

State of New Hampshire



PERSONNEL APPEALS BOARD
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Appeal of Captain Gary Sloper

Docket #97-O-11

Department of Safety, Division of State Police

September 17, 1997

The New Hampshire Personnel Appeals Board (Rule, Johnson and Wood) met on Wednesday, August 13, 1997, under the authority of RSA 21-I, to consider the appeal of Gary Sloper, an employee of the Department of Safety, Division of State Police. By letter dated June 17, 1997, SEA Field Representative Jean Chellis asked the Board to order that Capt. Sloper's salary be adjusted from Salary Grade 26 Step 2 to Salary Grade 26, Step 3.

In support of that request, Ms. Chellis stated that the appellant was promoted, and that the position into which he was promoted was reclassified that same day. She argued that the Personnel Rules provided for Capt. Sloper to receive an increase in compensation equivalent to one step in his former class upon promotion, and another step upon reclassification of his new position.

On June 20, 1997, Personnel Director Virginia Lamberton filed a Motion to Dismiss, arguing that the appeal was untimely. Ms. Lamberton stated that the promotion and reclassification at issue occurred on February 28, 1997, and that a timely appeal therefrom must have been filed not later than March 15, 1997. She stated that the first correspondence she received concerning the dispute was a May 12, 1997, letter from Human Resources Administrator Claude Ouellette asking permission to grant Capt. Sloper a double increment. She denied that request by letter dated May 16, 1997. She argued that a timely appeal of her decision denying the double

Appeal of Captain Gary Sloper
Docket #97-O-11

page 1 of 5

increment must have been filed by June 2, 1997. Therefore, she asked the Board to dismiss the June 17, 1997, as untimely.

In her June 25, 1997, Objection, Ms. Chellis argued that until receiving his paycheck on March 28, 1997, Capt. Sloper could not have known the step at which the Director had established his rate of pay, and therefore could not have filed an appeal within fifteen days of the promotion and reclassification. She argued that on April 2, 1997, well within fifteen days of the March 28, 1997 pay day, Capt. Sloper addressed his concerns through the appropriate steps in the chain of command. Ms. Chellis also argued that the Director's letter denying the request to increase Capt. Sloper's compensation was not sent directly to the appellant¹, and he was aware of the letter only because it was shown to him by Col. Barthelmes some time after May 16th. Ms. Chellis said that Col. Barthelmes had informed the appellant about a meeting he had scheduled with Ms. Lamberton and Capt. O'Brien on June 2, 1997, and that he had told Capt. Sloper he would raise the compensation issue. She argued that until Capt. Sloper heard the results of that meeting, he would not have known that the request for adjustment was denied.

Ms. Chellis argued that even if the appeal was not timely, Per-A 201.03 of the Rules of the Personnel Appeals Board permitted the Board to waive its rules for good cause shown. She asked the Board to decide the appeal on its merits and order Capt. Sloper's compensation increased to salary grade 26, step 3.

According to Per 202.02 (a) (1) of the Rules of the Division of Personnel, "The employee [who is seeking resolution of a dispute] shall present a detailed written description of the basis for the dispute to the supervisor within 15 calendar days of the action in dispute." Ms. Chellis asserted that regardless of the date of the reclassification or promotion, Capt. Sloper was first aware of a "dispute" concerning his compensation on March 28, 1997, when he received his paycheck. She argued that because the employee had presented the problem to Col. Barthelmes within fifteen days, his attempts to resolve the dispute were timely. The Board does not agree.

¹ The Board can only assume that a copy was not provided to Capt. Sloper because he was never identified in any of the documents by either party as an individual seeking informal settlement of a dispute. Neither Col. Barthelmes' letter promoting Capt. Sloper's (SEA Exhibit 3), nor the letter from Claude Ouellette to the Division of Personnel requesting an additional step for the appellant (SEA Exhibit 1) indicate that copies were provided to Capt. Sloper.

In order to initiate the process of informal settlement, an employee has fifteen days in which to present a "detailed written description" of the dispute to his supervisor. Whereas Capt. Sloper knew on March 28, 1997, that his rate of pay was lower than he expected, the employee or his chosen representative had until April 12, 1997, to file a statement initiating the process of informal settlement. Neither the appellant, nor any person representing the appellant, filed such statement within the time allowed.

One month later, by letter dated May 12, 1997, Mr. Ouellette wrote to Director Lamberton, indicating that Col. Barthelmes had asked him to intercede for Captain Sloper on his behalf. In his letter, Mr. Ouellette asked the Director's permission to "give Captain Sloper an extra step." In support of that request, he stated that if the Department of Safety had waited one day to promote the appellant to Captain, the appellant automatically would have received the additional step. There was no complaint or allegation that the Director had improperly applied the Personnel Rules in establishing the appellant's salary grade and step on February 28, 1997, simply that if the Department of Safety had delayed the promotion, Capt. Sloper would have received an additional step. The Director responded by letter dated May 16, 1997, rejecting the request.

Ms. Chellis argued that although Capt. Sloper had seen a copy of the Director's May 16th decision, he knew that Col. Barthelmes planned to raise the issue again at his June 2nd meeting with the Director, and that upon learning that the request had been denied at that meeting, he timely filed an appeal. The Board does not agree.

RSA 21-I:58 I states, in pertinent part:

"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, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal..."

The Board agrees that Capt. Sloper probably did not know until March 28, 1997, that his rate of compensation had been set at salary grade 26 step 2. The Board also understands that Capt. Sloper raised the issue with his superiors immediately thereafter. However, having done so did

not relieve him or his agency of their obligations under the Rules of the Division of Personnel, the Rules of the Personnel Appeals Board and RSA 21-I:58 to file a timely appeal of the Director's decision. In the absence of a legally permissible, legally filed request for reconsideration, the Board can not be expected to accept a late-filed appeal simply because the appellant believed that further discussion between Col. Barthelmes and the Director of Personnel might yield a different result from the Director's original decision.

Per-A 201.03 of the Board's Rules states, "In the interest of expediting a hearing, or for other good cause, the Board may, unless otherwise precluded by law, suspend the requirements or provisions of any rules in this Chapter on application of a party or on the Board's motion." (Emphasis added.) RSA 21-I:58 establishes an appellant's responsibility for filing an appeal within fifteen calendar days of the action giving rise to the dispute. Even if the Board were to agree that it had the authority to waive the statutory requirement for timely filing, there is no "good cause shown" for such a decision.

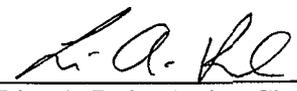
The appellant knew that the Director had established his compensation at salary grade 26 step 2 on March 28, 1997. He failed to file an appeal or a first step request for informal settlement as described by PART Per 202 of the Rules of the Division of Personnel² within fifteen days of that decision. The agency requested additional compensation on the appellant's behalf. The Director issued a decision denying that request on May 16, 1997. Neither the agency nor the appellant filed an appeal within fifteen calendar days of that decision.

The only "good cause" that the appellant offered was his assertion that his appeal has merit, and his claim that he should not be held accountable for failing to act in a timely fashion if he believed others in his department were handling the dispute for him. Most appellants believe, or at least represent, that their appeals have merit. That does not relieve them of their responsibility to exercise their rights to appeal within the time fixed by rule and law. Further, the appellant took none of the necessary steps to initiate a timely or properly filed appeal to the Director. Under the circumstances, the Board does not consider the grounds a sufficient showing of "good cause" to warrant hearing the appeal on the merits.

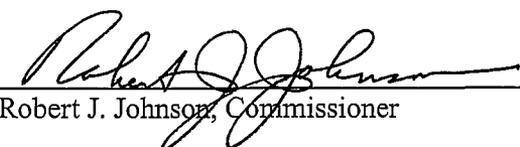
² Insofar as the only person with authority to affirm, amend or rescind a decision of the Director of Personnel was the Director of Personnel, any request for informal settlement should have been received by her not later than April 12, 1997.

Accordingly, the Board voted unanimously to dismiss Capt. Sloper's appeal as untimely.

THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chairman



Robert J. Johnson, Commissioner



Patrick H. Wood, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301
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