

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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APPEAL OF ROSE POUND

Docket #97-0-4

Department of Health and Human Services

March 13, 1997

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, February 26, 1997, under the authority of RSA 21-I:57, to consider the Personnel Director's February 20, 1997, Motion to Dismiss the Appeal of Rose Pound.

By letter dated January 21, 1997, Ms. Pound requested a hearing before the Board "for the purpose of reviewing and overturning an impending downgrade and the resulting loss of salary." By letter dated February 20, 1997, Personnel Director Virginia Lamberton moved for dismissal of Ms. Pound's appeal, arguing that the appeal was not timely filed. Ms. Pound did not file an objection to that motion.

In her letter of January 21, 1997, Ms. Pound stated that she received notification in February, 1995, that her position of Administrator IV, salary grade 32, had been reallocated to that of Administrator II, salary grade 28. She said she was aware that under the current Rules of the Division of Personnel, employees whose positions are downgraded are allowed to continue receiving compensation at the higher rate for a period of two years, after which the employee's salary is adjusted to reflect the actual classification of the employee's position. However, Ms. Pound argued that the actual change of duties which ultimately resulted in the reclassification of her position had

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occurred prior to adoption of the current Rules of the Division of Personnel. She stated that in 1991, she was reassigned from her position of Administrator IV to the position of Acting Area Administrator. She argued that because the reassignment occurred prior to April 27, 1996, the effective date of the current Personnel Rules, the salary reduction provision of Per 303.06 were inapplicable.

In her Motion to Dismiss, Ms. Lamberton argued that the "impending downgrade" of Ms. Pound's position from Administrator IV, salary grade 32 to Administrator II, salary grade 28, had occurred on February 3, 1995. She argued that under the provisions of RSA 21-I:57 and the Rules of the Division of Personnel, Ms. Pound had fifteen calendar days from the date of that decision to file an appeal of the reallocation, and that no such appeal was filed. Ms. Lamberton argued that the reallocation, and subsequent reduction in Ms. Pound's salary, was effected under the provisions of the Rules of the Division of Personnel which were effective April 27, 1992. Ms. Lamberton argued that the action from which the instant appeal arises was a classification decision in February, 1995, and that an appeal filed nearly two years after that decision must be dismissed as untimely.

Ms. Pound admitted that she received notification in February, 1995, that her position had been downgraded. She also admitted that she was informed that as a result of the reallocation, two years after the effective date of reclassification, her salary would be reduced from salary grade 32 to salary grade 28. While noting that she never was apprised of any specific right to appeal that decision, Ms. Pound stated that former DCYS Director Lorrie Lutz had advised her that she would support Ms. Pound in an appeal of her reallocation but advised Ms. Pound that she would first need a "paper trail" to document the reassignment to "Acting Area Administrator." Ms. Pound argued that until she discovered copies of an April 27, 1992, Performance Evaluation in her file at the Department of Health and Human Services, she was unaware of any such documentation. She argued that upon discovery of the documentation, she filed a timely appeal.

The appellant's April 27, 1992 Performance Summary lists her position at that time as "Administrator IV (Acting Area Admin. - DCYS)." The summary does not provide evidence of a reallocation or reclassification subject to the provisions of RSA 21-I:57 or the former Rules of the Department of Personnel. As such, the summary provides no support for the appellant's argument that her salary following reclassification must conform to the provisions of Personnel Rules in effect prior to April 27, 1992.

There is no dispute that in February, 1995, Ms. Pound received notification of her reclassification from Administrator IV, salary grade 32 to Administrator II, salary grade 28. Similarly, there is no dispute that Ms. Pound was apprised of the effects of such a reallocation on her salary, and that after two years, her salary would be adjusted according to the provisions of Per 303.06 of the Rules of the Division of Personnel. There also is no reference to a statutory provision or administrative rule requiring the Director to supply specific notice to an employee of rights to appeal either a reallocation or any change in compensation which might result from that reallocation.

RSA 21-I:57 states, in pertinent part:

"The employee or the department head, or both, affected by the allocation of a position in a classification plan shall have an opportunity to request a review of that allocation in accordance with rules adopted by the director under RSA 541-A, provided such request is made within 15 days of the allocation. ... The employee or department head, or both, shall have the right to appeal the director's decision [concerning the allocation of a position in the classification plan] to the personnel appeals board in accordance with rules adopted by the board under RSA 541-A."

Per-A 201.01 (b) of the Rules of the Personnel Appeals Board provides for appeal to the Board by, "Any employee or department head, or both, dissatisfied with the decision of

the director of personnel regarding the allocation of a position in a classification." Per-A 202.01 (a) of the Board's Rules also provides that, "Any notice of appeal shall be filed in writing within fifteen (15) days of the action giving rise to the appeal."

Having considered the arguments offered by the parties, the Board voted unanimously to deny Ms. Pound's appeal as untimely. Ms. Pound's assertion that she discussed the reallocation with Lorrie Lutz, the former Director of the Division for Children and Youth Services, and that she secured Ms. Lutz's support for an appeal, supports Director Lamberton's assertion that Ms. Pound was aware of the need to timely file an appeal if she intended to challenge the Director's decision. Furthermore, while the Performance Summary offered by the appellant supports her claim that she was performing the duties as "Acting Area Administrator" in 1991, it does not provide evidence of a review and reclassification subject to the provisions of RSA 21-I:57 or the Rules of the Division of Personnel.

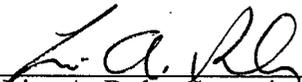
THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Rose Kurtz Pound, 33 Blaze Hill Road, Contocook, New Hampshire 03225
