommended by the appointing authority. N.H. Admin. Rules, Per 101.26. "Appointing Authority" is defined as the officer, board, commission, or person having the power to make appointments to offices or employment in the state classified service. N.H. Admin. Rules, Per 101.05.

Appeal of Peter Delfausse, M.D.
September 15, 1988

page 2

Further support for the Board's interpretation is found in the special statutory scheme provided for the removal of state officials who are not classified employees. See RSA 4:1. The existence of this procedure, which provides for a direct appeal to the New Hampshire Supreme Court (bypassing this Board), indicates that RSA 21-I:58, I was not intended to apply to such officials.

Finally, the Board is unaware of any past decisions in which it has assumed jurisdiction over an appeal by an unclassified officer. Thus, the Board's past practice is consistent with its construction of RSA 21-I:58, I.

For the foregoing reasons, the appeal is hereby dismissed. Having so ordered, the Board also denies the Request for Prehearing Conference.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE
Executive Secretary

cc: Neil Castaldo, Esq.

Jack Melton, Superintendent
New Hampshire Hospital

Virginia A. Vogel
Director of Personnel