

State of New Hampshire



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

APPEAL OF DREW LEE DUGAL
DOCKET #00-0-1
DEPARTMENT OF CORRECTIONS

February 10, 2000

The New Hampshire Personnel Appeals Board (Wood, Johnson and Barry) met on Wednesday, December 8, 1999, under the authority of RSA 21-I:58, to hear the appeal of Drew Lee Dugal, a former employee of the Department of Corrections. Mr. Dugal, who was represented at the hearing by Attorney Shawn Sullivan, was appealing the State's decision denying him payment of 1/3 of his accumulated and unused sick leave upon approval of his application for disability retirement benefits. Attorney John Vinson appeared on behalf of the Department of Corrections.

Mr. Vinson informed the Board that the Department of Corrections had no objection to making the payment and, in fact, had attempted to do so when Mr. Dugal's application for disability retirement was approved. Mr. Vinson advised the Board that he had talked to the Director of Personnel, Mr. Manning, in attempt to resolve this matter. He argued that the Department of Corrections was not the proper party, because the Department could not effect the requested remedy.

The Board queried the parties briefly to determine whether there were any facts in dispute, or whether the issue was limited to the appropriate interpretation of the appellant's rights under the provisions of Per 1204.04 of the Rules of the Division of Personnel. The parties agreed the

dispute was a legal, not a factual issue. The parties also agreed they would file a stipulation setting forth the facts so that the Board might determine the applicability of Per 1204 to the appellant's separation from employment.

Briefly, the facts as presented by the appellant and the Department of Corrections are as follows:

1. On or about March 21, 1997, while he was still employed by the Department of Corrections, Mr. Dugal made application for disability retirement benefits and asked that May 1, 1997 be the effective date of retirement.
2. Subsequent to the date of application, on or about June 9, 1997, Mr. Dugal was notified in writing of his termination from his employment for non-disciplinary reasons from the Department of Corrections.
3. The termination resulted from Mr. Dugal's continued absence and inability to return to work due to a medical condition.
4. Mr. Dugal was notified by letter dated August 18, 1998 that his application had been approved retroactive to July 1, 1997. By way of explanation, Retirement Counselor Cheryl Carbone wrote, "NHRS law requires that a termination of employment occur prior to the effective date of retirement. Your employer certified you terminated employment on June 10, 1997. Based on the above listed information, your effective date of retirement will be July 1, 1997, not the May 1, 1997 date you requested."
5. By letter dated December 30, 1998, Mr. Dugal's attorney informed the Department of Corrections that the appellant's retirement application had been approved.. He asked the Department to arrange for payment of one-third of Mr. Dugal's accrued sick leave.
6. Lisa Currier, Human Resources Administrator for the Department of Corrections, responded by letter dated February 8, 1999 that the NH Bureau of Accounts and Division of Personnel had denied the request for payment because Mr. Dugal was separated from service by termination, not by retirement, and that he was therefore ineligible to receive payment for any accumulated sick leave.

Per 1204.04 (a) of the Rules of the Division of Personnel states:

"Upon retirement under the provisions of RSA 100-A:5 and RSA 100-A:6 only, or upon eligibility under RSA 100-A:5 but electing to receive a lump sum in lieu of an annuity, an employee shall receive payment in a sum equal to 1/3 the number of sick leave days remaining to the employee's credit, provided that the total number of days eligible for payment shall not exceed 30 days."

RSA 100-A:6, II (c) states:

"Upon the application of a group II member in service or of his employer, any such member who has been totally and permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the natural and proximate result of repeated trauma or gradual degeneration occurring while in the actual performance of duty, or arising out of and in the course of employment or of any occupational disease arising out of or in the course of employment as defined by RSA 281-A:2, XI or XIII and found to be compensable by the commissioner of labor pursuant to RSA 281-A:43, provided that such injury shall be without willful negligence on his part, may be retired by the board of trustees on an accidental disability retirement allowance; provided that he is found to be mentally or physically incapacitated for the further performance of duty and that such incapacity is likely to be permanent. "

The Board recognizes the dilemma facing Mr. Dugal and is immediately reminded of the logistical loop identified by Joseph Heller in his memorable novel, Catch 22. However, the unraveling of this loop is fairly straightforward.

First, the statutory framework for accidental disability retirement in RSA 100-A:6, II (c), has priority over an interpretive regulation if there is an inconsistency, although the Board should attempt to read the statutes and regulations as being as consistent as possible. Second, since Per 1204.04 (a) specifically applies only to retirements under the statutory framework, it shall be

interpreted in a manner to carry out the provisions of the statutes. Third, the persons responsible for administering the retirement program for State employees have ruled that "termination" from employment must occur before accidental disability retirement can be effective.

Therefore, the Board interprets Per 1204.04 (a) to provide that an employee shall be entitled to payment for sick leave days as of the effective date of retirement of the employee under RSA 100-A:5 and RSA 100-A:6, as recognized by the administrators of the New Hampshire Retirement System.

Accordingly, the Board voted to GRANT Mr. Dugal's appeal, finding that he is eligible for payment of 1/3 of his accumulated sick leave, not to exceed a total of 30 days, as of the effective date of his retirement..

THE PERSONNEL APPEALS BOARD



Patrick H. Wood, Chairman



Robert J. Johnson, Commissioner

James J. Barry, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301
Atty. John Vinson, Department of Corrections, 105 Pleasant St., Concord, NH 03301
Atty. Shawn Sullivan, Cook and Molan, PA, 100 Hall St., PO Box 1465, Concord &
03302-1465