

State of New Hampshire

WPPID1065



PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF SUSAN M. HERRICK

Department of Environmental Services
Docket #93-D-11

(Letter of Warning - August 21, 1992)

April 29, 1993

The New Hampshire Personnel Appeals Board (Bennett and Rule) met Wednesday, April 21, 1993, to hear the appeal of Susan M. Herrick regarding a letter of warning issued to her on August 21, 1992, by Dennis R. Lunderville, Director of the Division of Air Resources, Department of Environmental Services. Ms. Herrick was represented at the hearing by SEA Field Representative Stephen J. McCormack. The Department of Environmental Services was represented by Assistant Commissioner John Dabuliewicz and Human Resources Administrator John Roller.

In preliminary pleadings, the State had requested that the instant appeal be consolidated with an appeal of a third and final letter of warning which the appellant received on November 4, 1992. The State argued that consolidating these matters for the purposes of hearing would promote judicial economy and efficiency, and allow the Board to consider Ms. Herrick's performance as a whole in its deliberations. The appellant had objected to consolidating the hearings, and at the March 3, 1993 prehearing conference convened by the Board to address those requests, the appellant argued that if Ms. Herrick's second letter of warning appeal were granted, the termination would be invalidated. The parties agreed that the hearings could be scheduled on the same day, but asked that the matters be treated as two separate and distinct appeals.

In other preliminary matters, the appellant asked that the Board receive into evidence the transcript of an earlier hearing before an Appeals Tribunal at the Department of Employment Security, as well as that Tribunal's decision on her request for unemployment benefits. The Board voted to exclude those proposed exhibits from the record. The Board need not find "employee misconduct" within the meaning of RSA 282-A:32 in order to uphold a termination decision, nor would the Board be bound to uphold a termination decision on the basis of a finding of "employee misconduct" which the Department of Employment Security found to be sufficient to deny unemployment compensation.

The appellant also asked that the witnesses be sequestered. The motion was granted without objection from the State. The witnesses were instructed not to discuss their testimony until after the hearing was closed.

Per 1001.03 of the Rules of the Division of Personnel describes the letter of warning as the "...least severe form of discipline to correct an employee's unsatisfactory work performance for offenses including, but not limited to ... (6) exhibiting uncooperative or disruptive behavior.. ." The specific instance of uncooperative or disruptive behavior cited in the warning involved a call received by Ms. Herrick while she was filling in as the receptionist from Mr. James DiGregorio. Mr. DiGregorio testified at the hearing that he felt he had been treated in a rude, discourteous and unprofessional manner, that Ms. Herrick did not appear to have made any attempt to reach Ms. Carroll for whom he had called, and refused to identify herself when Mr. DiGregorio asked to whom he was speaking. When Mr. DiGregorio asked for the name of the person with whom he was speaking, the woman said it was the receptionist. When he pressed for her name, she asked why he wanted the information. He said he had given his name, the purpose of his call, and believed he should be able to know with whom he was speaking. Mr. DiGregorio testified the woman told him she was the receptionist and that this information was sufficient.

On examination of Ms. Herrick, she admitted to taking the call. While Mr. DiGregorio said his call was a business call, Ms. Herrick testified he had indicated to her that his call was of a personal nature. Mr. DiGregorio testified that there was no "break" in the conversation during which Ms. Herrick could have tried to reach Ms. Carroll. Ms. Herrick insisted that she had put his call on hold while she tried to reach Ms. Carroll by phone at her desk. Mr. DiGregorio said he believed anyone calling a federal, state or municipal government office had a right to know the name of the person with whom the caller was speaking. Ms. Herrick testified that she had never been instructed to identify herself by name when she was working as the receptionist and that she still believed there was no need for her to offer any information beyond the fact that she was the receptionist. She also testified that she handled Mr. DiGregorio's call in the same fashion as any other call received in the office, and that she was simply following her instructions to "route" the incoming calls.

The State offered into evidence several performance evaluations for the limited purposes of reviewing the assessment of Ms. Herrick's work performance in the area of "communications". Her probationary evaluation dated September 19, 1990, listed Ms. Herrick's communications in speaking with the public and co-workers in a courteous and helpful manner, and expressing information in an appropriate fashion as meeting expectations. Her supervisor at that time added as a comment, "Susan needs to improve communication between co-workers." (DES Exhibit #1)

In a subsequent evaluation dated September 16, 1991, the communications section showed Ms. Herrick's performance to have fallen in the area of expressing information in an appropriate fashion to "below expectations". The additional comment was, "Emphasis is needed to be more concise when speaking with others". The general comments appearing on that evaluation included the following:

The office workload has been increasing over the past few months with new employees and demands upon us all. Susan has done great job in keeping up with the demands put upon her by other personnel. Areas of improvement are (1) to be more concise when speaking with others, and (2) professional attitude on the telephone. (DES Exhibit #2)

Inasmuch as the next evaluation was received by Ms. Herrick after the letter of warning now under appeal, the Board gave it no weight in considering the appropriateness or validity of the August 21, 1992 warning.

Ms. Herrick and her representative have argued that the letter of warning arises from a single incident, and that even if the Board were to find as a matter of fact that the incident occurred as described by Mr. DiGregorio, the incident did not rise to the level of an offense warranting a letter of warning. In particular, Mr. McCormack argued that in the absence of specific instructions on how to answer the phone, including a requirement for giving one's name when asked, the warning must be overturned. The appellant also argued in her original request for hearing that "...it can only be concluded that the employer encouraged Mr. Digregorio to write the complaining letter, thus giving them a believed basis for discipline." The Board does not agree.

If the agency asked Mr. DiGregorio to reduce his complaint to writing, that does not negate the fact that he was upset enough about the way he had been treated by Ms. Herrick to call the department afterward to make his complaint verbally. The appellant failed to offer any compelling argument or evidence that Mr. DiGregorio's complaint was motivated by anything other than his irritation at being treated in an abrupt, discourteous manner by the appellant. The fact that Ms. Herrick refused to identify herself when asked, and even asked why Mr. DiGregorio wanted her to identify herself, certainly suggests that Ms. Herrick realized that the caller was annoyed with her and might plan to complain about her. Furthermore, to examine the incident in isolation deprives the Board of relevant evidence needed to put it in perspective, whether it looms larger or smaller in the context of Ms. Herrick's performance. In light of the testimony and evidence, the Board found that the incident with Mr. DiGregorio was illustrative of a continuing course of conduct for which the letter, albeit imperfectly written, was given.

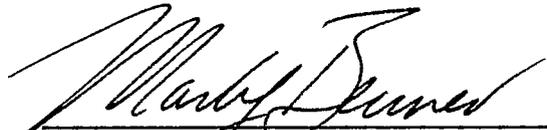
Apparently minor concerns about Ms Herrick's communication skills were noted by her supervisor in her probationary performance evaluation in September 1990. A greater level of concern, particularly in terms of how appropriately Ms Herrick did or did not express information and how Ms Herrick handled phone calls, was noted in Ms Herrick's September, 1991 performance evaluation. Ms Herrick received a first letter of warning in November, 1991.

The letter of warning under appeal is a second letter of warning for uncooperative or disruptive behavior. The appellant has asked the Board to judge the incident cited in isolation, suggesting that the incident in and of itself did not rise to the level of an offense warranting a written warning. However, taken as part of a continuing course of conduct, the Board found that the department acted within its authority to issue a letter of warning.

The Board granted the Appointing Authority's Request for Findings of Fact and Rulings of Law to the extent that they are consistent with the Board's own findings as set forth above.

The Board voted to deny Ms Herrick's appeal, upholding the agency's decision to issue her a second letter of warning for uncooperative or disruptive behavior.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Stephen J. McCormack, SEA Field Representative
John Roller, Human Resources Administrator, Dept. of Environmental Services
John Dabuliewicz, Esq., Assistant Commissioner, Environmental Services

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APPEAL OF SUSAN M. HERRICK. v. DEPARTMENT OF ENVIRONMENTAL SERVICES
Docket #93 -D- 11
Request for Rehearing/Reconsideration

June 23, 1993

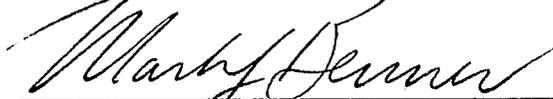
By letter dated May 10, 1993, SEA Field Representative Stephen McCormack requested that the Board reconsider its April 29, 1993 decision in the matter of Susan M. Herrick (93-D-11 - letter of warning appeal) and grant a rehearing.

Per-A 204.06(b) of the Rules of the Personnel Appeals Board requires that every motion for rehearing "shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable" and that the board may grant a rehearing "...if in its opinion good reason therefore is stated in the motion." The appellant offered no argument which was not properly raised during the hearing on the merits or considered by the Board in denying Ms. Herrick's appeal.

As the Board found in its April 29, 1993 decision, the substance of a complaint need not be dismissed merely because the recipient asks an individual to reduce a verbal complaint to writing. The Board found that Ms. Herrick's behavior was abrupt and discourteous, that it was indicative of a continuing course of conduct, that her conduct rose to the level of uncooperative or disruptive behavior within the meaning of Per 1001.03 of the Rules of the Division of Personnel, and that the Department properly exercised its authority in issuing a letter of warning as the least severe form of discipline to correct an employee's unsatisfactory work performance.

The Board voted to deny the appellant's Motion and to affirm its decision of April 29, 1993, denying Ms. Herrick's appeal.

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