

State of New Hampshire



PERSONNEL APPEALS BOARD

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APPEAL OF TIMOTHY DORIS

DOCKET #99-D-13

BUREAU OF EMERGENCY COMMUNICATIONS

February 24, 1999

The New Hampshire Personnel Appeals Board (Bennett, Wood and Barry) met on Wednesday, January 13, 1999, under the authority of RSA 21-I:58, to hear the appeal of Timothy Doris, an employee of the Bureau of Emergency Communications. Mr. Doris, who was appealing a May 22, 1998, written warning for failure to meet the work standard, was represented at the hearing by SEA Field Representative Linda Chadbourne. David Mazeau, Operations Supervisor, appeared on behalf of the State.

The appeal was heard on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of the audio-tape recording of the hearing on the merits, documents submitted by the parties prior to the hearing, notices and orders issued by the Board, and documents admitted into evidence as follows:

Appellant's Exhibits

- A. Written Warning NHBEC099 to Timothy Doris from Dave Mazeau dated May 22, 1998
- B. E-Mail to Bruce Cheney et al fi-om Timothy Doris dated March 18, 1998
- C. E-Mail to Timothy Doris fi-om Bruce Cheney dated March 18, 1998
- D. E-Mail to Timothy Doris et al from Dave Mazeau dated March 18, 1998
- E. Memorandum NHBEC089 to Bruce Cheney from Timothy Doris, dated March 25, 1998

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State's Exhibits

The State offered into evidence a document described as a "Supervisor Activity Account" and minutes of a supervisory meeting dated April 18, 1998. Ms. Chadbourne objected to their admission arguing that neither of the documents had been disclosed to the appellant prior to the hearing. The Board excluded those documents. Although other documents were discussed during the course of the hearing, none of those documents were formally offered into evidence and none were admitted into the record.

The warning issued to Mr. Doris by Supervisor Mazeau on May 27, 1998, alleged specifically that:

1. The appellant approved a self-swap for a Telecommunications Specialist after her leave request had already been denied by Supervisor Mazeau.
2. That the appellant failed to properly document or address a personnel problem affecting both the individual employee and the safety of those in the environment in which he was working.
3. That the appellant had been negligent in carrying out his supervisory responsibilities with respect to reporting his activity, reviewing the work of employees assigned to his shift, and reporting system problems;
4. That he had excessive unscheduled absences; and
5. That he had a history of unacceptable performance..

With respect to the specific allegations, the parties offered the following arguments:

The appellant approved a self-swap for a Telecommunications Specialist after her leave request had already been denied by Supervisor Mazeau.

Mr. Mazeau argued that under section 49.3 of the Collective Bargaining Agreement, although Telecommunicators are permitted to swap shifts, an employee can not swap a shift with himself/herself. He argued that one of the employees had requested, and had been denied approval, for time off. He asserted that in spite of the leave denial, Ms. Doris allowed that

employee to swap shifts with herself for a time when she had already been denied leave, and that in so doing, he violated the agreement. The appellant argued that in this instance, the employee's request had originally been granted by another supervisor, but that Mr. Mazeau denied the request because of "staffing" concerns. He argued that the staffing issue had been resolved without requiring the use of any over-time work, and that he called Mr. Mazeau for guidance and clarification. He argued that when Mr. Mazeau did not respond, he finally approved the "self-swap."

There is no evidence that Mr. Doris' approval of the swap entailed approving time off that had already been denied by his supervisor. Rather, it appears that the employee was permitted to change her work schedule, and did so without affecting staffing or requiring the payment of any overtime. Absent evidence that such approval violated the Collective Bargaining Agreement, the Board found that approving the schedule change provided an insufficient basis upon which to issue a written warning for failure to meet the work standard.

The appellant failed to properly document or address a personnel problem affecting both the individual employee and the safety of those in the environment in which he was working.

Mr. Mazeau argued that the appellant had observed behavior by one of the employees on his shift that caused him concern for his own safety and the safety of his co-workers, but that the appellant failed to document those behaviors or take appropriate action to address those issues. He argued that although the appellant was not necessarily incorrect in deciding not to discipline the employee, he had an obligation to deal with the issue rather than "passing the buck" to his supervisors.

The appellant argued that he had taken the appropriate steps by requesting intervention by other supervisory personnel in dealing with the employee. He argued that he had sent e-mail to the Director of the Bureau and to the other supervisors advising them that other employees had begun to complain of this individual's "bizarre" behavior, that he believed the employee's mental condition was "fragile at best," that he knew the individual possessed weapons, and that he was

concerned that the employee was capable of carrying out something comparable to the killings that had recently occurred in a Connecticut State office building. He argued that because he worked the over-night shift, he was unable to access the EAP (Employee Assistance Program) for help, and needed to refer the problem to his supervisor and the director who worked days.

The evidence reflects that Mr. Doris forwarded his concerns in all e-mail to Bruce Cheney, David Mazeau, Timothy Creavin, Kelly Grant, Doree Price and Steve L'Heureaux at 4:01 a.m. on March 18, 1998. (SEA Exhibit B) Mr. Mazeau replied by e-mail at 8:15 that same morning, writing:

"As a member of the SEA, I am sure you are very familiar with the contract requirements regarding employee rights. Before the administration can do anything we need documentation of problems that would indicate that action is required. This means YOU have to document his behavior and show that you have attempted corrective action by letter of counseling followed by perhaps letters of warning. Perhaps I have missed you [sic] efforts to date, but I suspect that these have been no such letters issued to date. Put another way, you have to make an effort to deal with the problem **before** you look to others to take care of the issue. You are a supervisor. You need to do those things a supervisor is supposed to do in these matters and provide the administration with the necessary basis for action. If I have missed the ground work you have done on this matter, please bring it to my attention ASAP." (SEA Exhibit D)

On March 25, 1998, Mr. Doris wrote a memo to Director Cheney (SEA Exhibit E) documenting incidents that had occurred between March 3rd and March 18th involving this particular employee. There is no evidence of a response from the Director, or from any of the other supervisory staff, until the date the written warning was issued to Mr. Doris on May 22, 1998.

While Mr. Doris may not have been particularly effective in dealing with a difficult and potentially dangerous situation, there is no evidence to suggest that those above him in the chain of command were any more effective. Harsh criticism is certainly warranted for failing to

document or for delaying reports of “bizarre” behavior. However, the Board does not believe that a request for assistance and intervention when employees are fearful of a co-worker, pal-titularly when viewed in light of the administration's response, is sufficient to warrant a written warning.

The appellant had been negligent in carrying out his supervisory responsibilities with respect to reporting his activity, reviewing the work of employees assigned to his shift, and reporting system problems;

The State failed to offer any evidence that Mr. Doris failed to submit reports of activities or review the work of employees assigned to his shift. The appellant made an uncontroverted offer of proof that prior to receipt of the letter of warning, he had never been informed that his supervisory reports were insufficient or had not been received. Accordingly, the Board found insufficient evidence to warrant a written warning on the basis of that allegation.

The appellant had excessive unscheduled absences.

The State argued that Mr. Doris had an unacceptable number of unexpected absences. The appellant argued that all of his requests for leave had been approved, and that many of his unexpected absences had been as a result of recuperation from knee surgery. The State argued that even if the leaves were approved, it had a right under the Rules of the Division of Personnel to discipline an employee whose use of unscheduled leave was excessive.

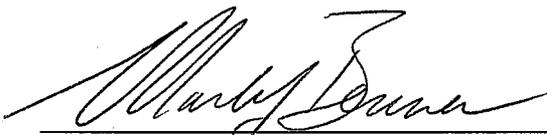
The Board agrees that an agency can discipline an employee for excessive absenteeism. However, the State offered no evidence that the appellant had ever been counseled about his use of leave, or informed that the agency considered the leave excessive. While counseling may well have been appropriate, the Board found no evidence sufficient to sustain a warning on the basis of this allegation.

The appellant had a history of unacceptable performance.

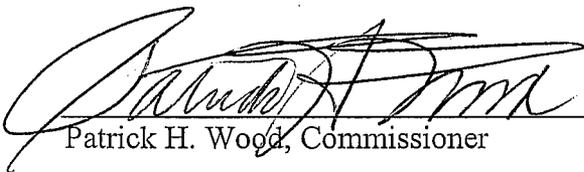
The State failed to offer any evidence of the appellant's alleged "history of unacceptable performance." The Rules of the Division of Personnel provide for a system of performance evaluation and appraisal through which the employer is expected to assess an employee's work performance against a set of standards and work expectations. Apart from its reference to Mr. Doris' responsibilities as a supervisor, and the requirements appearing on his job description, the State offered no evidence of discussions or communications with Mr. Doris about the employer's expectations. Moreover, the State offered no evidence that it had conducted any type of performance evaluation notifying the employee of deficiencies in his work.

On the evidence, arguments and offers of proof, the Board found that there were issues involving Mr. Doris' work performance that certainly warranted evaluation, discussion and counseling. However, the State failed to persuade the Board that it was justified in issuing a written warning. Therefore, the Board voted to order that the letter of warning be reduced to a notice of counseling, and the letter of warning be removed from the appellant's file in the Division of Personnel. On the conditions set forth above, the appeal is GRANTED.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman



Patrick H. Wood, Commissioner



James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301
Linda Chadbourne, SEA Field Representative, PO Box 3303, Concord, NH 03302-3303
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