

State of New Hampshire

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PERSONNEL APPEALS BOARD
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Appeal of Sylvia Grenier
Docket #91-D-12

Postsecondary Technical Education

January 13, 1992

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, November 20, 1991, to hear the appeal of Sylvia Grenier, an employee of the Department of Postsecondary Technical Education. Ms. Grenier was represented by SEA Director of Operations Thomas Hardiman. Commissioner H. Jeffrey Rafn appeared on behalf of the State.

By letter dated October 29, 1991, Commissioner Rafn requested that the Board dismiss Ms. Grenier's appeal, arguing that neither the appellant nor her representative had ever cited a violation of a particular Personnel Rule. Commissioner Rafn argued that the substance of Ms. Grenier's appeal appeared to arise from the agency's adherence to the provisions of Per 308.03(4)f which states:

"Each written warning shall expire as a basis of possible discharge two years after its date but shall be kept in the employee's file in the Department of Personnel."

The Board took Commissioner Rafn's motion under advisement.

Ms. Grenier received a letter of warning on November 15, 1990, which was revised on January 25, 1991 for the purpose of removing a reference in the letter to another employee of the Technical Institute. Neither party submitted a copy of the original or the revised warning to the Board for its records. Neither party offered any detail concerning the incident which occurred on October 26, 1990, and precipitated the warning. The only evidence received by the Board involving the actual incident appears in Dr. David Larrabee's letter to the appellant dated December 14, 1990, which stated in part:

"... The fact remains that you threatened an individual's life and under Personnel regulations, you could have been discharged for your actions. We choose [sic] to put you out on sick leave to get professional help, fearing a discharge would only exacerbate the situation and possibly result in your harming yourself or another individual. I took this action after hearing advice from a medical expert, the school nurse."

Ms. Grenier testified that she was working in the business office at New Hampshire Technical Institute on October 26, 1990, which was the last day her immediate supervisor Wendy Parent was to be working in that office. Ms. Grenier testified that she was under a great deal of stress, fearing that she would not be able to perform her job adequately without training. She testified that she had repeatedly made requests to Ms. Parent, Ms. Brown and Ms. Hopley, employees of the Technical Institute, for training, but that none had been provided to her. She said that the moment she arrived in the office on October 26, 1990, she was upset, that she became hysterical, and that she decided to go to the school nurse. She stated that upon arriving at the nurses office, "I completely lost my cool. I was out of control."

Ms. Grenier testified that at the suggestion of the school nurse, she spoke with someone from emergency services, but that she became even more upset when the first question asked by them was whether or not she had insurance. The appellant testified she then got into her car and went home sick. She testified that when she returned to work the following day, a Security Officer was waiting for her. She was informed she would be required to get a release for duty from both her medical doctor and her psychiatrist before she would be allowed to return to work. Ms. Grenier remained out on sick leave until those releases were secured.

In the March 4, 1991 letter of appeal, Mr. Hardiman argued:

"The situation that led to Ms. Grenier's Letter of Warning was the result of one person's observation. The school nurse made a decision that was later reviewed by medical doctors, who gave Ms. Grenier the right to return to work. In our opinion, it was a situation that was blown out of proportion by the agency."

Dr. Greenwald's handwritten letter, received at New Hampshire Technical Institute on November 19, 1990, stated:

"I have performed a psychiatric evaluation on Sylvia Grenier. In my opinion, she is not likely to become physically violent at work. She will be continuing in therapy in order to learn to better manage her anger. It could be quite helpful if her employer would also reconsider some of Ms. Grenier's complaints."

The evidence, therefore, only supports a finding that on November 19, 1990, Dr. Greenwald determined Ms. Grenier should be allowed to return to work. Dr. Greenwald's assessment does not address the actual incident of October 26, 1990, nor does it suggest that Ms. Grenier was improperly placed in sick leave status on that date. Commissioner Rafn argued that Ms. Grenier had never denied the occurrence of the incident which led to the letter of warning, nor had she questioned the propriety or purpose of the warning.

In disciplinary appeals, the appellant bears the burden of proof. The Board found that the appellant failed to meet her burden of proving that the agency improperly issued her a letter of warning and refused to allow her to return to work prior to November 19, 1990. In the absence of evidence to support a finding that the incident did not warrant issuance of a letter of warning, or that the situation was "blown out of proportion by the agency", the Board is not persuaded that the warning should be removed from Ms. Grenier's file.

With regard to the issue of reinstating Ms. Grenier's sick leave, Commissioner Rafn argued that it was Ms. Grenier and not the agency who initially determined she was too emotionally distraught to be at work, and that it was Ms. Grenier who had decided to go home on sick leave. He argued that her request for reinstatement of her sick leave was untimely in that the issue had never been raised prior to Ms. Grenier's hearing before the Director of Personnel. Mr. Hardiman argued that Ms. Grenier would have had no way of knowing prior to her return to work that she was being paid from her accrued balance of sick leave. He argued that since the agency had refused to allow her to return to work, the agency had improperly required her to use sick leave.

The Board does not agree. On the evidence, the Board found that Ms. Grenier had removed herself from the work place claiming to be too emotionally distraught to be at work. The record contains limited but uncontroverted evidence that Ms. Grenier had threatened a co-worker, and that the threat was deemed sufficiently serious by the agency that she was required to secure medical and psychiatric releases before returning to duty. Inasmuch as Ms. Grenier had initially requested the use of sick leave, there is no basis to now claim that she was unaware that she was being paid from her accumulated

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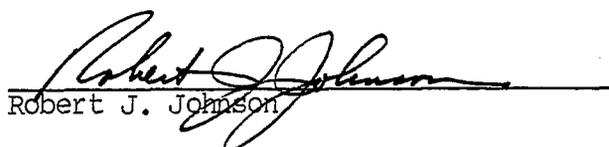
sick leave balance. Further, absent evidence to support a finding that Ms. Grenier should have been allowed to return to work without medical and psychiatric releases, no grounds exist upon which to order that her leave be reinstated.

The Board voted to deny Commissioner Rafn's Motion to Dismiss. However, on the evidence, the Board voted to deny Ms Grenier's appeal.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett



Robert J. Johnson



Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
Dr. H. Jeffrey Rafn, Commissioner, Postsecondary Technical Education
Thomas F. Hardiman, Director of Operations, State Employees' Association