

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

## ***APPEAL OF JEFFREY JENKINS***

***Docket #99-D-6***

***Department of Transportation***

***December 7, 1998***

The New Hampshire Personnel Appeals Board (Bennett, Wood and Bany) met on Wednesday, August 26, 1998, under the authority of RSA 21-I:58, to hear the appeal of Jeffrey Jenkins, an employee of the Department of Transportation. Mr. Jenkins, who was represented at the hearing by SEA Director of Field Operations Thomas Hardiman, was appealing his disciplinary demotion from Traffic Maintenance Supervisor to Engineering Technician V, effective February 23, 1998, as a result of his alleged "role and failure to take appropriate supervisory action in connection with environmental violations revealed in the investigation of the Bureau of Traffic's disposal of highway pavement marking paint." [See letter of demotion dated February 23, 1998.] Assistant Attorney General Kathryn Bradley appeared on behalf of the State.

The appeal was heard on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of the audio tape recording of the hearing on the merits of the appeal, notices and orders issued by the Board, pleadings submitted by the parties, and documents entered into evidence as follows:

### State's Exhibits

1. Letter of Disciplinary Demotion dated February 23, 1998
2. Interview of Jeffrey Jenkins dated December 5, 1996

3. Interview of Jon Hanson dated November 18, 1996
4. Interview of Anne Levesque dated November 22, 1996
5. Interview of Carol Murray dated November 25, 1996
6. Interview of Jeffrey McGarry dated November 16, 1996
7. Interview of James Colburn dated November 24, 1996; December 10, 1996; and February 20, 1997

Appellant's Exhibits

1. January 19, 1995, letter from Thomas D. Myers to Leon Kenison
2. Position Classification for Traffic Maintenance Supervisor
3. June 5, 1995, letter from James Colburn to Bureau staff, and October 16, 1995 assignment of Jeffrey McGarry as Bureau of Traffic Hazardous Solid Waste Coordinator
4. February 27, 1996, Press Release
5. March 21, 1996, memorandum from James Colburn to John Clement
6. May 8, 1996, staff notes regarding Ann Levesque's assignment as Hazardous and Solid Waste Coordinator for the NH DOT
7. July 30, 1996, Memorandum from John Clement
8. September 16, 1996 communication from Ann Levesque
9. November 6, 1996, Operations Staff Meeting Notes
10. November 14, 1996, Training certificate issued to Jeffrey Jenkins
11. November 15, 1996, newspaper article
12. Division of Operations Staff Meeting minutes
13. November 13, 1996, memo from Douglas Graham
14. November 25, 1996, memo from James Colburn
15. December 17, 1996 memo from John Clement
16. December 9, 1996, memo from Jeffrey Jenkins
17. December 17, 1996, memo from Jon Hansen

18. December 18, 1996, memo to John Clement
19. January 3, 1997, Memo from Ann Levesque
20. DOT Chain of Command
21. Soil Drainage System test results
22. November 25, 1996, interview of John Clement
23. November 22, 1996, interview of Anne Levesque
24. Letter of reference from Douglas Graham

Ms. Bradley argued that Mr. Jenkins had overall responsibility for management of the Traffic Bureau in the absence of the Administrator, and had overall supervision of the Bureau's Hazardous Waste Program. She offered to prove that Mr. Jenkins knew or should have known in July, 1996, that paint residue being discharged into the storm drains at the Bureau of Traffic facility on Sheep Davis Road were hazardous materials, and should not have been disposed of in that fashion. She argued that after receiving explicit instructions to cease the truck wash-out procedures that resulted in such discharge, Mr. Jenkins continued to allow paint crews to wash out their trucks in such a fashion that paint-contaminated wash water would be disposed of into the storm drain system. She argued that Mr. Jenkins failed to take responsibility for ensuring appropriate oversight of materials handling and labeling at the bureau facility, and failed to take any corrective action until forced to do so as a result of the investigation conducted by the Department of Environmental Services.

Before taking up the merits of the appeal, Mr. Hardiman moved for dismissal of the case, arguing that the Personnel Rules in effect at the time of the demotion did not authorize immediate demotion for the alleged offense. He argued that Mr. Jenkins had an employment record free of any prior discipline, and therefore could not be demoted without prior warnings for the same offense. The Board advised the appellant that the

Motion would be held in abeyance until after the appellant made his arguments and offers of proof on the merits of the appeal.

Mr. Hardiman argued that Mr. Jenkins never had responsibility for the overall management of the bureau's hazardous waste program. He argued that after discovery of the paint discharge in July, 1996, Hazardous Waste Coordinator Levesque did not even consult Mr. Jenkins or keep him apprised of the status of the tests being conducted. He argued that any decisions about hazardous waste handling were made by those above him in the chain of command. The appellant argued that when asked by his administrator for suggestions on how to mitigate the problem, he did so; however the agency rejected all his ideas as "temporary," insisting that they needed a permanent solution instead.

Having considered the evidence, argument and offers of proof, the Board voted to treat Mr. Hardiman's oral Motion to Dismiss as a Motion for Directed Judgment.

Per 1001.07 (b)(1) of the Rules of the Division of Personnel in effect at the time of Mr. Jenkins' demotion stated, "An appointing authority shall be authorized to demote an employee under the provisions of this part provided that the employee has received at least 2 prior warnings for the same offense within the previous 2 years." The appellant argued, without dispute, that he had never received any prior discipline.

Per 1001.07 (b)(2) of the Rules in effect at the time of Mr. Jenkins' demotion provided for immediate demotion without prior warning when the offense in question involved, "...a. Threatening the safety of another employee or client, b. Disruption of services provided by the agency, [or] c. Driving a state vehicle without a license or proper authorization." Insofar as the alleged offense met none of the foregoing criteria, the appellant's demotion would have been subject to Per 1001.07(b)(1), and would have required the issuance of 2 written warnings for the same offense before his demotion

could be authorized. Accordingly, the Board voted unanimously to grant the appellant's Motion.

The Department of Transportation shall reinstate Mr. Jenkins to his former position as Pavement Marking Supervisor. His reinstatement shall not result in any loss of seniority, status or pay, and shall be made effective immediately.

THE PERSONNEL APPEALS BOARD

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Mark J. Bennett, Chairman



Patrick H. Wood, Commissioner



James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Kathryn Bradley, Assistant Attorney General  
Thomas Hardiman, SEA Director of Field Operations

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*Appeal of Jeffrey Jenkins  
Doclet #99-D-6  
Department of Transportation*

*Response to Department's Motion for Reconsideration*

*January 6, 1999*

On December 23, 1998, the Board received the State's Motion for Reconsideration in the above-titled appeal. Having reviewed that motion in conjunction with the parties' pleadings and the Board's December 7, 1998, decision, the Board ruled as follows:

The Board's decision was based on the issues raised and facts presented by the parties. While the Board has the authority to modify a disciplinary ruling by an agency, the Board did not believe such modification was warranted in this case. The Motion for Reconsideration contains no new evidence or any showing that an error of law has been made.

Therefore, the Motion is DENIED.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD

Handwritten signature of Mark J. Bennett in cursive.

Mark J. Bennett, Chairman

Handwritten signature of Patrick H. Wood in cursive.

Patrick H. Wood, Commissioner

Handwritten signature of James J. Barry in cursive.

James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Kathryn Bradley, Assistant Attorney General  
Thomas Hardiman, SEA Director of Field Operations