

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
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Nursing Assistants - Glenclyff Home for the Elderly

Docket #2009-O-001

Board's Decision on Petitioner Randy P. Choiniere's Request for a Declaratory Ruling
Regarding the Operation of State-Owned Vehicles at Glenclyff Home for the Elderly

October 8, 2008

By letter dated August 20, 2008, SEA Grievance Representative Randy Choiniere requested that the Board issue the following declaratory ruling regarding the operation of state-owned vehicles by Nursing Assistants at Glenclyff Home for the Elderly:

"Driving a safe vehicle *is* not a duty characteristic of the Nursing Assistant I, Nursing Assistant II, or Nursing Assistant III class specification. Glenclyff Home for the Elderly may not require employees holding Nursing Assistant I, Nursing Assistant II, or Nursing Assistant III positions to operate safe vehicles as part of their *duties*."

By letter dated October 3, 2008, Todd Bickford, Superintendent of the Glenclyff Home filed a response. Having carefully reviewed the pleadings and supporting documentation submitted by Mr. Choiniere and Mr. Bickford in connection with his request, the Board found as follows:

- I. Per-A 201.03 (a) of the Board's rules states, "(a) Any person may petition the board for a declaratory ruling on matters within the board's jurisdiction by filing an original and 3 copies of the petition in accordance with Per-A 204.02."

- II. Per-A 102.08 of the Board's rules defines "Declaratory ruling" as meaning, "...a decision by the board as to the specific applicability of any statutory provision or of any rule or order of the board in accordance with RSA 541-A:1, V."
- III. The relevant statutes, rules and legal authority cited in the petitioner's request for a declaratory ruling in this case are not matters within the Board's jurisdiction, but instead pertain to the Personnel Director's authority to prepare, maintain and periodically update the classification plan and apply those rules adopted by the Director of Personnel under the authority of RSA 21-I:42 in classifying positions.
- IV. In accordance with the provisions of RSA 21-I:43, I, "It is the intent of the general court that the director of personnel shall have the sole authority to adopt and interpret, subject to the appeals process" those rules related to position classification.
- V. RSA 21-I:46 authorizes the Board to "...hear and decide appeals as provided by RSA 21-I:57 and 21-I:58 and appeals of decisions arising out of application of the rules adopted by the director of personnel."
- VI. RSA 21-I:57 permits employees, department heads, or both to appeal the allocation of a position in a classification.
- VII. RSA 21-I:58 allows "any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57" to appeal to the Board within fifteen calendar days of the date of the action giving rise to the appeal.
- VIII. The petitioner's question and the proposed ruling do not pertain to the matters within the Board's jurisdiction but to the Personnel Director's authority under the provisions of RSA 21-I:42 to develop and maintain a system of classification for all positions within the State classified service.
- IX. While RSA 21-I:57 permits agency heads, employees or both to appeal the Director's decision with respect to the allocation of a position within a classification system, and authorizes the Board to issue an order in connection with such an appeal for the Director to make a correction regarding the appropriate classification of a position, the Board's enabling statutes do not authorize the Board to make an independent review of position classifications outside the context of a properly filed appeal, nor does the law permit the Board to issue declaratory rulings concerning those duties, responsibilities or minimum

qualifications that may be appropriate for any particular class of positions within the classification system.

For all the reasons set forth above, the Board voted unanimously to deny the petitioner's request for a declaratory ruling regarding the duties characteristic of Nursing Assistants I, II or III at the Glenclyff Home for the Elderly, and whether or not employees holding positions with those class titles may be required, as part of their duties and responsibilities, to operate State vehicles to transport patients. In so doing, the Board also voted to refer the matter to the Director of Personnel for review and action as may be appropriate.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



Philip Bonafide, Vice Chairman



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