

State of New Hampshire

WPPID1030



**PERSONNEL APPEALS BOARD**

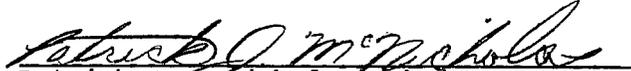
State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

**APPEAL OF DONALD SHANLEY**  
Response to Appellant's Request for Reconsideration  
Docket #90-0-12

December 16, 1992

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Rule) met Wednesday, December 16, 1992, to consider the appellant's December 8, 1992 Motion for Reconsideration in the above-captioned appeal, and the State's December 14, 1992 Objection to that Motion. Having reviewed the Motion and Objection in conjunction with the Board's November 19, 1992 decision in this matter, the Board voted unanimously to deny the Appellant's Motion for Reconsideration. The Board also voted to affirm its November 19, 1992 decision, denying Mr. Shanley's appeal for temporary promotion.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Mark J. Bennett

  
Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel  
Margo Hurley, SEA Field Representative  
Michael Barlow, Director of Financial Data Management  
Elliot Lerner, Commissioner, Department of Administrative Services

# State of New Hampshire

WPPID1020



## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

### APPEAL OF DONALD SHANLEY Division of Information Services Department of Administrative Services Docket #90-O-12

November 19, 1992

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Rule) met Wednesday, October 28, 1992, to hear the appeal of Donald Shanley, a former employee of the Division of Information Services. Mr. Shanley, who was represented at the hearing by SEA Field Representative Margo Hurley, was appealing an alleged denial of compensation for a temporary promotion from salary grade 27 to salary grade 31, effective September 25, 1989. The Department of Administrative Services was represented by Michael Barlow, Director of Financial Data Management. Also appearing on behalf of the State was Virginia Vogel, Director of Personnel.

At the outset of the hearing, Mr. Barlow submitted a Motion to Dismiss on the grounds that the appeal was untimely. In support of that Motion, Mr. Barlow argued the appellant had failed to pursue Step II of the appeals process, which required that he notify the Director of Personnel within 5 working days of receiving Commissioner Jones' letter of May 14, 1990, that he was seeking further review of the Commissioner's decision. He also argued the appeal to the Board, filed June 22, 1990, was not received by the Board within fifteen calendar days of Commissioner Jones' May 14, 1990 decision.

Ms. Hurley objected to the Motion, arguing she had never received Commissioner Jones' May 14, 1990 letter. She noted for the record that the Jones letter was not on agency letterhead and was unsigned. She also argued she wrote to Director Vogel on May 11, 1990, since she had not, by that date, received a reply to her April 20, 1990 appeal to the Commissioner. Ms. Hurley said she never received a reply from Director Vogel.

The Board voted to take the Motion under advisement, noting the appeal itself had been received by the Board more than two years earlier and that the

parties were all present for the scheduled hearing on the merits. The Board advised the parties a ruling on the Motion would be issued as part of the written decision in this case.

The Board first voted to deny the State's Motion to Dismiss. Ms. Hurley's claim that she had never received Commissioner Jones' May 14, 1990 letter is somewhat bolstered by the fact that the file copy offered by the State is neither signed nor copied on departmental letterhead. All other similar exhibits offered by the appellant and the State appear on letterhead or interdepartmental communication stationery. Accordingly, the Board voted to consider the appeal on its merits.

Having considered the evidence as presented, the Board voted to deny the appeal. In so doing, the Board made the following findings of fact and rulings of law:

Prior to August 27, 1989, Mr. Shanley was assigned to the DIS work group supervised by Richard Bandlow (DIS Group Leader, salary grade 31). Other work groups were supervised by George Blanchard, Peter Croteau, Richard Reycroft, Anita Wiswell, Tom Edwards and Joseph Nadeau. The classification of the senior staff person in each instance was determined by the complexity and analytical requirements of the computer system(s) for which the work group was responsible. Several of the work groups were required to design and develop new systems while others, such as Mr. Nadeau's "group", were primarily responsible for maintenance of existing systems.

At that time, only Mr. Blanchard, Mr. Bandlow and Mr. Reycroft were classified as DIS Group Leader, salary grade 31. The remaining employees were compensated as Management Information Systems Analyst Programmer II, salary grade 27, although the positions held by Ms. Wiswell and Mr. Ellington were actually classified as Data Processing Project Manager, salary grade 30, temporarily downgraded to MISAP II, salary grade 27. Mr. Nadeau's position, classified as MISAP I, salary grade 25, had been temporarily upgraded to MISAP II, salary grade 27, while he was responsible for supervision of a work group.

On August 11, 1989, Mr. Nadeau transferred to the Department of Revenue Administration. On or about August 25, 1989, Mr. Shanley was asked by DIS Administrator Frank Champa to assume certain tasks supervising a work group

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Division of Information Services  
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which had previously been performed by Joseph Nadeau. There were no posted promotional openings. Mr. Champa advised Mr. Shanley at that time that the new assignment would not result in a promotion or an increase in salary. At that time, the remaining work group supervisors were classified and compensated as follows:

Richard Bandlow (DIS Group Leader - salary grade 31)  
Blanchard (DIS Group Leader - salary grade 31)  
Peter Croteau (Data Processing Project Manager - salary grade 30)  
Richard Reycroft (DIS Group Leader - salary grade 31)  
Anita Wiswell (Data Processing Project Manager - salary grade 30)  
Tom Edwards (unclassified)

Between August 25, 1989 through July 1, 1990, the period of time during which Mr. Shanley alleged he was entitled to compensation at salary grade 31, Mr. Shanley was employed by the Division of Information Services as a Management Information Systems Analyst/Programmer II, salary grade 27. Although there are several documents generated by Mr. Shanley after August 25, 1989, in which he referred to himself as "DIS Group Leader", there is no documentary evidence Mr. Shanley was ever offered a position in that classification or requested a review of his position for reclassification to DIS Group Leader. Similarly, there were several references to Mr. Shanley as "Project Manager", including an organizational chart dated 2/12/90 (SEA Exhibit A). However that same chart refers to each of the seven "Group Leaders" as Project Manager, regardless of the actual position classification of the incumbents.

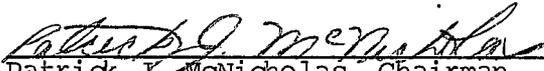
There was no vacant salary grade 31 position into which the appellant could have been promoted, temporarily or permanently. In August, 1989, Mr. Shanley agreed to perform certain job assignments which had previously been performed by Joseph Nadeau, whose position was classified as a Management Information Systems Analyst/Programmer II, salary grade 27. The supervisory and/or administrative functions which Mr. Shanley assumed, such as signing time sheets or leave slips, are well within the parameters of the class specification for MISAP II, salary grade 27. If Mr. Shanley believed he was performing duties not described by that class specification, his remedy was to request a review of his position through the Division of Personnel.

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Mr. Shanley was never offered a promotion and ~~was~~ never offered additional compensation to assume Mr. Nadeau's systems-maintenance or administrative duties. The responsibilities Mr. Shanley performed between August 25, 1989 and July 1, 1990, were consistent with those described by the specification for Management Information Systems Analyst/Programmer II, salary grade 27.

On the evidence presented by both parties, the Board voted unanimously to deny Mr. Shanley's appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Mark J. Bennett

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Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel  
Margo Hurley, SEA Field Representative  
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