

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### APPEAL OF KATHLEEN A. REGAN Department of Health and Human Services Docket #92 - 0 - 4

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92-0-904

September 6, 1994

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Rule) met Wednesday, August 10, 1994, to hear the appeal of Kathleen A. Regan, a former employee of the Division for Children, Youth and Families (formerly Children and Youth Services). Ms. Regan, who appeared pro se, was appealing the Personnel Director's decision denying a request to establish Ms. Regan's beginning salary at a step above the minimum of her salary grade after after the appellant had accepted employment with the Division for Children and Youth Services as a Program Specialist III. Virginia Lamberton, Director of the Division of Personnel, appeared on behalf of her division.

Before taking up the merits of Ms. Regan's appeal, the Board allowed the parties to offer oral argument on the Director's July 8, 1994 request to dismiss the appeal. Ms. Lamberton argued that Ms. Regan had left State service voluntarily on April 16, 1993, and therefore had no relief available to her even if she were to succeed in her appeal. Ms. Lamberton argued that the Rules require initial appointment at the minimum of the salary grade established for the position, except when appointment at a step above the minimum is requested by an agency and approved by the Director of Personnel as being in the best interest of the State. Although Ms. Regan's appointment was made under the former Rules of the Division of Personnel, Ms. Lamberton argued that the current Rules clarify what the past practice had been; appointments above the minimum of a salary grade are approved only in bona fide cases of recruitment difficulties. She said she believed the Board should not be in the business of making initial employment decisions, noting that the appellant was not even an employee at the time of the action giving rise to the dispute, the decision to employ her at the minimum of the grade. Therefore, Ms. Lamberton argued that Ms. Regan was not entitled to appeal to the Personnel Appeals Board.

Ms. Regan argued that she had waited two years for a hearing on the merits of her appeal and believed she was entitled to review of the case. She argued that there was a salary difference of approximately \$3,600 between her annual earnings at Step Min. of grade 22 and Step III. She believed that if her appeal was successful, at a minimum she would be able to collect the difference in compensation between the minimum and Step III of salary grade 22 for her period of employment with the State.

Following oral argument on the Director's Motion, the Board advised the parties that it would

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N-) take the motion under advisement, and would allow the parties to address the merits of the appeal itself.

Ms. Regan stated that when she applied for the position of Program Specialist III, the advertisement included a salary range, with no notice that initial hires must be placed at the minimum step. Otherwise, she said she would not have pursued the position. Ms. Regan stated that salary was not discussed with her until she was offered the position. She said that she was advised at that time that the agency would recommend hiring her at Step III. At that time she was informed that hiring above the minimum required the approval of the Personnel Director and that although the Director might not approve Step III, the agency believed there should be no problem securing approval for employment at Step II. Ms. Regan stated that the agency had given her the option of starting at the minimum and waiting for retroactive approval of a higher than minimum step, or delaying start of work until a decision had been made by the Personnel Director on the request. Ms. Regan opted to take the position, assuming she would eventually be compensated at the higher rate, retroactive to her first day of work.

Ms. Regan said she had been advised that there were only six candidates scheduled for Program Specialist III interviews and that of the four who appeared as scheduled for the interview, she was considered the best candidate. Ms. Regan stated that the position itself was funded in whole by a federal grant and was budgeted for a Program Specialist III Step II, and she believed that hiring above the minimum to fill that position would have had no effect on the general fund. Ms. Regan also asserted that Richard Chevrefils, then Director of the Division for Children and Youth Services, considered hiring her above the minimum to be in the best interest of the State, and that his opinion should have been given greater weight in this matter.

Ms. Lamberton said that Ms. Regan was one of several candidates for the vacant Program Specialist III position and that there was no difficulty in recruiting to fill that position. She said that while the former Personnel Rules referred to hiring above the minimum step as permissible when it was "in the best interests of the State", in practice that had always meant filling a long-vacant position for which there had been great difficulty recruiting. Ms. Lamberton stated that Ms. Regan's education and experience were in the field of rehabilitation, not child abuse and neglect.

After considering the record before it, the Board voted to deny the Director's Motion to Dismiss. The fact that Ms. Regan resigned her position after filing her appeal does not necessarily render her appeal moot. The record reflects that the difference between the salary Ms. Regan received and the salary she believed she was entitled to receive was approximately \$3,600. Although she was a probationary employee when she filed her appeal, an appeal was timely filed within fifteen days of the date of the Director's decision denying a request to assign her to Step III of salary grade 22. On that basis, the Board found that the appellant was entitled to a review of that decision.

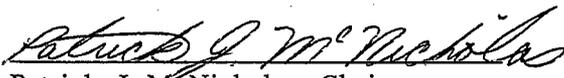
On the merits of the case, the Board voted unanimously to deny Ms. Regan's appeal. In spite of Ms. Regan's lack of familiarity with the administrative rules covering her employment with the State of New Hampshire, the rules do exist and provide constructive notice. Per 304.01(a) of the Rules in effect at the time of Ms. Regan's appointment stated, "The minimum rate of pay

for a class shall normally be paid upon appointment to the class; however, subject to the approval of the director, original appointment at a salary above the minimum rate may be paid whenever such action is in the best interest of state service."

Ms. Regan was never promised a salary above the minimum for the class in which she accepted employment, although she was informed that a request would be made for hiring above the minimum. She was advised that hiring above the minimum must be approved by the Director of Personnel. Ms. Regan received no promises she would receive a salary above the minimum, although she was informed that if Step III was not approved by the Personnel Director, there shouldn't be a problem getting the Director to approve Step II. When given the option of starting work at the minimum and seeking retroactive approval for the higher step, or waiting to start work until the step issue had been resolved, Ms. Regan chose to start work, accepting employment salary grade 22 step 0. Ms. Regan failed to prove by a preponderance of the evidence that employing her at Step III in the class Program Specialist III was in the best interest of state service. She also failed to prove by a preponderance of the evidence that the Director of Personnel abused her discretion in denying the request to appoint Ms. Regan at a salary above the minimum for the class.

Accordingly, the Board denied the appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Mark J. Bennett, Commissioner

  
Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director, Division of Personnel  
Sandra Platt, Administrator, Health and Human Services  
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