

State of New Hampshire

PERSONNEL APPEALS BOARD

Chairman
Loretta Platt



EXECUTIVE SECRETARY
Mary Ann Steele

PERSONNELAPPEALSBOARD
State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

MOTION FOR RECONSIDERATION Appeal of James Bennett

June 20, 1988

At its meeting of June 14, 1988, the Personnel Appeals Board, Commissioners Cushman and Platt sitting, reviewed the Motion for Reconsideration filed by SEA Field Representative Jean Chellis on behalf of James Bennett, an employee of the Department of Safety. In that Motion, the appellant asked that the Board reconsider its April 4, 1988 decision dismissing Mr. Bennett's appeal of "a decision of the Director of the Division of Personnel in the matter of a reorganization and resulting reclassification within the Department of Safety." Upon review of the record, including submissions from the appellant, Director of Personnel and Commissioner of Safety, the Board issued a decision dismissing the appeal for failure to timely file.

In the Motion for Reconsideration, the appellant presented no information to justify reversal or reconsideration of the Board's April 4, 1988 decision in Mr. Bennett's appeal. The Board therefore voted unanimously to deny the Motion for Reconsideration.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE
Executive Secretary

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cc: Jean Chellis, SEA Field Representative

Richard M. Flynn, Commissioner of Safety

Edwin Goodrich, Human Resources Coordinator
Department of Safety

Virginia A. Vogel
Director of Personnel

State of New Hampshire

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APPEAL OF JAMES BENNETT

April 4, 1988

On Tuesday, February 9, 1988, the Personnel Appeals Board, Commissioners Cushman and Platt sitting, reviewed the appeal of James Bennett, Safety Inspector, Department of Safety.

The record, as reviewed by the Board included the original appeal request from Ms. Chellis dated August 5, 1987, the Board's order of December 14, 1987 requiring additional submissions by the appellant, the appellant's Division of Personnel file, the appellant's December 21, 1987 response to the Board, the Board's January 20, 1988 request for written information concerning this appeal from the Division of Personnel and the Department of Safety, Personnel Director Virginia Vogel's response to the Board dated January 21, 1988 and Safety Commissioner Richard Flynn's response to the Board dated February 2, 1988.

Upon review of the record, the Board voted unanimously to dismiss the matter, granting Mrs. Vogel's motion to dismiss on the basis of the appellant's failure to timely file his appeal.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE
Executive Secretary

cc: Jean Chellis, SEA Field Representative
Virginia A. Vogel, Director of Personnel
Richard M. Flynn, Commissioner of Safety

State of New Hampshire

WPPID560



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APPEAL OF JAMES BENNETT Docket #89-D-10

Response to State's Motion for Reconsideration

June 25, 1990

At its meeting of May 23, 1990, the Personnel Appeals Board (Johnson and Rule) considered the State's Motion for Reconsideration filed by Director Daley, Division of Enforcement, in the letter of warning appeal of James Bennett. The Board voted to deny the Motion, affirming its March 15, 1990 decision. In so doing, the Board decided the State had not provided sufficient grounds upon which to grant the State's request for reconsideration of its March 15th decision.

The State has offered additional "written evidence from February 10, 1988, relating to an incident in which Officer Bennett was not only verbally counselled on poor report writing, but was also provided with a sample report that was acceptable". The Board was not persuaded that such additional evidence would lead it to reach any different conclusion from that given in its initial order.

Based upon the foregoing, the Board voted to deny the Motion, and affirm its decision of March 15, 1990.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE
Executive Secretary

cc: E. James Daley, Director, Division of Enforcement, Department of Safety
Dennis T. Martino, Representative, State Employees' Association
Virginia A. Vogel, Director of Personnel
Civil Bureau - Attorney General's Office

State of New Hampshire

WPPID482



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APPEAL OF JAMES BENNETT
Department of Safety
Docket #89-D-10

March 15, 1990

A quorum of the New Hampshire Personnel Appeals Board (Rule and Johnson) met Wednesday, February 14, 1990, to hear James Bennett's appeal of a letter of warning dated January 10, 1989. Appellant was represented at the hearing by SEA Representative Dennis T. Martino. E. James Daley, Director of Enforcement, represented the Department of Safety.

The letter of warning issued by Director Daley cited violation of Rule #3.6 (Obedience to Orders) and violation of Rule #4.3.2, (Unsatisfactory Performance) as grounds for discipline.

The Board found the majority of the allegations contained in the letter of warning to be unsupported by the evidence. Specifically, the letter of warning states, "On October 3, 1988, you received Field Action Request #DOE-8, which directed you to investigate the complaint as identified in the attached September 23, 1988 memo written by me." The testimony and evidence which comprise the record in this appeal do not support a finding that Bennett received the case October 3rd, but that he received his instructions to investigate the McDerby case sometime between October 8th and October 18th.

The warning goes on to say, "On October 19, 1988 you were called in and met with me personally regarding this case, and its lack of progress. At that time, you had indicated that you had done some preliminary work but at no time did you mention anything relating to the evidence or lack of evidence in relation to a possible forgery charge."

Bennett's first report on the case was made on October 28th, was received by the Division on November 2nd, and reviewed by Director Daley on November 3rd. Daley states that Bennett, "...made no reference or report relating to the elements that did or did not exist for the possible charge of forgery. As a result, on November 7, 1988, at approximately 3:15 p.m., you were called into my office and in the presence of Lieutenant Smart, you were asked why, in

fact, you had not accomplished your assigned task. Your answers were unsatisfactory, and you were again advised in great detail, that **it** was not only your obligation as a result of my direct instructions, but as a law enforcement officer, to investigate this case to determine whether or not the elements did, or did not exist for the potential crime indicated."

The Board found no reference, either in the September 23rd investigative file memo, the Field Action Report, or in the hand-written instructions of Lieutenant Smart, to any requirement that Bennett specifically address the "elements" of a forgery complaint. The Board is not persuaded that Officer Bennett violated or disobeyed any direct orders by failing to include such elements in his report. The Board concedes that identifying the elements of an offense, and noting whether or not they were present, may be the standard format for investigative reports. No evidence to this effect was submitted, however, and the Board is hard pressed to make a finding that Bennett's omission of the elements constitutes disobedience of an order.

The "Sample Complaints" found in the handbook excerpts attached as State's Exhibit appear to only provide guidance in completing reports when the investigating officer believes a crime has been committed. As was clear from Bennett's report, he did not find evidence of forgery, and could not have used the "sample" format. The Department of Safety did not produce any evidence of what a properly completed report should contain, and the Board was therefore unable to determine the extent to which Mr. Bennett's investigative report(s) may have been deficient.

Daley goes on to say in the warning, "A discussion also ensued regarding the lack of progress in relation to this case, since your assignment to this case on October 3, 1988." Again, the Department of Safety has provided no evidence of what constitutes timely disposition or satisfactory progress under normal circumstances. The Board is not persuaded, on the basis of the evidence received, that Bennett's handling of the McDerby case constitutes "fail[ure] to immediately obey all orders and instructions given by your superiors."

The January 10, 1989 warning states, "This level of disciplinary action (letter of warning) is a result of the fact that you were counseled verbally for identical violations, by me on April 21, 1988, as a result of unsatisfactory performance and failing to obey orders in a similar investigation at that time. Your failure to adequately correct these areas of deficiencies has resulted in this letter of warning." The Board received no corroborative testimony or evidence, apart from the allegations contained in the letter of warning itself, that the same violations had occurred in April, 1988, and that Officer Bennett had been counselled in this regard.

Based upon the foregoing, the Board voted to order that the charge of disobeying the orders and instructions of a superior be deleted from the warning, as well as reference to failure to promptly investigate the complaint. The Board further orders the Department of Safety to amend the letter of warning to indicate that **it** will expire as a basis for discharge at the conclusion of one year, rather than the two years provided for in the Rules of the Division of Personnel. The revised warning shall remain in Officer Bennett's personnel file, however, with a copy of the Board's order in this matter attached.

THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chairman



Robert J. Johnson, Member

cc: Dennis T. Martino, SEA Representative
E. James Daley, Director of Enforcement, Department of Safety
Virginia A. Vogel, Director of Personnel
David S. Peck, Assistant Attorney General