

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### APPEAL OF GEORGE CUMMINGS Department of Health and Human Services Docket #89 -C-42

April 21, 1994

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Rule) met Wednesday, July 8, 1992, to hear the classification appeal of George Cummings, an employee of the Department of Health and Human Services. Mr. Cummings, who is currently classified as an Administrator I, salary grade 26, had requested that his position be reclassified and upgraded to Administrator I, salary grade 28. Mr. Cummings appeared pro se. Virginia Lamberton, Director of Personnel, appeared on behalf of the Division of Personnel.

The appellant's position is assigned to the Office of Quality Assurance in the Department of Health and Human Services. In his Classification Questionnaire, he defined the primary function of the position as follows:

The purpose of the Office of Quality Assurance is to monitor and evaluate operation of Federal and State Public Assistance Programs for fiscal performance accountability and provide information, strategies and recommendations for improved administration of programs.

In a written statement submitted by the appellant in support of his appeal, Mr. Cummings characterized the position review conducted by the Division of Personnel as ignoring the various position attributes in dispute rather than addressing them. He argued that "The letter instead recounts in a very simplified form portions of the desk review..." and that the focus of the interview with his supervisor, Joseph Arcidiacono, was to compare his position with the other three Administrator I positions in the office of Administrative services rather than comparing it for similarity with a position of Administrator II in the office. He suggested that the only comparable position was that of Administrator II of the Office of Special Investigations. He stated, "In the decision letter my duties are described in incomplete, oversimplified terms and phrased with inferences designed to support denial of the request."

In matters of position classification, the burden is upon the party requesting' the reclassification to provide sufficient justification to warrant granting the request. The burden is his, not the Personnel Director's, to prove that there were sufficient material and substantial changes in the duties and responsibilities of the position to warrant reclassification. The

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Director is not responsible for "disputing any portions of the Position Classification Questionnaire". The Director is responsible for reviewing the position in light of the classification plan, as well as comparing the position to similarly classified positions within that plan. When there is evidence that there are substantial differences between the position under review and similarly titled positions, then the Director is responsible for determining which classification would more accurately describe the functions and responsibilities of the position. In this instance, it appears that the Director found the appellant's position to be sufficiently similar to other Administrator I positions to deny the request for reallocation.

Mr. Cummings took particular issue with a number of statements in the notice of decision, and characterized them as "misunderstood or oversimplified statements of fact in the decision letter". The Board will attempt to address them in the order in which they appeared, as they seem to form the basis of his appeal.

- \* He spends a considerable portion of his "working time lobbying for changes to federal laws, especially those that pertain to review methodologies".

Mr. Cummings indicated that he had spent more time than usual in lobbying efforts around the time of the classification review because of House hearings in Washington for AFDC-QC Reform earlier that month. He said that on balance, his lobbying efforts, combined with "a number of other activities" totalled no more than 10% of his time.

In terms of reviewing a position, when a task or combination of tasks represents approximately 10% of an employee's regular duties, it is considered among the primary functions of the position. The Board finds nothing improper in the Director having reviewed his position in that light.

- \* "He also works to obtain information on legal strategies to combat what our Division might consider to be an unfair requirement emanating from federal authorities."

Mr. Cummings indicated that he considered that sentence, and the statements which followed, a means of downplaying the significance of the conflict between the states and federal agencies on the error tolerance levels and appropriateness of the fiscal sanction system. He indicated that "part of [his] job is to keep up to date on what Human Service Departments in 49 states and 4 other jurisdictions also consider unfair, unrealistic and unreasonable federal error tolerances and QC methodologies." He said that the states trade information on a regular basis, but that because some issues are unique to New Hampshire, his department is on its own in developing arguments.

- \* "He develops and runs training programs for district office Case Technicians, explaining to them how quality control works and explaining additional ways to check clients' income".

Mr. Cummings argued that "The reference to developing training modules for case technicians... would more accurately be described as the incumbent's responsibility to oversee development and conduct of training modules for case technicians which concentrate on such things as interviewing and verification techniques for all eligibility factors. Income is only one of many eligibility factors." The Board does not consider the statement from the decision letter to be fatally flawed because it lacks the detail which the appellant would have preferred. The Board believes that the Director understood the nature of the task performed by the appellant and gave it due consideration in her review of the position.

- \* "Mr. Cummings contacted the analyst from my Division on May 1, 1989, indicating that he would be gaining a two-person Statistical and Research Unit comprised of a Program Specialist IV and a Statistical Assistant. This will be in addition to the four federally mandated quality control systems, two state option quality control monitoring systems and the Error and Intervention Program (Program Integrity Review System). He stated that the federally mandated quality control systems have become more complex over the years, due to both mandated changes in the regulations along with fiscal sanction litigation which constantly expands the body of case laws."

Mr. Cummings argued that both positions had been part of the Office of Quality Assurance for many years, but were reassigned to the Research and Planning Unit in Administrative Services in September 1987. He indicated that during their assignment, they still devoted more than 90% of their time to Quality Assurance under his direction. The Board did not see anything in the Director's letter indicating that his review was prejudiced by the Director's description, since "Supervision" was not one of the factors in dispute.

Mr. Cummings noted the absence of any discussion in the classification decision of his role in developing corrective action policy and procedural strategies for the program areas. He argued that this aspect of his position was "overshadowed by the controversy over large fiscal penalties". He said that the day to day consultation between himself and his staff represents a much larger commitment of time. He noted that he is a member of a committee composed of the Deputy Director, the Administrator of Program Management, and the Program Specialists for Medicaid, Food Stamps and AFDC in the Office of Economic Services. He said that one of the prime missions of the committee is to develop new or improved policies and procedures to more effectively administer the programs.

Again, except for the fact that the appellant may have felt that the Division more carefully studied or more fully understood his job assignments if the decision had clearly referenced the "corrective action" facet of his work, the Board does not believe that this component was overlooked in the review of his position. The appellant is seeking an increase in the factors of Complexity, Working Conditions, and Initiative. The Board believes that the appellant's description of his activities was clear enough in his classification review questionnaire to accurately assess those attributes.

The appellant's position is currently allocated at the seventh degree for the attribute "Complexity of Duties", and he requested that this attribute be increased to the eighth, or highest degree. The current description of the appellant's position for the attribute "Complexity of Duties" is described as follows:

Work carrying responsibility for consideration and analysis of major departmental problems. Requires development of data and recommendations influencing decisions on long-term policies relating to major functions.

The Board believes this attribute accurately reflects the complexity of the appellant's work. The Board is not persuaded that Mr. Cummings is responsible for work described by the eighth, or highest degree:

Work comprising participation in the formulation of broad policies and long term programs, involving thorough analysis of all data and making decisions that serve as guides and general directives to the department as a whole."

In spite of the appellant's contention that he has assumed responsibilities for developing and implementing new programs in the past several years, the Board does not believe they serve as guides and general directives to the department as a whole. Rather, the Board believes the appellant's duties involve recommendations influencing decisions on long-term policies "relating to major functions" as described in the seventh degree for "Complexity".

The appellant requested that the Board allocate an additional 5 points to the attribute of Working Conditions in recognition of the amount of travel involved in the appellant's position. The appellant's request for rating his work as "good working conditions such as best shop conditions, but with some disagreeable factor such as necessarily poor ventilation, heat, noise, oil, dusts or drafts..." is completely unsupported by the evidence, and the request is denied accordingly.

For the Initiative attribute, the appellant again suggested that his position should be allocated at the highest of the six available degrees. By definition from the Evaluation Manual:

This factor relates to the job's requirements for exercise of judgment, independent action, and creative effort in originating new methods or procedures. In addition, initiative refers to resourcefulness beyond routine practices, supervision, and regulatory procedures established by statute.

The degree allocation requested by the appellant is defined as follows:

Requires the highest ability to establish, organize and carry out policy-making activities and major departmental programs, such work seldom checked or revised by a superior.

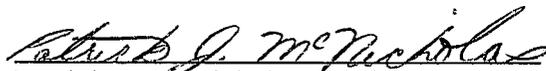
While the Board understands and appreciates the importance of policy-making activities in

which the appellant participates, there are several tiers of management within the office of Administrative Services, including the Administrator III position held by the appellant's supervisor, which would be responsible for organizing and carrying out policy-making activities and major departmental programs. The Board believes that the appellant contributes to the decision-making process, but does not have ultimate authority to "establish, organize and carry out policy-making activities" without supervisory approval.

While the Board is mindful of its obligation to respond to proposed findings of fact and rulings of law and finds them helpful in focusing the review on the material facts in dispute, detailed, compound proposed findings which do not allow the Board to focus on the issues are not helpful in reaching a decision. To the extent that the proposed findings are consistent with the Board's decision, they are granted. Otherwise, they are denied.

Having reviewed the information submitted by both parties, the Board voted unanimously to deny Mr. Curnmings' appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Mark J. Bennett, Commissioner

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Lisa A. Rule, Commissioner

- cc: Virginia A. Lamberton, Director of Personnel  
George Cummings, Office of Quality Assurance  
Sandra Platt, Administrator, Health and Human Services  
Dr. Harry Bird, Commissioner