

State of New Hampshire



PERSONNEL APPEALS BOARD

State House Annex

Concord, New Hampshire 03301

Telephone (603) 271-3261

APPEAL OF KIM LONERGAN AND NANCY LYFORD Appeal of Denial of Retroactive Compensation

On Wednesday, August 16, 1989, the Personnel Appeals Board (Commissioners McNicholas, Cushman and Johnson) reviewed the retroactive pay appeals of Kim Lonergan and Nancy Lyford, employees of Laconia Developmental Services (formerly Laconia State School) who had appealed determination of non-eligibility for retroactive pay as a result of the upgrading of their former positions.

On June 14, 1988, the Board issued an order remanding to the Director of Personnel all retroactive pay appeals pending on that date. On September 22, 1988, the Director filed her response with the Board, requesting that the appeals of Kim Lonergan and Nancy Lyford be dismissed for failure to timely file. Subsequent to that finding, the Board scheduled the matter for oral argument on March 22, 1989. Appellants were represented by SEA Field Representative Ann Spear. Mary Ann Steele represented the Division of Personnel.

At the close of that hearing, the Board allowed Appellants fourteen days in which to file additional written arguments addressing the issue of timely filing. The Division offered Requests for Findings of Fact and Rulings of Law, which the Board asked the Division of Personnel to incorporate into a response to be filed within seven days of receipt of Appellants' submission. Both parties provided the requested documents.

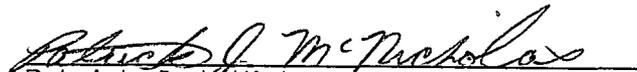
Upon review of the matter, the Board voted to dismiss the appeals of Kim Lonergan and Nancy Lyford as untimely. In so doing, the Board compared the instant appeal to the matter of Richard Savory, a former Case Technician for the Division of Human Services who had appealed denial of retroactive compensation following upgrading of his former position. As in the case of Appellants Lonergan and Lyford, Mr. Savory's appeal had been submitted for the Board's consideration, remanded to the Director by order of the Board, and returned to the Board by the Director with a recommendation that the appeal be dismissed for failure to timely file.

The Board heard oral argument by the parties on December 13, 1988, and issued an order on December 28, 1988, granting the request to dismiss Mr. Savory's appeal as untimely. The Board granted the State's Requests for Findings of Fact and Rulings of Law, wherein the State noted that Mr. Savory had no timely appeal pending on the date of the Court's ruling in the case of Petition of State Employees Association and Robinson, 129 NH 544 (1987). Appellant subsequently filed a Motion for Reconsideration which the Board denied by order dated March 15, 1989.

Appellant Savory, through his representative the State Employees' Association, filed an Appeal by Petition Pursuant to RSA 541:6 (No. 89-144) with the New Hampshire Supreme Court. On July 24, 1989, the Court summarily affirmed the Personnel Appeals Board's decision that Mr. Savory's appeal was not timely.

The Board finds that the appeals of Kim Lonergan and Nancy Lyford were not timely filed. In keeping with the Board's earlier ruling in the Appeal of Richard Savory, as affirmed by the New Hampshire Supreme Court on July 24, 1989, the Board voted unanimously to dismiss the appeal, and to grant the State's Requests for Findings of Fact and Rulings of Law as submitted April 10, 1989.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


George R. Cushman, Jr., Member


Mark J. Bennett, Alternate

cc: Ann Spear, SEA Field Representative

Lisa Currier, Human Resource Coordinator
Laconia Developmental Services

Virginia A. Vogel
Director of Personnel

DATED: August 18, 1989

State of New Hampshire

WPPID477



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Reconsideration Response APPEAL OF KIM LONERGAN AND NANCY LYFORD

May 17, 1990

The Personnel Appeals Board, upon review of Appellants' September 7, 1989 Motion to Reconsider, affirms its decision of August 18, 1989, finding the above-captioned appeal to be untimely.

Appellants argue that "the adjustment and appeal process was followed by the grievants and by their actions was approved as an appropriate procedure until Director Vogel's April 10, 1989 letter to the Personnel Appeals Board raising the issue of a timely filing after twenty-two (22) months of the appeal process had occurred."

The record reflects that the timeliness issue, as well as the propriety of the steps taken to appeal denial of retroactive compensation were raised in the Director's August 3, 1987 letter to SEA Field Representative Spear. The Director's letter stated, in part:

"You fail, however, to indicate and/or document exactly what grievance was filed, when and by whom. Further, it seems somewhat peculiar that a decision relative to retroactive compensation arising from an Appeals Board decision some five months ago is only coming to this Division's attention now. Additionally, if the action appealed was a decision of the Appeals Board, why wasn't your letter addressed to them. I do not intend to pursue this matter any further unless and until you forward to my attention information regarding 1) the manner in which this alleged denial of compensation was appealed, 2) how notification of the decision in question was received by the above-named employees, 3) by whom the appeal was made, 4) how the matter is timely filed in accordance with the "Rules", clarifying how such a request for hearing can be considered timely now, some five months later."

Clearly, the issue of timely filing, and the appropriate forum in which to file the appeal, had already been raised by the Director, both in her letter to Ms Spear of August 3, 1987, and in response to the Board's order for more information, and recommendation for disposition.

Lonergan and Lyford
Reconsideration Response

Appellants also contend that "regardless of any dispute of timeliness the Personnel Appeals Board should accept this appeal by looking past the technical argument raised by the State and focus on the equity of the facts and intent of the appellants' pleadings".

The Board can not accept the argument that it should simply over-look the issue of a timely filing, particularly when the issue from which the appeal arises was a decision of the Board. Certainly, Appellants' representative had to have been aware that Superintendent Crocker would have had no authority to over-turn the Board's decision. Since Crocker would have had no authority to over-turn the Board's decision in the upgrading of direct care personnel, he would not have had any authority to decide, for the Board, that a late filed appeal would have been accepted.

Based upon the foregoing, the Board denies Appellants' Motion to Reconsider.

THE PERSONNEL APPEALS BOARD

Patrick J. McNicholas, Chairman
George R. Cushman, Jr., Member


Mary Ann Steele, Executive Secretary
(for the Board)

cc: Lisa A. Currier, Human Resource Coordinator
Laconia Developmental Services

Chris Henchey, Director of Operations
State Employees' Association

Virginia A. Vogel, Director of Personnel