

State of New Hampshire



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

Appeal of Peter Mason

Docket #96-D-17

New Hampshire Hospital

Response to Appellant's Motion for Reconsideration

May 21, 1997

By letter dated March 13, 1997, SEA Field Representative Margo Steeves requested that the Board reconsider its February 19, 1997, decision in the Appeal of Peter Mason.

Ms. Steeves argued that although the appellant did not object to the matter being heard on offers of proof, "...the appellant certainly had no reasonable expectation that the Board would assume anything to be true except for any exact facts specifically stipulated to by both parties." Absent persuasive evidence or argument to support that assertion, the Board finds the appellant's argument to be without merit.

The appellant's argument that, "The appointing authority has submitted the letter of concern as evidence knowing that there was no means for the appellant to contest the content," is equally unpersuasive. Ms. Steeves was the first to offer the letter of concern, forwarding it to the Board as Attachment #7 to the April 29, 1996, appeal which she filed on Mr. Mason's behalf. Furthermore, the Board notes that in the April 29th letter of appeal, Ms. Steeves argued, "Mr. Mason was counseled over 'boundaries' on August 29, 1995 (see Attachment 7), and he agreed to work on the issues brought forward in that session. He has not needed further discipline; there have been no further incidents."

3

The Board voted unanimously to deny the instant Motion. In so doing, the Board voted to affirm its decision upholding the October 12, 1995, written warning for failure to meet the work standard.

FOR THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD

(Miller, Johnson and Rule)



Mary Ann Steele, Executive Secretary

cc: , Virginia Lamberton, Director of Personnel
Marie Lang, Human Resources Administrator, New Hampshire Hospital
Margo Steeves, SEA Field Representative

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February 19, 1997

The New Hampshire Personnel Appeals Board (Miller, Johnson and Rule) met Wednesday, October 23, 1996, under the authority of RSA 21-I:58, to hear the appeal of Peter Mason, an employee of New Hampshire Hospital. Mr. Mason, who was represented at the hearing by SEA Field Representative Margo Steeves, was appealing an October 12, 1995, letter of warning issued to him for allegedly violating New Hampshire Hospital's policy on "boundaries." Marie Lang, Human Resources Administrator, appeared on behalf of New Hampshire Hospital.

The appeal was made on offers of proof. The record in this matter consists of the audio tape recording of the hearing, pleadings (with attachments) submitted to the Board prior to the hearing, and exhibits entered into evidence as follows:

Appellant's Exhibit 1:

New Hampshire Hospital's "Boundary Policy" dated 2110195

State's Exhibit 1:

Cover memo to Al Shigo from Joe Perry dated September 16, 1995, and complaint letter from Sandra Brown dated August 28, 1995

State's Exhibit 2:

Letter of warning issued to Peter Mason, dated October 10, 1995

After reviewing the documentary evidence and considering the parties' oral argument and offers of proof, the Board made the following findings of fact and rulings of law:

FINDINGS OF FACT

1. Peter Mason, a Psychiatric Social Worker assigned to Adult Psychiatric Services, has worked for New Hampshire Hospital more than 16 years.
2. Mr. Mason has no prior record of formal disciplinary action.
3. On August 17, 1995, Mr. Mason met with Joseph Perry, his immediate supervisor and Al Shigo, New Hampshire Hospital Director of Social Services, to discuss their concerns about the appellant's work performance and his ability to maintain appropriate personal and professional relations with patients and staff.
4. On August 29, 1995, Al Shigo issued a "Letter of Concern" to the appellant as a follow-up to that meeting. The letter also served to apprise the appellant of deficiencies in his work performance, particularly in regard to establishing appropriate "boundaries" and "maintaining constructive interpersonal and professional boundaries in work with others, patients as well as staff."
5. Dr. Shigo wrote that Mr. Mason demonstrated a continuing tendency to intrude into "personal boundaries" or interrupt conversations of others at inappropriate times. He also noted that instead of providing effective therapy for individuals at the Philbrook Center, Mr. Mason had delved into issues outside of his scope of responsibility and expertise. Mr. Shigo suggested that Mr. Mason "seek counseling" to address "unresolved issues on [the appellant's] part" which he believed to be contributing to the problem.
6. After the letter of concern had already been issued, Mr. Perry forwarded to Dr. Shigo a written complaint from Ms. Sandra Brown, one of Mr. Mason's co-workers.
7. Ms. Brown's letter complained that on more than one occasion, Mr. Mason had made remarks about her being over-weight. She said she found his remarks, and his later apology, to be offensive.
8. A written warning was issued to Mr. Mason on October 12, 1995, citing "failure to meet the work standard as evidenced by... continued failure to maintain appropriate boundaries."

Ms. Steeves argued that the "boundary policy" which the appellant allegedly violated refers only to interactions between staff and patients, and therefore could not be applied to interpersonal relations between members of the hospital staff. She argued that the type of incident described by Ms. Brown's complaint had already been addressed in a counseling session and letter of concern, and that Mr. Mason was actively participating in the plan of corrective action when he received the written warning. She argued that by issuing a written warning to the appellant, New Hampshire Hospital in fact had disciplined him twice for the same offense.

Ms. Steeves argued that the Brown complaint was inaccurate, and that it mischaracterized Mr. Mason's comments. She suggested that staffing difficulties and workload had created a stressful working environment for all of the Hospital's employees and that stress might have caused Ms. Brown to misconstrue Mr. Mason's remarks as something other than a reflection of his concern for her well-being. She argued that mediation rather than discipline would have been the more appropriate way to resolve any outstanding concerns which Ms. Brown, Mr. Perry or Dr. Shigo might have had about the appellant's conduct.

Ms. Lang argued that "boundaries" apply to relationship between staff members as well as between staff and patients. She noted that these issues are covered in employee orientation and training sessions, as well as in the Hospital's written policies. Ms. Lang argued that the counseling letter which was issued to Mr. Mason in August, 1995, was not "discipline" within the meaning of the Personnel Rules, and therefore could not be considered the first of two disciplinary actions for the same offense.

Ms. Lang argued that while New Hampshire Hospital personnel practice may involve counseling prior to discipline, some conduct is sufficiently egregious to warrant immediate disciplinary action. Ms. Lang argued that in light of documented prior concerns about Mr. Mason's conduct with patients and staff, New Hampshire Hospital acted appropriately by issuing a written warning to the appellant once the Brown allegations had come to light.

RULINGS OF LAW

- A. Per 1001.03(a) provides that: "An appointing authority shall be authorized to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance..."

DECISION AND ORDER

The Personnel Rules describe six forms of discipline, with the written warning recognized as the "least severe form of discipline to correct an employee's unsatisfactory work performance..." While New Hampshire Hospital may describe counseling letters or letters of concern as a frequently used first step in the disciplinary process, such letters are not formal discipline in and of themselves. Therefore, the Board found that the only discipline imposed in this instance was the October 12, 1995, written warning.

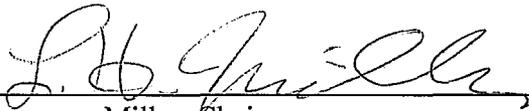
The August 29th letter of concern addressed three separate performance issues: failing to maintain appropriate "boundaries," getting "off track" in maintaining a "process oriented therapy focus," and displaying a tendency to "impose [his] own agenda on a situation." Contrary to the appellant's assertions, criticism about his interpersonal relations, as evidenced by the letter of concern, involved "patients as well as staff." (Emphasis added.) The letter listed "intruding into personal boundaries, or interrupting the conversations of others at inappropriate times" as examples of the conduct to be corrected. Ms. Lang argued that when Dr. Shigo issued the counseling letter to Mr. Mason, he was unaware of the Brown complaint, which described a more serious "boundary" infraction than merely interrupting someone's conversation. The appellant did not deny making remarks to Ms. Brown about her weight. Instead, he argued that his remarks were an indication of concern, which Ms. Brown had misconstrued. The appellant suggested that mediation rather than discipline would have been the more appropriate way of addressing Ms. Brown's complaint.

On the evidence and offers of proof, the Board voted to deny Mr. Mason's appeal. The evidence reflects that Mr. Mason's ability to maintain appropriate interpersonal relations had been a source of concern over a more substantial period of time than that which elapsed between the issuance of the letter of concern and the subsequent letter of warning. The

August 19, 1995, Letter of Concern stated, "[Boundaries] has been a consistent problem for you. At times it has been the focus of letters of concern. When it is brought up, it gets better for some time, but then seems to get worse again. ..." Had Dr. Shigo been aware of the Brown complaint on August 29, 1995, he could have chosen to issue a written warning for the boundary infraction. Therefore, the Board found that it was reasonable for Dr. Shigo to issue a written warning after having been apprised of the substance of Ms. Brown's complaint.

For the reasons set forth above, Mr. Mason's appeal is denied.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



Lawrence Miller, Chairman



Robert Johnson, Commissioner



Lisa Rule, Commissioner

cc: Virginia Lambertson, Director of Personnel
Marie Lang, Human Resources Administrator, New Hampshire Hospital
Margo Steeves, SEA Field Representative