State of New Hampshire

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PERSONNEL APPEALS BOARD
State House Annex
Concord, New Hampshire 03301
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N.H. Personnel Appeals Board Decision

In Re:

MARY MAGGIONCALDA
Docket #90-O-23 and #90-O-26

Response to Appellant's Motion for Reconsideration and Rehearing
and
Motion for Production of Documents

February 14, 1991

On October 5, 1990, Mary Maggioncalda, through her representative Attorney Richard E. Molan, submitted a Motion for Rehearing and Reconsideration and a Motion for Production of Documents in the above-captioned appeals.

The New Hampshire Personnel Appeals Board, by order dated September 17, 1990, had denied Ms. Maggioncalda's appeals of non-certification for positions of Administrator II and Supervisor VII. In so doing, the Board had found that the appellant did not meet the educational criteria established for the specific positions for which she had applied, nor had she demonstrated that her own education and training should qualify her for promotion to either of those positions. The Board did not find it unreasonable to require formal education in the listed fields in order to meet the minimum qualifications for either position in question. Similarly, the Board did not find that the Director of Personnel acted arbitrarily or capriciously in refusing to substitute ostensibly relevant experience for education in the required field(s).

In the Motion for Reconsideration filed on Ms. Maggioncalda's behalf, Attorney Molan argued that establishment of educational requirements which do not allow for the substitution of relevant experience for education, or substitution of formal education in other than the selected fields was arbitrary, capricious

and discriminatory. Attorney Molan argued that the Board had erred as a matter of law by accepting the rationale offered by the Division of Personnel and the Department of Health and Human Services for establishment of such minimum qualifications without first requiring the State to produce evidence that applicants lacking such minimum qualifications could not be successful upon promotion.

Attorney Molan further argues that only through records available uniquely to the Division of Personnel might the appellant demonstrate that similarly qualified incumbents are performing successfully in positions of Administrator or Supervisor. Attorney Molan therefore submitted his Motion for Production, offering to provide new and additional evidence in a rehearing of Ms. Maggioncalda's appeal based upon the information supplied by the Division of Personnel.

In his original written submissions to the Board, Attorney Molan had argued "No objective rationale can be articulated nor can history provide a reasonable reflection as to why experience and education combination and equivalencies cannot and are not permitted for these specific positions within the State's classified service. That being the case, to render career advancement at an end is unreasonable, arbitrary and capricious under these circumstances." On that premise, Attorney Molan argued that refusal to certify Ms. Maggioncalda's applications for Administrator II and Supervisor VII was discriminatory.

To be successful in her appeal, Ms. Maggioncalda must have offered proof to support her claim of discriminatory treatment. It is not the burden of the Division of Personnel nor of the Department of Health and Human Services to attempt to disprove the appellant's theory of refusal to certify based on non-merit factors. Rather, the appellant must prove by a preponderance of the evidence that the Division acted arbitrarily, capriciously or unreasonably.

The Board, in its order of September 17, 1990, suggested the type of proof which the appellant might have submitted to persuade the Board to reverse the Division of Personnel's certification decision. The appellant, in her Motion for Reconsideration and Rehearing now argues, "The Board has suggested a methodology of proof in its decision relative to the Appellant's showing successful completion of duties by similarly qualified incumbents, to wit, the Appellant, on information and belief avers that such a standard can be

supported by evidence which may be adduced through the production of record by the Division of Personnel in compliance with the attached request for production of documents, thereby providing new and additional evidence which may be adduced at a rehearing in this matter."

Now that the appellant understands what evidence the Board might have found persuasive, she asks the Board to order the Division of Personnel to conduct a search of its records and provide documents to the appellant which might support her position and provide the evidence which was lacking in her original appeal to the Board. She also argues that without the documents requested in her Motion for Production, she is essentially denied her right to due process and confrontation.

The Board might have found Appellant's Motion for Production of Documents more compelling had it been offered at or before the hearing. The appellant, however, made no requests for comparative data about similarly situated employees from the Division of Personnel prior to the hearing, Further, the appellant made no reference to such comparison in her own Requests for Findings of Fact. The Board is unwilling to entertain Appellant's Motion for Reconsideration solely for the purpose of allowing the appellant an opportunity to discover and present new evidence which she failed to obtain prior to her hearing.

Appellant's own Requests for Findings of Fact and Rulings of Law make virtually no reference to the possibility that there are other incumbents with educational training and experience equivalent to the appellant's who are successfully performing duties similar to the Administrator II or Supervisor VII positions, or that she was precluded from perfecting her appeal in the absence of such information.

The Appellant has failed to demonstrate that the Board's order, in light of the record before it, was either unreasonable or unlawful. In fact, the Board granted all of appellant's requests for findings of fact, but did not arrive at the same conclusions as those presented in the appellant's proposed rulings. The Appellant has also failed to demonstrate that the information sought in her Motion for Production was unavailable prior to the hearing, that she had attempted to obtain such information prior to the hearing, or that

having made such attempt was denied access to that information. Accordingly, Appellant's Motion for Reconsideration and Rehearing and Appellant's Motion for Production are denied.

THE PERSONNEL APPEALS BOARD

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N.H. Personnel Appeals Board Decision
In Re:
MARY MAGGIONCALDA
Docket #90-0-23 and #90-0-26

dated: Seatember 17, 1990

The New Hampshire Personnel Appeals Board (McNicholas, Cushman and Johnson) met Wednesday, August 22, 1990, to hear the certification appeals of Mary Maggioncalda for two position classifications in the Department of Health and Human Services: Administrator II (Salary Grade 28) and Supervisor VII (Salary Grade 27). Ms Maggioncalda, who was represented at the hearing by Attorney Richard Molan, is currently employed by the Division of Elderly and Adult Services as a Program Specialist I (Salary Grade 17). Ms Maggioncalda argued that the Division of Personnel acted unreasonably in refusing to certify her applications to those positions as meeting the minimum educational qualifications.

Virginia A. Vogel, Director of Personnel, appeared on behalf of the Division of Personnel. Ms Vogel contended that the Division of Personnel did not consider Ms Maggioncalda's undergraduate degree in English to satisfy the minimum educational requirement of either position for which Ms Maggioncalda had applied. She further argued that degree requirements may vary within a classification in terms of the major field of study required by virtue of the duty assignments of the particular position.

Ms Maggioncalda testified that she has been employed by the Department of Health and Human Services for fifteen years, holding positions in the Division of Welfare, Division for Children and Youth Services, and the Division of Elderly and Adult Services. She has described her education and experience as qualifying her, in the past, for increasingly responsible positions in the Department of Health and Human Services. Ms Maggioncalda indicated that she had negotiated for provision of administrative support services between various sub-components of the Department during the creation of the Division for Children and Youth Services, and during transfer of the Philbrook Center to the Division for Children and Youth. She also testified that her current assignments involve organizational development and structure, training, and administration of a demonstration grant associated with Dartmouth Medical School. Ms Maggioncalda concluded that the duties described in both the posting for Supervisor VII and the posting for Administrator II were quite >comparable to her current responsibilities in her position of Program Specialist.

With regard to her educational background, Ms Maggioncalda contended that the functional thrust of her course work in English was written communication. In her estimation, the generic specifications place a high value on communication skills. When asked if she believed herself to meet the minimum qualifications for the positions as posted, she testified that she did, believing her degree in English and her additional course work should qualify as a related field. If it were not considered a related field, she argued the qualifications were not reasonable.

Ms Vogel argued that the appellant did not meet the educational criteria for the specific positions for which she had applied. In the position of Supervisor VII, the specification requires the applicant to hold a Master's degree from a recognized college or university with major study in a human services field such as social work or psychology or in business, public or health administration, political science, or a related field, plus six years of relevant experience in a human services field, with at least three of those years in a management or consultive level position. In the alternative, an applicant could hold a Bachelor's degree from a recognized college or university with major study in a human services field such as social work, psychology, health care, business administration, political science, or a field related to the areas mentioned. In addition, the applicant would need nine years of experience in fields such as welfare, social services, public health or a related field, with five of those years at a management or consultive level.

Although Ms Maggioncalda's credentials are impressive, the specifications for the two positions for which the appellant had applied make no provision for equivalencies in the areas of education and experience. The Board does not find it unreasonable to required formal education in the fields listed in order to qualify for promotion to the positions in question.

The Board ruled as follows on the appellant's proposed findings of fact and rulings of law:

Numbers 1 - 16 are granted
Numbers 17 - 20 are denied

What the appellant has failed to consider in proposing that she should have qualified for promotion based upon the reasonable consideration of her experience as satisfying the educational requirements for the subject position is the previous certification of her application for other positions based upon her possession of a bachelor's degree and graduate credits. Were the Board to accept the appellant's arguments on their face, any requirement for formal education at any level would become questionable.

As a practical matter in the selection of candidates for promotion, certain minimum entrance requirements must be satisfied, and the appellant has not demonstrated that establishment of such minimum educational requirements is either arbitrary or capricious, nor has the appellant demonstrated that a candidate who lacks such minimum entrance requirements could be successful in the performance of the duties in either the classification of Administrator II or Supervisor VII in the areas to which those positions are assigned.

Based upon the foregoing, the Board voted to deny Ms. Maggioncalda's appeals. The Board further found that the Department of Health and Human Services, and the Division of Personnel, acted reasonably in denying Ms. Maggioncalda certification for the classifications of Administrator II and Supervisor VII.

THE PERSONNEL **APPEALS BOARD**

Patrick J. McNicholas, Chairman

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George R. Cushman, Jr.

cc: Richard Molan, Esq.
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Virginia A. Vogel
Director of Personnel

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