

State of New Hampshire



PERSONNEL APPEALS BOARD

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

APPEAL OF JOHN HAYES New Hampshire Hospital Response to Appellant's Motion for Reconsideration Docket #95 -D-5

March 3, 1995

On January 4, 1995, the New Hampshire Personnel Appeals Board received a request for reconsideration from Dr. John Hayes of the Board's December 15, 1994 decision in his appeal of his involuntary transfer from a position of Psychological Associate II at the Anna Philbrook Center to a position of Psychologist in the Transitional Housing unit at New Hampshire Hospital. In support of that request, Dr. Hayes reiterated the arguments raised at his hearing on the merits, specifically that three other psychologists on staff at New Hampshire Hospital had extensive experience dealing with an adult psychiatric population, that they were more qualified to perform the duties at Transitional Housing, and that none of the three would have required clinical supervision if they had been assigned to Transitional Housing.

It is clear from the record, as well as the arguments submitted by Dr. Hayes in his January 4, 1995 Motion, that Dr. Hayes does not share New Hampshire Hospital's opinion of how best to staff the position in Transitional Housing. Similarly, it is clear that Dr. Hayes would prefer to have had New Hampshire Hospital staff the vacancy by involuntarily transferring any of the other doctoral level psychologists. However, that does not prove that the transfer was made for some reason other than the agency's best interests, or that the Board's December 15, 1994 decision was unreasonable or unlawful.

Accordingly, the Board voted unanimously to deny Dr. Hayes' request for reconsideration, and to affirm its decision that the agency was acting within its discretion in deciding to transfer Dr. Hayes.

THE PERSONNEL APPEALS BOARD

Handwritten signature of Mark J. Bennett in cursive script.

Mark J. Bennett, Acting Chairman

Handwritten signature of Robert J. Johnson in cursive script.

Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Mark Chittum, Director of Finance and Personnel, New Hampshire Hospital
Margo Steeves, SEA Field Representative

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APPEAL OF JOHN HAYES

New Hampshire Hospital

Docket #95 -D- 5

December 15, 1994

The New Hampshire Personnel Appeals Board (Bennett and Johnson) met Wednesday, December 7, 1994, to hear the appeal of John Hayes, an employee of the Department of Health and Human Services (New Hampshire Hospital). Dr. Hayes was represented at the hearing by SEA Field Representative Margo Steeves. Mark Chittum, Director of Finance and Personnel, appeared on behalf of New Hampshire Hospital. The appeal was heard on offers of proof without objection from either party. The record consists of the audio tape recording of the hearing, documents filed by both parties prior to the hearing, and exhibits submitted by New Hampshire Hospital at the hearing.

Dr. Hayes' appeal arises from his involuntary transfer from a position of Psychological Associate II at the Anna Philbrook Center to a position of Psychologist in the Transitional Housing unit at New Hampshire Hospital. Ms. Steeves offered to prove through the testimony of Dr. Hayes that his transfer from a program involving short-term treatment of children and adolescents to a longer-term treatment program for adults failed to make use of his education and training, and therefore was not in the best interests of the agency. Dr. Hayes would testify that his specialty is child psychology, and that he has no experience in the treatment of adults. He also would testify that he had never applied for the position of Psychologist in Transitional Housing, that such a transfer would result in his needing additional supervision, and that notice of the transfer from the Anna Philbrook Center to Transitional Housing came within a month of his having prevailed in a dispute with his supervisor about being granted full privileges in Psychological Testing and Psychotherapy. Dr. Hayes would testify that there were other qualified Psychologists interested in promotion or transfer to the Transitional Housing position, and that New Hampshire Hospital' should have offered the position to an interested applicant instead of transferring him involuntarily to the program. Finally, Dr. Hayes would testify that when he was transferred to Transitional Housing, New Hampshire Hospital advertised in the Boston Globe to fill his former position with someone possessing experience in child psychology, demonstrating that he should have been allowed to remain in his position.

Mr. Chittum offered to prove that positions of Psychologist at New Hampshire Hospital carry the same minimum qualifications, regardless of the area to which they are assigned. Mr

Chittum offered to prove through the testimony of Dr. Udo Rauter that by virtue of his education, experience and supervision, Dr. Hayes was fully qualified to assume the position in Transitional Housing, and that there were no other qualified applicants for the position when it was posted in-house. Mr. Chittum offered to prove that without a fully qualified Psychologist at the doctoral level in the Transitional Housing unit, New Hampshire Hospital would be unable to seek appropriate third party reimbursement for services provided. He offered to prove that Dr. Hayes' transfer resulted in his receiving a salary upgrade from s.g. 26 to s.g. 28, thereby resulting in a benefit to both the agency and the employee.

Mr. Chittum offered to prove through the testimony of Dennis D'Ovidio, Director of Treatment and Clinical Services, that Dr. Hayes was considered the best qualified doctoral level psychologist for the position at Transitional Housing. He also offered to prove that Dr. Hayes' need for additional clinical supervision at Transitional Housing should not be considered dispositive of the appeal, in that Dr. Hayes received similar supervision at the Anna Philbrook Center.

In Ms. Steeves' September 23, 1994 letter of appeal filed on Dr. Hayes' behalf, she argued that the appellant was told there was a personality conflict between him and his supervisor, but that he had been given no counselling on how to resolve that conflict. She also argued that the appellant had been advised that patients at Transitional Housing had little need for psychological testing services, an area in which the appellant had been cited for failure to submit test reports in a timely fashion during his employment at Philbrook. Again, Ms. Steeves argued that the appellant had received no supervision to address this deficiency, and that flex time the appellant had requested for completion of his reports had been limited to specific case management work, such as family therapy sessions scheduled after 4:00 p.m.

Having compared the class specifications for Psychological Associate II and Psychologist (NHH Exhibits A and B), as well as the Performance Summary and Employee Rebuttal (Notice of Appeal, Attachment 4), the Board found that transferring Dr. Hayes from his position of Psychological Associate II at the Philbrook Center to Psychologist at Transitional Housing, was in the best interest of the agency, and appeared to offer several benefits to the employee. The transfer resulted in increased compensation for the employee. The position to which the appellant is currently assigned at Transitional Housing utilizes his education and training while reducing the number of assignments for which he had received criticism in his past performance evaluation. The administrator of the program to which the appellant was transferred considered him to be the best qualified of the doctoral level psychologists available for the program. The Hospital's financial officer and the Superintendent believed the transfer was essential to ensuring the maximum level of third party reimbursements.

In accordance with Per 602.01(b), the appointing authority may determine when it was in the best interest of the agency to transfer an employee to fill a vacancy. The record reflects that appointing authority considered the advantages and disadvantages of transferring Dr. Hayes from the Philbrook Center to Transitional Housing, and determined that it was in the agency's best interest to make the transfer. The Board found that the agency was acting within its discretion in deciding to transfer Dr. Hayes.

There is no clear evidence that notice of the transfer was provided to the Director of Personnel as required by Per 602.01(a). The appellant failed to raise this argument as a basis for appeal, and is therefore considered to have waived it. While no prejudice appears to have resulted from the absence of notice, the agency shall take note that future transfers should be accomplished in accordance with the rule. Compliance with Per 602.01(a) could have been

achieved easily in this instance by forwarding a courtesy copy of Dr. Hayes' transfer letter to the Director of Personnel.

On the evidence, oral arguments and offers of proof, the Board voted to deny Dr. Hayes' appeal.

THE PERSONNEL APPEALS BOARD


Mark J. Bennett, Acting Chairman


Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Mark Chittum, Director of Finance and Personnel, New Hampshire Hospital
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