

State of New Hampshire



PERSONNEL APPEALS BOARD

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

APPEAL OF LAURA GAEDTKE

Docket #2008-D-004

Department of Health and Human Services/DCYF

February 21, 2008

A quorum of the New Hampshire Personnel Appeals Board (Casey and Johnson) met in public session on Wednesday, January 9, 2008, 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 Laura Gaedtke, an employee of the Department of Health and Human Services. Ms. Gaedtke, who appeared *pro se*, was appealing a written warning issued to her on May 2, 2007 for failure to meet the work standard. Specifically, the State alleged that Ms. Gaedtke: 1) failed to submit court reports in a timely fashion, 2) failed to comply with requirements to make regular visits to the children in her caseload and their caregivers, 3) failed to document case work and 4) failed to keep her supervisor apprised of case activity. Karen McCabe, DHHS Director of Human Resources appeared on behalf of the State. The Board heard the appeal on offers.

Preliminary Matters:

1. The Board explained that the hearing would be conducted by a quorum of the Board rather than the usual three-member panel, as permitted by RSA 21-I:46, II. The Board also explained that the appeal would be heard on offers of proof, as explained in the Board's scheduling notice, and that no live testimony would be permitted, although both parties would be allowed to make statements on their own behalf. After introducing

themselves, the Board asked if the parties objected to either member of the Board convened to hear the appeal. There was no objection.

2. Ms. McCabe advised the Board that she was unfamiliar with the appeals process and asked the Board to recognize Attorney Lynne Mitchell as the agency's representative. Ms. Gaedtke objected, indicating that the notice she received from the Board stated that Ms. McCabe would be appearing on the department's behalf. Ms. Gaedtke said if she had received notice from the Board or from the agency that counsel would be representing DHHS, she might have proceeded differently in preparing her own case. Attorney Mitchell said that she often appears on behalf of the agency, and argued that allowing her to appear would not harm the appellant or prejudice her appeal. She also argued that there was no requirement for her to provide notice of her appearance.
3. Ms. Gaedtke indicated that until the day of the hearing, no one from the department had contacted her about any documents they might offer into evidence. She also confirmed that she had not provided any documents or a list of exhibits to the department. Ms. McCabe said that Ms. Gaedtke had already seen the documents that the State planned to offer into evidence, so none of the information would be a surprise to her.

The Board went off the record briefly to review the notice of hearing and discuss its own administrative rules related to appearances by counsel. After returning to the record, the Board denied Ms. Mitchell's request to appear on the agency's behalf. Attorney Mitchell asked the Board to note her objection.

Per-A 206.07(b) states, "At least 5 working days before the date of any hearing or pre-hearing conference, a party or the party's representative shall file with the board and with the other party(s) to the appeal an appearance that includes the following information:

- (1) A brief identification of the matter;
- (2) A statement as to whether or not the representative is an attorney and if so, whether the attorney is licensed to practice in New Hampshire; and
- (3) The party or representative's daytime address and telephone number."

In light of Ms. Gaedtke's objection and the requirements set forth in the rule, the Board denied Ms. McCabe's request to have Attorney Mitchell represent the agency. The Board also noted Ms. Mitchell's objection for the record.

According to Per-A 206.14, at least five working days prior to the date of a hearing, parties are required to give one another and the Board a list of all exhibits they intend to offer into evidence. Because neither party provided notice to the other of documents that might be offered into evidence, the Board decided to exclude any documentary evidence that was not properly disclosed prior to the hearing.

Record of the Hearing

The record of the hearing in this matter consists of the audiotape recording of the hearing on the merits of the appeal, the Board's November 29, 2007 notice of scheduling, and the following documents submitted to the Board in the Appellant's initial request for a hearing:

1. Ms. Gaedtke's November 9, 2007 notice of appeal
2. Personnel Director Karen Hutchins' October 25, 2007 Step IV response to request for review by the Director
3. Letter of Warning dated May 2, 2007 issued to Ms. Gaedtke by Deb Kavanagh

Position of the Parties

Ms. Gaedtke argued that throughout her 18 years with the Division, her performance evaluations were generally positive, though timely submission of court reports had always been an issue. Recently, the department started issuing her written warnings, even though there were other employees who also had late reports who were never disciplined.

Ms. Gaedtke argued the job itself has not changed over the years, although the volume of work and the reporting requirements have increased significantly. She said that the court system's expectations concerning submission of child assessment or placement reports has

increased the pressure on her to produce more work in less time. Additional case management requirements, including work in the BRIDGES system, she said, have had a negative effect on her ability to complete work as assigned.

Ms. Gaedtke argued that the courts have been frustrated with DCYF's performance in general, and that she was not the only employee to prompt sanctions by the court. Ms. Gaedtke said that she never received copies of emails from any judges who were concerned about her work, nor did she receive specific allegations about not visiting children in her caseload. Ms. Gaedtke said there were other employees with late reports who were never disciplined.

Ms. Gaedtke stated that she has a documented disability that makes it difficult for her to type reports and case notes and keep her records up-to-date. She said that the State has been aware of the problem for a number of years, and a few years ago provided her with voice-recognition software as a form of reasonable accommodation. Ms. Gaedtke argued that the software never operated as efficiently as she had hoped, and when the State overhauled its computer system, it essentially rendered the software obsolete. She said that although she has tried her best to make the software work, problems using the program have impacted her ability overall to perform her job responsibilities and stay focused on the other aspects of her position. She indicated that the Department never provided the additional training she requested.

Ms. Gaedtke argued that the Department had suggested that she use a tape recorder for dictating reports that could then be typed by support staff or by her supervisor. Ms. Gaedtke said she did not believe there were enough support personnel, that dictating reports and BRIDGES notes would have been too complicated, that her supervisor was not always available to assist her with typing reports, and that the Department refused to provide the digital recorder she would have preferred.

Ms. McCabe argued that the written warning issued to Ms. Gaedtke on May 2, 2007 was the first of several warnings the Appellant had received for failure to meet work standards. She

indicated that Ms. Gaedtke's position requires her to make monthly visits to the children in her caseload, visit foster parents, maintain accurate and timely contact logs, and produce and file reports with the court in a timely manner. Ms. McCabe said that the courts were becoming increasingly frustrated with Ms. Gaedtke's repeated failure to file reports as directed and that Judge Morrison in particular has expressed frustration and issued sanctions, including monetary fines, in five separate cases where the appellant's reports were late.

Ms. McCabe argued that the Appellant is expected to see each of the children in her caseload at least once each month, but has repeatedly failed to do so. Additionally, she said, the Appellant failed again and again to file timely reports with the courts, resulting in sanctions and fines. Ms. McCabe argued that the Appellant's supervisors have been very explicit in their discussions with the Appellant about children being placed at risk when court reports are not timely, and said that the Appellant refused to take advantage of additional assistance the Division has provided to help the Appellant comply with the Division's and the court's requirements.

Ms. McCabe argued that the agency provided coaching, supervision, assistance with the BRIDGES software system, a plan of correction, assistance meeting with foster parents and scheduling visits with children, and reasonable accommodations for Ms. Gaedtke's reported disability. Ms. McCabe said that in response to Ms. Gaedtke's requests for a reasonable accommodation to address the difficulty that she has typing reports and case notes, the Department provided the appellant with Dragon TM voice recognition software, software training, and secretarial support. The department also offered Ms. Gaedtke recording equipment to dictate reports and BRIDGES entries, Ms. McCabe said, but Ms. Gaedtke would not to take advantage of the assistance provided.

Ms. McCabe acknowledged the Appellant's request for additional training, but noted that when training was offered, the Appellant declined, saying she could not fit it into her schedule. Ms McCabe also noted that Ms. Gaedtke's difficulties with the physical act of typing would not bear on her ability to organize her files, manage her schedule, visit children in her caseload, or keep her supervisors apprised of case management issues.

Ms. McCabe argued that the Division and the Department had taken all reasonable steps to accommodate the Appellant's known disability to assist her in completing her assignments as required. She argued that the Appellant nevertheless failed to meet the work standard, and the Division responded reasonably by issuing a written warning as the least severe form of discipline available.

After carefully reviewing the written warning and considering the offers of proof made by the parties in relation to the arguments raised by the appellant at the hearing and in her notice of appeal, the Board determined that:

1. The letter of warning issued to Ms. Gaedtke on May 2, 2007, lists specific allegations concerning the appellant's failure to meet the work standard.
 - a. Ms. Gaedtke has repeatedly failed to file court reports in a timely fashion.
 - b. Ms. Gaedtke was fined in January 2007 by the Strafford County Probate Court for failure to file a timely report; she failed to notify her supervisor of that fine until April 2007.
 - c. Ms. Gaedtke failed to see at least three of the children in her caseload in their foster homes for a period of at least four months. One foster parent indicated that Ms. Gaedtke never visited the foster child in their home between September 2006 and March 2007.
 - d. Ms. Gaedtke has not maintained appropriate written documentation of case activities so that it would be accessible to co-workers or supervisors, and she failed to make timely entries into the BRIDGES system so that other workers could retrieve that information.
2. Ms. Gaedtke failed to refute any of the allegations outlined in the letter of warning, and she offered no reasonable explanation why those offenses should not be deemed grounds for issuance of a written warning for failure to meet the work standard.
3. The corrective action plan outlined in the letter of warning does not refer to any accommodation for the appellant's reported disability, nor is there any reason why it should.

4. The agency took appropriate steps to provide a reasonable accommodation for the Appellant's reported disability, and the evidence reflects that the agency has continued to work with the Appellant to accommodate her need for assistance producing typed reports.
5. Typing is not the subject of the corrective action plan outlined in the Appellant's written warning. The plan speaks to discussing cases assigned to the Appellant, scheduling visits and submitting a calendar of planned visits, reporting what the Appellant's schedule will include each week, completing reports, updating supervisors about scheduled court proceedings, listing hearing dates in a daily planner, and following supervisory directions.
6. The Appellant failed to persuade the Board that limitations on her ability to type would prevent her from performing the essential functions of her position or taking the corrective action outlined in the warning.

Discussion:

Per 1002.04 (a) of the Rules of the Division of Personnel describes written warnings as "...the least severe form of discipline used by an appointing authority in order to correct an employee's unsatisfactory work performance or conduct." The evidence reflects that Ms. Gaedtke's work performance as a Child Protective Service Worker is unsatisfactory, and the appointing authority has taken appropriate steps in counseling, supervising, coaching and ultimately disciplining her based on that failure to meet work standards.

The Board is sympathetic to Ms. Gaedtke's complaint that she has been micromanaged by her own supervisors. However, the Board also understands why supervisors need to engage in actual task management when an employee's work performance deteriorates to the point that the employer is subject to sanctions and fines for the employee's failure to perform.

Standard of Review:

Per-A 207.12 (b) of the Rules of the Personnel Appeals Board provides, "In disciplinary appeals, including termination, disciplinary demotion, suspension without pay, withholding

of an employee's annual increment or issuance of a written warning, the board shall determine if the Appellant proves 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.”

Decision and Order

The disciplinary action was lawful. The record reflects that the agency took appropriate steps to address the Appellant's reported disability, and treated her as it might treat any other qualified individual with or without a disability. The agency provided the reasonable accommodation that the Appellant requested by purchasing for her use Dragon™ voice-recognition software. It provided her with training and secretarial support to enter case notes and type reports. The Appellant failed to persuade the Board that difficulties typing reports or case notes would prohibit her from carrying out the remainder of her assigned duties and responsibilities, particularly as they relate to keeping her supervisors informed of her work activities and case status.

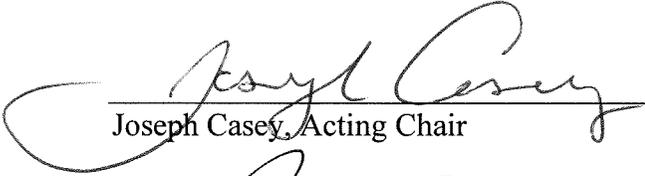
The appointing authority did not violate the rules by issuing the written warning. The Personnel Rules describe the written warning as the least severe form of discipline to correct an employee's unsatisfactory work or conduct. The warning contains all the required elements, including a narrative describing the nature of the Appellant's failure to meet the work standard, and a corrective action plan intended to address and correct those issues. The disciplinary action was warranted by the Appellant's failure to meet work standards. According to the class specification available on the Division of Personnel's website, a Child Protective Service Worker III is expected, "To perform protective service casework in investigating and recommending action on reports of alleged child abuse/neglect and to develop and implement case plans to insure compliance with state and federal mandates." If

Ms. Gaedtke is not performing that casework, filing timely reports, or working on case plans, she is not performing the core function of her position.

The disciplinary action was also just in light of the facts in evidence. Although Ms. Gaedtke insists that her failure to meet work standards is a result of the agency's failure to provide a suitable accommodation to address her difficulties typing reports and case notes, the evidence indicates that the agency has, in fact, provided substantial assistance and reasonable accommodations.

Therefore, for all the above reasons, the Board voted unanimously to DENY Ms. Gaedtke's appeal, and affirm the written warning.

THE PERSONNEL APPEALS BOARD



Joseph Casey, Acting Chair



Robert Johnson, Commissioner

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301
Karen McCabe, Human Resources Administrator, Department of Health and Human
Services, 129 Pleasant St., Concord, NH 03301
Laura Gaedtke, 79 South Main St., Rochester, NH 03867