

State of New Hampshire



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

Appeal of Gary Crosby

Docket #97-D-7

New Hampshire Hospital

Response to Appellant's Motion for Reconsideration and State's Objection to Motion to Reconsider

June 2, 1997

By letter dated March 20, 1997, SEA Field Representative Margo Steeves filed a Motion for Reconsideration of the Board's March 13, 1997, decision denying Mr. Crosby's appeal of a June 18, 1996, letter of warning. The Board received the State's Objection on April 1, 1996.

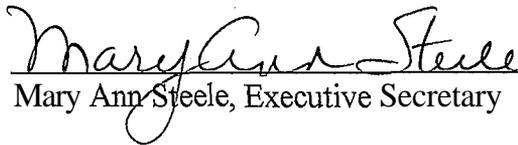
Per-A 204.06 of the Rules of the Personnel Appeals Board provides that a party may appeal for a rehearing by submitting a motion in which the party must "set forth fully every ground upon which is it claimed that the decision or order complained of is unlawful or unreasonable." Per-A 204.06 (d) provides that, "The Board may grant such rehearing if in its opinion good reason therefore is stated in the motion."

After reviewing the Motion and Objection in conjunction with the Board's decision, as well as reviewing the documentary evidence contained in the record, the Board remains of the opinion that its findings, appearing on page 3 of the decision, are well-supported by the evidence. The Board notes that while the Board made no specific finding with respect to the actual language used during the exchange between the Mr. Crosby and his

supervisor, Ms. Steeves is correct in noting that reference to Mr. Crosby having called Ms. Cleasby a liar was eventually deleted from the revised warning that was received by the appellant on July 19, 1996.

The reissued warning charges Mr. Crosby with willful insubordination and refusing to carry out 3 separate job assignments. The appellant has failed to offer persuasive evidence or argument to support a claim that the Board's decision upholding that warning was either unlawful or unreasonable. Accordingly, the Board voted to deny the Motion to Reconsider and affirm its decision denying Mr. Crosby's appeal.

FOR THE PERSONNEL APPEALS BOARD


Mary Ann Steele, Executive Secretary

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

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APPEAL OF GARY CROSBY

Docket #97-D-7

New Hampshire Hospital

March 13, 1997

The New Hampshire Personnel Appeals Board (Miller, Bennett and Barry) met Wednesday, January 8, 1997, under the authority of RSA 21-I:58, to hear the appeal of Gary Crosby, an employee of New Hampshire Hospital. Mr. Crosby, who was represented at the hearing by SEA Field Representative Margo Steeves, was appealing a June 18, 1996, letter of warning for alleged willful insubordination and refusal to carry out three separate job assignments on the evening of June 6, 1996. Marie Lang, Human Resources Administrator, appeared on behalf of New Hampshire Hospital. The appeal was made on oral arguments and offers of proof. The record in this matter consists of the audio tape recording of the hearing and documents submitted by the parties prior to the hearing.

Mr. Crosby, a third shift Mental Health Worker, was assigned to "Yellow House" on the night of June 6, 1996. The State alleged that just after midnight, Joan Cleasby, a Mental Health Worker II, went to Yellow house with a new key for the ined room, where patient medications and charts are kept. The State alleged that Mr. Crosby called Ms. Cleasby a liar when she attempted to explain that med room lock had been changed and only designated staff had access to the key. Mr. Crosby insisted that everyone on second shift had a key, and that staff assigned to Yellow House should have them as well.

The State alleged that later in his shik, Ms. Cleasby called to see if the patient at "Yellow House" who had difficulty with nocturnal incontinence, had been toileted. Mr. Crosby replied that the patient had been up earlier and probably had already used the bathroom. Ms. Cleasby referred him to staff notes and the appellant replied it was the first time he'd heard anything about that assignment. When Ms. Cleasby repeated her instructions to "special" the patient, the appellant responded that he needed to see

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the instructions in writing. By 5:00 a.m., Mr. Crosby was still insisting that he needed to see written instructions about the additional assignment.

The State also alleged that he refused to take patient charts to the Superintendent's Office when directed to do so, and that ultimately, Keith Stevens, another employee, eventually went to Yellow House to unlock the med room so the Mental Health Workers on shift could finish their medication count and write progress notes, and to pick up the charts. The State argued that there was only one note to be written, and a full hour until the end of the shift in which the medication count and progress notes could be completed. Ms. Lang noted that contrary to Mr. Crosby's later assertion, there was no evidence that he had to stay past the end of his shift to complete patient notes.

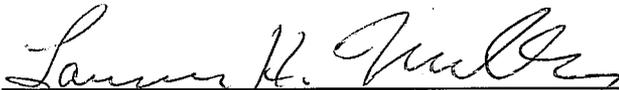
Ms. Steeves argued that Mr. Crosby's conduct did not rise to the level of an offense under the Optional Dismissal provisions of the Rules. She argued that although Mr. Crosby questioned his assignments, he never refused to perform them. Mr. Steeves argued that Mr. Crosby was understandably upset about not having keys to the med room, since that was where the patient charts and medications were kept, and that it wasn't until the Step I appeal meeting with Dennis D'Ovidio, Supervisor of Transitional Housing, that Mr. Crosby had a clear explanation of why he and other Mental Health Workers did not have keys to the room.

Ms. Steeves argued that Mr. Crosby never refused to take charts to the Superintendent's office, only that it seemed unnecessary, particularly when they believed they would have to wait for a first shift person to unlock the chart room. She also argued that Mr. Crosby never refused to provide the required "specialing,." She said he'd been told in passing that if the patient didn't get up on his own, they were to get him up. She argued that Mr. Crosby simply asked for written instructions because the patient notes did not tell them to awaken the patient, simply to monitor him. Ms. Steeves argued that the written warning was actually retaliatory in nature, and was issued only after Mr. Crosby had stood up for a co-worker who had complained about the supervisor responsible for the warning. She also noted that Mr. Crosby was the employee who notified the supervisor that someone had lost his keys resulting in the need to re-key the building. She argued that Mr. Crosby was understandably upset when he realized that people who were not working in Yellow House had keys to the facility and the employees assigned there did not.

After considering the evidence, argument and offers of proof, the Board voted unanimously to sustain the warning. The Board found that after the Hospital decided to re-key the building and determined that only designated staff would be issued keys, Mr. Crosby became annoyed, displaying animosity toward everyone who had been issued a key. By questioning every directive and insisting that he would not perform assignments unless directed in writing to do so, he essentially refused to perform those assignments.

The Hospital has a responsibility to maintain facility security. Deciding not to issue keys to all the employees represented a responsible exercise of management prerogative. By refusing to submit to reasonable supervisory directives, Mr. Crosby engaged in willful insubordination and refusal to carry out his job assignments. As such, the Board voted to deny Mr. Crosby's appeal.

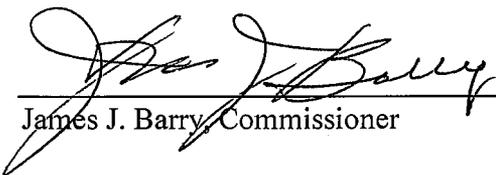
THE PERSONNEL APPEALS BOARD



Lawrence H. Miller, Chairman



Mark J. Bennett, Commissioner



James J. Barry, Commissioner

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