

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### *Appeal of William Mark Turner*

*Docket #99-C-6*

*Division of State Police*

October 6, 1999

The New Hampshire Personnel Appeals Board (Wood, Rule and Barry) met on Wednesday, September 1, 1999, to hear the appeal of W. Mark Turner, a former employee of the Division of State Police, Department of Safety. Mr. Turner was appealing the Director's September 30, 1998, decision denying his request for reclassification from Corporal, salary grade 20, to Sergeant I, salary grade 21. Atty. James Donchess appeared for appellant. Virginia Lamberton, Director of Personnel and Sara Willingham, Administrator of the Bureau of Human Resources, appeared for the Division of Personnel.

The hearing on the merits of Mr. Turner's appeal was made without objection on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of pleadings submitted by the parties prior to the hearing, notices and orders issued by the Board, the audio tape recording of the hearing on the merits, and documents admitted into evidence as follows:

#### Appellant's Exhibits

1. Class specification for Sergeant I
2. Corporal Turner's Position Classification Questionnaire and related documents, and his letter of appeal to Ms. Lamberton
3. September 30, 1998, letter from Virginia Lamberton to Cpl. Turner denying his request for reclassification

State's Exhibits

- A. Letter dated October 19, 1992, addressed to Colonel Lynn Presby
- B. Organization Chart prior to February 28, 1997
- C. Letter dated February 28, 1997, addressed to Commissioner Flynn
- D. Letter dated March 7, 1997, addressed to Colonel Barthelmes
- E. Generic organization chart, dated February, 1997
- F. Letter dated January 30, 1998, addressed to Director Lamberton from Colonel Barthelmes
- G. Letter dated November 4, 1997, addressed to Colonel Barthelmes
- H. Position Classification Questionnaire completed by Corporal Turner
- I. Letter dated July 7, 1998, addressed to Colonel Barthelmes
- J. Letter dated July 13, 1998, addressed to Director Lamberton
- K. Organization charts of the N. H. State Police
- L. Job Specification, State Police Trooper II
- M. Job Specification, State Police Corporal
- N. Supplemental Job Description for Corporal Turner
- O. Job Specification, State Police Sergeant I
- P. Proposed Supplemental Job Description for Corporal Turner
- Q. Letter dated July 19, 1998, addressed to Director Lamberton
- R. Letter dated September 30, 1998, addressed to Corporal Turner
- S. Letter dated October 22, 1998, addressed to Mary Ann Steele, Executive Secretary, Personnel Appeals Board

Before addressing the merits of the case, Ms. Lamberton asked the Board to dismiss Mr. Turner's appeal on the grounds that he had resigned prior to a final decision of the Board, and therefore would be ineligible for any retroactive compensation in the event that the Board granted his appeal. Ms. Lamberton referred the Board to RSA 21-I:54, III, which states the following:

**§ 21-I:54 New Positions and Reclassification of Positions.**

"III. The director shall make a decision on any request for reclassification or reallocation from department heads or position incumbents within 45 days of receipt of a completed request for reclassification or reallocation as defined by rules adopted under RSA 21-I:43, II(u). No increases in salary shall be allowed for any request until a final decision is made by the director, or if the director's decision is appealed, by the personnel appeals board. Increases in salary due to

reclassification or reallocation shall become effective at the beginning of the next pay period following the final decision of the director or the board."

The Director argued that by law, changes in the salary grade assigned to a position as a result of a reclassification could not become effective until the beginning of the next pay period following the final decision of the director or, if the director's decision was appealed, the final decision of the board.

Attorney Donchess argued that the Board had the discretion to order retroactive compensation if it found that the Director's decision was incorrect. He asked the Board to deny the Director's motion to dismiss, arguing that the appellant was not so much concerned with the issue of retroactive pay, but the effect that his position classification and salary grade would have had on the calculation of retirement compensation.'

The Board advised the parties that it would take the Motion under advisement, and asked the Director and the appellant to submit their written arguments on that motion to the Board within ten days of the date of the hearing. The Board then received the parties' offers of proof as follows:

Attorney Donchess made the following offers of proof:

- The appellant served as commander of the fixed wing unit of the aviation unit, and remained commander of that unit until shortly before his retirement in July of 1999.
- The individual appointed to replace the appellant as commander of the fixed wing unit is a Sergeant I.
- The duties performed by the appellant match almost exactly duties set forth in Sergeant I specification in that he exercised field supervision and participated in evaluation of subordinate personnel, directed the activities of air and ground personnel during field assignments, and provided field supervision to personnel who were assigned, on a rotating basis, to the ground support unit.

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'RSA 100-A:5, II (b) "Upon service retirement, a group II member shall receive a service retirement allowance which shall consist of: (1) A member annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and (2) A state annuity which, together with his member annuity, shall be equal to 2-1/2 percent of his average final compensation multiplied by the number of years of his creditable service not in excess of 40 years." Under the terms of the Agreement in effect at the time of the appellant's retirement, final compensation would have included payment of the employees accrued annual leave, bonus leave, compensatory leave and 1/3 of accrued sick leave up to 30 days, paid at his then current rate of pay.

- The appellant used technical equipment to gather evidence of those traveling at excessive speed on the highways.
- The appellant was responsible for testifying in court.
- The appellant served as an instructor at the Police Academy, approved schedules of those who worked for him and decided who should be recommended for leave.

Attorney Donchess argued that if the duties of the position warranted assignment of a Sergeant I on August 1, 1999, they should have warranted the same classification in February 1997, when the appellant took command of the fixed wing unit.

Personnel Director Lamberton asked the Board to consider the argument and offers of proof given by her in the previous hearing in the appeal of Francis Lord, as well as additional arguments and offers of proof as follows:

- In October 1992, the Division of Personnel eliminated the classification of Trooper First Class<sup>2</sup> and temporarily reallocated Trooper First Class incumbents to the rank of Corporal.
- Within the Division of State Police, employees reclassified to Corporal by virtue of their length of service, successful completion of the Corporal's Examination, completion of approved supervisory training, and recommendation by a Promotional Review Board were referred to as "soft corporals." Employees selected competitively to supervisory vacancies at the rank of Corporal were referred to as "hard corporals."
- Although "hard corporals" and "soft corporals" occupied the same rank, supervisory corporals selected to direct and supervise a shift within a troop or unit were performing work at a higher level than those who had attained the rank of corporal by longevity and reclassification.
- On February 28, 1997, the Division of Personnel approved the Department of Safety's reorganization proposal for the Department of Safety, Division of State Police, resulting in additional reclassifications of law enforcement personnel.
- The majority of the "soft corporals" were reclassified from Corporal, salary grade 19 to Trooper II, salary grade 19. The remaining incumbents either retained their rank of Corporal, salary grade 20, or if responsible for continuing investigations or supervision of a shift, were reclassified to Sergeant I, salary grade 21.

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<sup>2</sup> Troopers with 10 or more years of service and a record free of major discipline for seven years, were eligible to become Troopers First Class. Employees so classified were compensated at one salary grade higher than that assigned to the classification of Trooper.

- During the initial review and reclassification of Corporal positions, Cpl. Turner was not identified by the Division of State Police as one of the incumbent Corporals who should be reclassified to Trooper II or Sergeant I.

The Division of State Police never sought or received permission to reclassify the position vacated by the appellant to the rank of Sergeant.

The Division of State Police never sought or received permission to transfer a Sergeant I incumbent into the position previously occupied by the appellant.

Findings of Fact

1. The appellant's approved supplemental job description amended 9/1/94, and his proposed amendment to the Supplemental Job Description dated 1/23/98, described the appellant's "Scope of Work" as follows: "Conducts general law enforcement activities pursuant to RSA 100-6:B governing the Division of State Police within the Aviation Unit, under the direction of the Unit Commander."
2. The scope of work outlined in the appellant's approved and proposed supplemental job descriptions is consistent with the specification for State Police Corporal. It is not as complex or comprehensive as the scope of work in the approved specification for State Police Sergeant I: "To perform supervisory police work by planning, leading and coordinating troop/unit work activities and monitoring criminal detection and investigation operations."
3. The point factor ratings for State Police Trooper II, State Police Corporal and State Police Sergeant I are as follows:

Position Title Classification	ISI	Knowledge	Impact	Supervision	Working Conditions	Physical Demands	Communications	Complexity	Independent Action	Total Points	Salary Grade
SP Trooper II	3 045	3 060	3 020	2 005	6 060	4 025	4 035	4 080	3 030	360	19
SP Corporal	3 045	4 085	3 020	3 015	6 060	4 025	4 035	4 080	3 030	395	20
SP Sergeant I	3 045	4 085	3 020	3 015	6 060	4 025	4 035	4 080	4 055	420	21

4. Sergeants and Corporals receive the same number of points for the evaluation factor "Supervision."

5. The position of Corporal has a higher rating than Trooper II in the factors of Knowledge and Supervision.
6. The position of Sergeant I has a higher rating than Corporal in the Independent Action factor.
7. "Independent Action" is described by the Evaluation Manual as, "...the amount of decision making, initiative, and responsive effort required in originating new or more efficient work methods and procedures. This factor measures the type, frequency, and priority of well-defined alternatives and the extent to which instructions or policies guide action in selecting and applying strategies to enhance service delivery of the agency."
8. Corporals are rated at the third level for Independent Action, described by the Evaluation Manual as follows: "Requires a range of choice in applying a number of technical or administrative policies under general direction and making routine decisions or in recommending modifications in work procedures for approval by supervisor."
9. In his position classification questionnaire, the appellant wrote, "I routinely objectively assess all activities concerning the operation of the Aviation unit. I must be available to subordinates to assist them in making law decisions concerning their actions as it pertains to established technical, professional or administrative standards, and in the process may develop new work methods and procedures."
10. The appellant's work assignments as described by his approved and his proposed supplemental job description, and his position classification questionnaire, support allocation at the 3<sup>rd</sup> level for Independent Action.

### Rulings of Law

- A. "The director shall establish a formal written class specification covering each position in the classified system. The purpose of the class specification shall be to identify the job functions, distinguishing factors, examination requirements, and the minimum qualifications which apply to all positions in the same class." [Per 301.02 (a)]
- B. "The duties and work assignments for each position in the state classified service shall be defined by a supplemental job description established by this rule." [Per 301.03 (a)]
- C. The supplemental job description shall be developed and updated by the appointing authority or the supervisor assigned by the appointing authority to oversee the work assignments of the position." [Per 301.03 (b)]
- D. "Any work assignment which affects more than 10 percent of the total working time of the position shall be listed on the description by the appointing authority, designated supervisor or the employee of the position in accordance with this rule." [Per 301.03 (c)]

- E. An employee's supplemental job description must include, "A statement of the scope of work for the position, which shall be related to the basic purpose section of the class specification and shall specify how the broad purpose of the specification translates into a specific role within the goals and objectives of the agency." [Per 303.03 (d) (6)]
- F. "Allocation Review. – 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. If a review is requested by an employee, the director shall contact the employee's department head to determine how the employee's responsibilities and duties relate to the responsibilities and duties of similar positions throughout the state. The employee or department head, or both, shall have the right to appeal the director's decision to the personnel appeals board in accordance with rules adopted by the board under RSA 541-A. If the board determines that an individual is not properly classified in accordance with the classification plan or the director's rules, it shall issue an order requiring the director to make a correction." [RSA 21-I:57]
- G. "... No increases in salary shall be allowed for any request until a final decision is made by the director, or if the director's decision is appealed, by the personnel appeals board. Increases in salary due to reclassification or reallocation shall become effective at the beginning of the next pay period following the final decision of the director or the board." [RSA 21-I:54, III]
- H. "Upon written notice to the director [of personnel], the appointing authority may fill any vacancy with the transfer of a departmental employee from any position within the same class title to a vacant position with the same class title." '[Per 602.01 (a)]

### Decision and Order

In her September 8, 1999, letter to the Board, Director Lamberton argued that having retired, from State service, the appellant no longer held a classified position that could be reclassified or reallocated. She argued that even if the Board were to find that the appellant's position prior to his retirement should have been reclassified to Sergeant I, there was no authority to compensate him retroactively. In support of that position, she cited the language of RSA 21-I:54 III that states, "...No increase in salary shall be allowed for any request until a final decision is made by the director, or if the director's decision is appealed, by the personnel appeals board. Increases in salary due to reclassification or reallocation become effective at the beginning of the next pay period following the decision of the director or the board."

Attorney Donchess argued in his September 10, 1999, Objection to Motion to Dismiss that, "RSA 21-I:54 provides that no agency may award an employee back pay until there has been a final decision, by either the Personnel Appeals Board or by the Director of Personnel, on the employee's request for reclassification." He argued that RSA 21-I:54 gives the Personnel Appeals Board the discretion to award back pay when it makes a final decision regarding an appeal properly filed under RSA 21-I:57.

RSA 21-I:54, III, establishes the mechanism for determining the effective date of increase in salary following the review and upgrading of a position. Prior to 1989, RSA 21-I:54, III, made specific provisions for retroactive compensation as a result of a position reclassification or reallocation. However, when the statute was amended in 1989, the reference to retroactive compensation was replaced with language prohibiting an increase in salary upon reclassification or reallocation until the beginning of the pay period following the, "final decision of the director or the board."

There is no legal authority for the Board to order payment of compensation retroactive to the date of the Director's decision, regardless of Mr. Turner's employment status on the date of the Board's decision. Accordingly, the relief sought by the appellant in the form of reclassification retroactive to the date of the Director's original decision is beyond the Board's statutory authority. On that basis, given Mr. Turner's status as a retired State employee, the Board voted to DISMISS the instant appeal.

If the appellant had not retired and had remained in his position, the Board would have voted to DENY the appeal on its merits.

The appellant's position as commander of the fixed wing unit of the aviation unit was properly classified as a Corporal, salary grade 20, when the reorganization review was performed. Having compared the class specifications for Trooper II, Corporal and Sergeant I, the Board found that the most obvious distinction between the three classifications is in the "Basic Purpose" of each classification. The "Scope of Work" outlined by the appellant on his existing and proposed supplemental job descriptions is consistent with the "Basic Purpose" of the Corporal classification, and does not rise to the level of "supervisory police work" defined by the specification for Sergeant I. By allowing the appellant to retain the rank of Corporal, the Division of Personnel did recognize and allow him to be compensated for his supervisory

responsibilities by rating the Supervision factor for his position at the same level that is assigned to the classification of Sergeant I.

Despite the appellant's offer of proof that his former position is currently occupied by a Sergeant I, there was no evidence that such an assignment was reviewed or approved by the Division of Personnel under the provisions Per 602.01 of the Rules of the Division of Personnel. Further, when the Division of Personnel conducted its review of the Corporal positions, the Division of State Police did not identify the appellant's position as a shift or unit supervisor with duties that would warrant its reallocation to Sergeant I. When the reorganization decision was transmitted to the Division of State Police, the appointing authority accepted the decision to keep the position allocated at the level of Corporal, and to have the position revert to the classification of Trooper once the position became vacant.

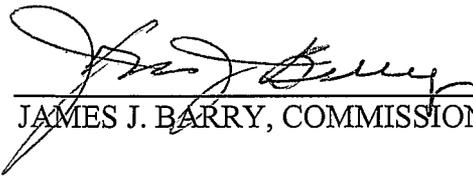
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