

State of New Hampshire



PERSONNEL APPEALS BOARD
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Appeal of Susan Chapman Lozier
Docket #2005-D-001
Department of Transportation

December 8, 2005

The New Hampshire Personnel Appeals Board (Wood, Johnson, Bonafide and Reagan)¹ met in public session, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules on Wednesday, September 28, 2005, to hear the appeal of Susan Chapman Lozier. Ms. Lozier was appealing a letter of warning dated April 27, 2004, and amended May 25, 2004, charging her with inappropriate workplace conduct, failure to adhere to assigned work hours, and failure to produce an acceptable work product in a reasonable amount of time. Assistant Attorney General Margaret Fulton appeared on behalf of the Department of Transportation. The Appellant appeared *pro se*.

The appellant argued that the Department of Transportation violated her rights under the Personnel Rules and Collective Bargaining Agreement in terms of its management of her personnel file. She further argued that errors by others in her bureau, lack of cooperation by her co-workers, and lack of truthfulness on the part of her supervisors were the underlying reasons for the warning.

Ms. Fulton argued that the Appellant engaged in inappropriate workplace conduct, failed to adhere to assigned work hours, and failed to produce an acceptable work product in a

¹ The Board sat *en banc*. Neither party objected to the matter being heard *en banc*, nor did they object to any member of the Board hearing and deciding the matter.

reasonable amount of time. As a result, she argued, the State acted reasonably in issuing a written warning to the Appellant for failing to meet work standards.

In accordance with the Board's rules, and with the consent of the parties, the Board heard the appeal 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, and documents admitted into evidence as follows:

State's Exhibits:

1. May 25,2004 written warning (amended) issued to Susan J. Chapman by Matthew E. Moore and James F. Marshall
2. Class Specification for Accounting Technician and Supplemental Job Description for Position #20143
3. Affidavit of Armand J. Nolin
4. Affidavit of Donald S. Lasell
5. Affidavit of Matthew Moore
6. Typed Note dated February 9,2004 addressed to "Susan"
7. October 13,2003 Letter of Counsel issued by Armand J. Nolin to Susan J. Chapman
8. Performance Summary for the period of 4/18/03 to 4/18/04, with 4-page typed rebuttal, signed by Ms. Chapman Lozier on November 2,2004

The Appellant indicated that she had not received the State's exhibits prior to the hearing. She said that she had moved and that her mail should have been forwarded to her, although she admitted that her forwarded mail was sometimes delayed.

Ms. Fulton stated that the Appellant had not communicated at all with the Department after filing her appeal, and had never informed the Department of her change of address. Ms. Fulton stated that the majority of the State's exhibits were part of the Appellant's personnel file. She indicated that the affidavits being offered into evidence had been

mailed to the address that had been provided to the Department, and she argued that the State should not be precluded from offering those exhibits into evidence when it had complied with the Board's rules for exchange of evidence.

The Board recessed the hearing in order to allow the Appellant to review the documents being offered into evidence by the State. After giving the Appellant sufficient time to review those documents, the Board admitted the State's exhibits into evidence without objection.

Appellant's Exhibits:

The Appellant's exhibits consisted of the attachments to her original notice of appeal. They were admitted as a single exhibit described as follows:

September 3, 2004 notice of appeal with attachments:

- 9 8-page response dated 9/3/04 to "statements" in the May 25, 2004 written warning
- July 23, 2004 letter from David Brillhart to Susan Chapman
- July 8, 2004 letter from Susan Chapman to Sara Willingham
- June 23, 2004 letter from Jeff Brillhart to Susan Chapman
- 9 June 9, 2004 letter from Susan Chapman to Commissioner Carol Murray
- 9 May 25, 2004 letter of warning issued to Susan Chapman, dated April 27, 2004, Amended on May 25, 2004, Step II of the Informal Appeal Process
- May 11, 2004 memo from Susan Chapman to James Marshall Re: Response to letter issued... on 4/27/04
- Susan J. Chapman Resume
- 9 June 11, 2004 letter from Susan Chapman to Carol Murray
- October 13, 2003. Letter of Counsel issued to Ms. Chapman by Armand Nolin
- 9 Hand-written notes
- July 25, 2003 e-mail from Susan Chapman to Pat Dwinnells, Armand Nolin, D. Gandalf and Matthew Moore titled "Work to Do," with attachments

- October 8,2003 e-mail from Susan Chapman to Armand Nolin, with attachments
- October 15,2003 e-mails (2) to Susan Chapman from Margaret Curtis
- January 23,2004 memo from Susan Chapman to Matthew Moore RE: Missing Documents and Files (with attachments)
- Notes after the May 25,2004 Meeting with Jim Marshall and Matt Moore
- May 25,2004 letter of warning with attachments

Ms. Lozier argued that her exhibits would show that, "...the claims made in the letter [of warning] were produced as a result of discord within the office and the workload being unnecessarily heavy in [her] area, and co-workers causing problems which affected [her] work directly, so [she] had to spend a great deal of [her] time correcting their errors."

Findings of Fact

Having carefully considered the evidence and argument offered by the parties, the Board found the following:

1. The Appellant has worked for the Department of Transportation since 1999. At the time the warning was issued, she was employed as an Accounting Technician (salary grade 12) in the Bureau of Public works² where the accountabilities listed on her supplemental job description included:
 - Establishing and maintaining the Public Works contractual ledger for all active projects by posting, balancing of transactions and transferring of funds.
 - Utilizes independent judgment in reviewing and verifying invoices and alteration orders that are being processed.
 - Processing estimate invoices on contracts; making sure the monies are correctly manifested.
 - Composing, signing and filing of all correspondence associated with accounts payable.

²The Appellant is currently employed by the Department as an Accountant I.

- Communicating and coordinating with other state agencies to insure the appropriate funds are allocated to the various projects.

Tracking transactions on an audit review sheet so that information can be readily accessed.

- Completing audit verifications submitted by certified public accounting firms by presenting them with the current status of payments that have been made on projects. [State's Exhibit 2]

2. In February 2004, Armand Nolin, the Business Administrator in the Bureau of Public Works informed Matthew Moore, the Bureau Administrator, "...payments were running well behind the Bureau's procedure." [State's Exhibit 3] Mr. Moore had also "...received telephone calls on a regular basis from distressed contractors looking for their payment(s)." [State's Exhibit 5] Mr. Moore directed the Appellant to concentrate all her efforts on getting the payments up-to-date. He also reassigned some of the Appellant's duties to her supervisors and co-workers so the Appellant's time would not be taken up filing, photocopying, or running errands within the Department.
3. In an effort to standardize procedures and expedite payment processing, Mr. Moore also directed the Appellant to participate on a "team" with supervisors and co-workers to establish procedures for handling the mail, filing, tracking payments, logging documents and change orders, and generally managing the flow of information and tasks in the office to ensure proper file management and timely payment to contractors.
4. Affidavits provided by Armand J. Nolin and Donald S. Lasell [State's Exhibits 3 and 5] attest to Ms. Chapman Lozier's inappropriate conduct and lack of cooperation during the team meeting process. Specifically, Mr. Nolin indicated that the Appellant was "typically late [to meetings], interrupted others' ideas, changed topics randomly, [was] disruptive by flipping papers, constantly writing notes, [would] make unintelligible noises, laugh for no reason." [State's Exhibit 3] The Appellant's demeanor during the hearing on the merits of her appeal was consistent with that description.

5. The Appellant repeatedly demonstrated that she was not willing to compromise or accept others' ideas when they involved examining or discussing how her own work flow might be improved. She made it clear that she resented Ms. Dwinnells' and Mr. Nolin's input during that process, even though they were in her supervisory chain of command and had been directed to pick up some of the Appellant's duties. In the document titled "Susan Chapman Lozier 9/3/04" in the section titled "Comments re P.6," the Appellant wrote, "...This group had the mindset that my work was up for their approval or disapproval. That was not right. Ms. Dwinnells and Mi. Nolin don't want to do my work, don't provide any real assistance to me, but have much to say about it. I develop systems which work without having any of their support. If they were to 'help' me then they should have made an attempt to listen to me instead of continually arguing with me."
6. In a document titled "Notes After the May 25, 2004 meeting with Jim Marshall and Matt Moore" the Appellant wrote, "My co-workers proved themselves to be adversarial for reasons unknown to me." Other documents attached as "Exhibit F" to the Appellant's May 11, 2004 letter to James Marshall, particularly the page titled "Thoughts on the situation at work," provide good examples of the Appellant's role in the ongoing conflict with one of her co-workers, D Gandalf. The documents also offer evidence of the Appellant's constant criticism of others in her work group, and her refusal to accept any responsibility for what she describes as "discord" in the workplace. With respect to Mr. Gandalf, the Appellant wrote, "I will not lower my standards because it takes D out of his comfort level. That D does not share the concept of improving workflow to improve processes is not my problem. It is clear to me that D is untrained. Moreover, he is unwilling, as his behaviors and attitudes continually confirm this... D is unwilling to engage in problem-solving or to take on a work-related challenge." The Appellant's description of interactions with Mi. Moore, Mr. Nolin and Ms. Dwinnells are equally judgmental. The Appellant's disdain for her co-workers and supervisors is apparent in the documents she offered into evidence.
7. In terms of punctuality and maintaining a regular work schedule, the Board asked the Appellant if it were true that the Department had changed her work hours several

times in order to help her report to work on time, and whether or not she had been counseled in February 2004 about repeatedly being late. The Appellant said, "I remember [Mr. Nolin] coming over to my desk and glaring at me and telling me I was late again and it was unacceptable." She agreed that her schedule had been changed several times, but did not believe it had helped particularly. The Appellant indicated that those in her work group knew she had personal issues periodically that made her late to work. When the Board asked the Appellant if she agreed it would be difficult to staff a department if every employee came and went whenever they wanted to or whenever they could, the Appellant did not answer the question directly, replying instead, "The way I feel about it, it's not as bad as people who stay on the phone for a half hour or sell their eggs around the building."

8. When the Board questioned the Appellant about how she obtained permission to work overtime, and whether or not she had been counseled about working through the chain of command for approval if she needed to work overtime, she again avoided answering the question directly. Instead she stated, "I told Mr. Moore at that time that I didn't think I necessarily needed overtime... Factually it is true that I would work until the end of my day, and then I would pick up. Because it's accounting work, if I wasn't done at the end of the day, I'd just keep working on it until I was done. It wasn't an issue since 1999."
9. In her written response to her performance evaluation [State's Exhibit 8] the Appellant wrote, "Ms. Dwinnells misrepresents me and my work situation... she, like Mr. Moore, Mr. Nolin, continually blamed me for payment delays which are not in my control and which, furthermore, were more correctly linked to the lack of support I had in the office. I always told Mr. Moore that I didn't have problems with making payment per se, despite the database flaws." The evidence reflects that payments to contractors were not always timely, and although the Appellant did not have complete control of the payment process, the evidence supports the Department's assertion that the payment process was "...impeded by [the Appellant's] attention to fine detail on items that are not [her] responsibility. This combined with [her] refusal to utilize assistance from co-workers, [her] failure to bring issues preventing processing of payments to [her] supervisor, [and her]

uncooperative involvement on the contractor payment process improvement team...”
[State's Exhibit 1]

Rulings of Law

- A. Per 1001.03 (a) of the NH Code of Administrative Rules authorizes the appointing authority “...to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance or misconduct...”
- B. The Appellant's inappropriate interactions with her co-workers, her failure to adhere to her assigned work hours, and her failure to complete some of her assignments in a timely fashion constituted "failure to meet any work standard," one of the offenses for which appointing authorities are authorized to issue written warnings under the provisions of Per 1001.03 (a) of the NH Code of Administrative Rules.
- C. The Appellant failed to prove by a preponderance of the evidence 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,” as required by Per-A 207.12 (b) of the NH Code of Administrative Rules.

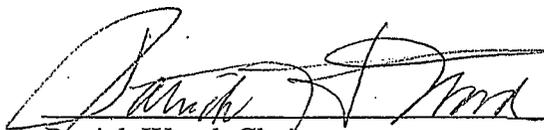
Decision and Order

The Board understands the Appellant's frustration at being responsible for work over which she could not exercise complete control. Instead of working cooperatively and collaboratively to identify and resolve those problems, however, the Appellant exacerbated the problem by openly showing her contempt for supervisors and co-workers, and repeatedly criticizing their work ethics and the quality of their work. When evaluated and counseled concerning her own shortcomings, the Appellant tried to deflect criticism by finding greater fault with others. The Appellant's conduct contributed

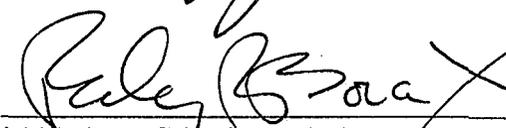
significantly to the group's apparent inability to work together effectively and collaboratively.

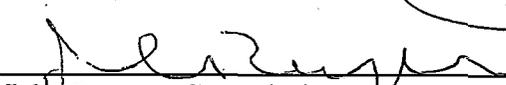
On all the evidence, argument and offers of proof, the Board found that the Department of Transportation was justified in issuing the Appellant a written warning for failure to meet work standards. Accordingly, the Board voted unanimously to DENY the appeal and uphold the written warning.

THE PERSONNEL APPEALS BOARD


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