

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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Appeal of Pamela Callioras

Docket #2013-D-002

Department of Health and Human Services – Division of Family Assistance

December 17, 2012

A quorum¹ of the New Hampshire Personnel Appeals Board (Wood and Bonafide) met in public session on Wednesday, November 14, 2012, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeal of Pamela Callioras, an employee of the Department of Health and Human Services. Ms. Callioras, who was represented at the hearing by SEA Grievance Representative Nicholas McGinty, was appealing a letter of warning issued to her on January 19, 2012, under the provisions of Per 1002.04(b)(1) and (8), for failure to meet work standards, and unauthorized use or misuse of information or communication systems in that she allegedly breached confidentiality, reviewed a case in "New Heights", and provided confidential information without authorization to a third party. Attorney Jennifer Jones appeared on behalf of the Department of Health and Human Services, Division of Family Assistance.

Without objection, the appeal was heard 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, the digital audio recording of the hearing on the merits of the appeal, and documents entered into the record as follows:

¹ In accordance with RSA 21-I:46, II, any two members of the Board shall constitute a quorum. Neither party objected to the appeal being heard by a quorum of the Board, and neither party objected to participation by either of the members convened to conduct the hearing.

Appellant's Submissions:

September 6, 2012, notice of appeal with attachments:

- August 23, 2012 letter from Karen Hutchins to Nicholas D. McGinty
- January 19, 2012 letter of warning issues to Ms. Callioras
- February 3, 2012 letter from Nicholas McGinty to D'Arcy Swendsen
- February 17, 2012 from Mickie Grimes to Sean Bolton
- March 2, 2012 letter from Nicholas McGinty to Terry Smith
- April 16, 2012 letter from Terry Smith to Nicholas McGinty
- May 1, 2012 letter from Nicholas McGinty to Nicholas Toumpas
- August 3, 2012 letter from Jill A. Desrochers to Nicholas McGinty
- August 17, 2012 letter from Nicholas McGinty to Karen Hutchins
- November 2, 2012 Statement by Sean Bolton

State's Submissions:

1. November 9, 2012 "Pre-Trial Submission" from the Department of Health and Human Services with attachments including: Letter of Warning dated January 19, 2012 (with attachments) and revised Letter of Warning dated April 26, 2012

After carefully considering the parties' evidence, arguments and offers of proof, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. Ms. Callioras is employed as a Family Services Specialist I by the Department of Health and Human Services Division of Family Assistance (DFA) in the Claremont District Office. In her capacity as a Family Services Specialist I, Ms. Callioras is responsible for processing food stamps, childcare and the QMB (Qualified Medicare Beneficiary) program.
2. Prior to her appointment as a Family Services Specialist I, Ms. Callioras had worked at New Hampshire Employment Security. She was laid off from her position there as a result of a reduction in force. She was later placed at the Department of Health and Human Services in a position of Family Services Specialist I through the State's RIF (Reduction in Force) placement program.

3. As a newly hired employee at the DFA, Ms. Callioras was required to sign a Statement of Confidentiality that states, "Every client has a right to privacy and confidentiality of his or her record. Information about a client may be shared among staff of the Department only, insofar as it is necessary for the best interest of the client. No information is to be shared with anyone else except with the informed consent of the client or the person authorized to give consent on the client's behalf. All staff and employees of the Department of Health & Human Services are under an equal obligation to treat as confidential any information they may acquire, by any means, about a client or ex-client. Breaches of Confidentiality will be graded as a serious offense and grounds for disciplinary action up to and including termination."
4. On or about January 3, 2012, a Probation-Parole Officer with whom Ms. Callioras had become acquainted through her work at New Hampshire Employment Security came to the Claremont District Office and asked to speak directly with her about having a Medicaid card reissued for his adoptive son. Issuing Medicaid cards was not part of the Appellant's regular work assignment.
5. After taking the gentleman into an interview room, Ms. Callioras logged into the New Heights computer system and confirmed that the child in question was a client of the DCYF eligible for a Medicaid card. Ms. Callioras did not wait to consult her supervisor, but obtained assistance instead from support staff to process the request, and ordered a Medicaid card for the child.
6. The child had an assigned caseworker through the Division for Children, Youth and Families, and was receiving benefits through the DCYF because he had been a foster child. The child was not receiving any services through the DFA, and Ms. Callioras had no legitimate reason related to her own work at the DFA to access his file or to disclose any information about the child to anyone.
7. After the fact, Ms. Callioras advised her supervisor that she had ordered the Medicaid card for the child.

Rulings of Law

- A. In accordance with the provisions of Per 1002.03, "In determining the appropriate form of discipline under Per 1002.04 through 1002.08, an appointing authority may consider factors including, but not limited to: (a) The nature and severity of the conduct or offense in relation to the employee's position classification, responsibilities, and accountabilities, and the functions of

the agency; and (b) The employee's past record of performance and discipline, including whether or not the employee has been disciplined in the past for the same or a similar offense." The weight of the evidence did not support the Appellant's contention that the discipline was motivated by bias, or that the Appellant was considered a "reject" because she was placed from the RIF list. The evidence also did not support the Appellant's contention that she had too little training to understand the limits of her authority to access and act upon cases outside her own caseload and ordinary work assignments.

- B. The reasons for discipline outlined in the letter of warning issued to the Appellant include failure to meet work standards, and unauthorized use or misuse of information or communication systems resulting in a breach of confidentiality. Under the current NH Code of Administrative Rules, the agency could have elected to impose a disciplinary suspension under the provisions of Per 1002.06(a)(3)a. for "disclosing or otherwise failing to safeguard confidential information," or in the most extreme case, could have considered dismissal under the provisions of Per 1002.08(b)(16) if the agency considered the breach of confidentiality a "willful release" of confidential information. The agency, in this case, chose the least severe form of discipline to correct the Appellant's unsatisfactory work performance.
- C. In appeals arising out of the issuance of a written warning, the appointing authority has the burden of, "producing evidence supporting the action under appeal," [Per-A 201.12(b)] The weight of the evidence in the instant appeal supports the Department of Health and Human Services' decision to issue a written warning to the Appellant.
- D. In all cases, the Appellant has the burden of proof. In this instance, the Appellant failed to persuade the Board that, "(1) The disciplinary action was unlawful; (2) The appointing authority violated the rules of the division of personnel by imposing the disciplinary action under appeal; (3) The disciplinary action was unwarranted by the alleged conduct or failure to meet the work standard in light of the facts in evidence; or (4) The disciplinary action was unjust in light of the facts in evidence." [Per-A 207.12 (a)(1)-(4)]

Position of the Parties

Mr. McGinty argued that Ms. Callioras was not the only case worker to "touch" cases outside their own caseload or program, and that it was unfair to single the Appellant out for discipline. Mr. McGinty argued that when the Appellant was presented with this request for assistance, she tried to consult her own supervisor but found that there was a line of people waiting to see the supervisor, so she asked instead for help from support staff, as the Appellant was simply trying to

be accommodating. Mr. McGinty noted that the Medicaid card would have been mailed directly to the child's home and was not given to the adoptive father. Mr. McGinty argued that the child's adoptive parent should have been authorized to obtain information and seek assistance on the child's behalf, and that the Appellant, therefore, did not breach confidentiality by confirming the child's Medicaid eligibility or by issuing a card on the child's behalf.

Mr. McGinty argued that the Appellant did not receive appropriate or sufficient training, and that although the Appellant may have followed "an incorrect process" in accessing the child's information and issuing the Medicaid card, the agency shared responsibility for the problem in that it failed to provide her with a mentor, and gave her inaccurate instruction by showing her how to access information outside her own caseload and Division within the agency.

Mr. McGinty argued that the agency could have approached the incident as a "teachable event" and might have counseled the Appellant, but chose instead to issue a letter of warning that was threatening and punitive rather than corrective in nature. He argued that the Board needed to consider the agency's inappropriate motive in deciding to issue a written warning, arguing that Appellant had been labeled from the beginning as a "reject," because the agency had been forced to hire her from the RIF list.

Attorney Jones argued that the Appellant had no right to disclose any information about the child to anyone without appropriate authorization and consent, and that by merely acknowledging that the child was a client eligible for services through the Department of Health and Human Services, the Appellant had breached confidentiality. Attorney Jones argued that the child was not in the Appellant's caseload, and was not a client of the DFA. Attorney Jones noted that the gentleman provided no proof that he was entitled to the information or assistance he requested, and she questioned why the gentleman would have come directly to the Appellant for assistance when, as the foster father or adoptive father, he would have known that the child had a caseworker through the DCYF. Attorney Jones argued that the gentleman requesting assistance was not an employee of the Department of Health and Human Services, was not a recipient of DFA services, and was never required to provide any proof that he was authorized to act on the child's behalf in requesting information or services. Attorney Jones argued that even if the gentleman was the child's adoptive father, the Appellant would have had no way of knowing if, for some reason, access to information about the child should have been withheld from him.

Attorney Jones argued that the Statement of Confidentiality that the Appellant signed when she was first assigned to the Division of Family Assistance says that, "No information is to be shared with anyone else except with the informed consent of the client or the person authorized to give consent on the client's behalf." Attorney Jones argued that the language of that statement is clear and requires no specialized training, and that the Statement of Confidentiality received by the Appellant and signed by her during orientation makes it very clear that any breach of confidentiality would be considered a serious offense.

Decision and Order

In the notice of appeal (page 8) Mr. McGinty wrote, in part, "While Ms. Callioras did not follow the process to which DFA/DHHS claims to expect adherence, when all was said and done, a member of the public received information for the child of whom he is the legal guardian as the adoptive father..." Under the Appellant's theory of the case, it is the outcome, not the process that matters. Mr. McGinty asked the Board to find that there was no actual breach of confidentiality and that there was no offense that would warrant discipline. The Board does not agree. Regardless of the outcome "when all was said and done," the process does matter, as it is the process that helps protect the rights of the individuals served by the agency. The Appellant disclosed confidential information about a child who was outside her caseload and outside her own Division's jurisdiction to an acquaintance of hers without determining the individual's interest in the case or his authorization to request services on behalf of the child. That act, regardless of the outcome, represented a breach of confidentiality.

Having carefully considered the evidence, argument and offers of proof, the Board found that the Personnel Rules give an appointing authority significant discretion in determining how and when to impose discipline. In this case, while the agency might have chosen a different course, the agency was well within its authority to determine that the Appellant committed an offense, and that the nature and severity of that offense in relation to the employee's position classification, responsibilities, accountabilities, and the functions of the agency warranted the imposition of discipline. The agency's Statement of Confidentiality warns that any breach of confidentiality may result in discipline up to, and including, termination of employment. In this case, the agency chose to use the least severe form of discipline recognized by the Personnel Rules and issued a written warning. In light of the fact that the agency could have chosen a more severe form of discipline,

the Board is not persuaded that the decision to issue a written warning to the Appellant was the result of bias toward the Appellant, but a reaction to the seriousness of the offense.

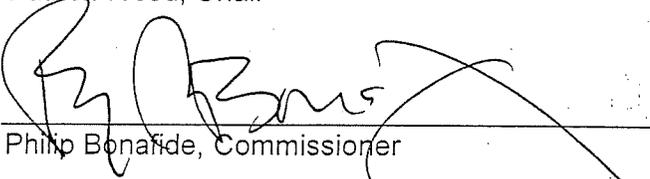
Prior to completion of the hearing, the Board asked the parties if they might settle the appeal by agreeing to have the letter of warning removed from the Appellant's file at some future date if there were no further offenses. The parties agreed to discuss a possible settlement, but were unable to reach a mutually acceptable resolution. Having considered all of the evidence, the Board recognized that the Appellant was fairly new at her job, that she had not completed her training when the incident occurred, and that she was trying to be helpful. The Board also noted that the Appellant recognized that what she had done was perhaps out of the ordinary and should be reviewed by a supervisor, as she reported the event to her supervisor after the fact. With that in mind, after weighing the various options that the parties might have considered if they were to have settled the appeal, the Board voted on its own motion to shorten the period of time for which the warning would be effective, directing that the warning be reduced to a counseling memo eighteen months from the date of issue, provided there are no similar incidents during that period of time.

For all the reasons set forth above, the Board voted to DENY the Appellant's request to remove the written warning from her file, but GRANT THE APPEAL IN PART by directing the agency to replace the written warning with a counseling memo on or about July 26, 2013 if the Appellant commits no similar offenses during that period of time.

THE PERSONNEL APPEALS BOARD



Patrick Wood, Chair



Philip Bonafide, Commissioner

cc: Karen Hutchins, Director of Personnel
Nicholas McGinty, SEA Grievance Representative
Attorney Jennifer Jones, Department of Health and Human Services
Mark Bussiere, HR Administrator, Department of Health and Human Services