

State of New Hampshire



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

Appeal of Robert Meegan

Docket #2004-D-017

Department Of Corrections

August 22, 2005

The New Hampshire Personnel Appeals Board (Wood, Johnson, Bonafide and Reagan)¹ met in public session on Wednesday, June 22, 2005, 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 Robert Meegan, an employee of the NH Department of Corrections. Mr. Meegan, a Probation/Parole Officer II, was appealing a May 19, 2004, written warning issued to him for "failing to meet any work standard." Attorney John Vinson appeared on behalf of the State. Mr. Meegan appeared *pro se*². In accordance with the Board's rules, and with prior notice to the parties, the appeal was heard on the parties' offers of proof.

In his May, 27, 2004 letter, the appellant asked the Board to accept his appeal of a January 16, 2004, written warning as well as his appeal of the May 19, 2004, warning (Docket #2004-D-017). His attorney stated that the January 16, 2004, warning had not been appealed within the statutory 15-day because, "...Director Blaisdell had indicated in a meeting at which the letter was provided to Mr. Meegan and [his attorney] that [they] could revisit the issue with him at any time and that, 'I don't hold anybody to the 15 days.

¹ Without objection by either party, the Board sat *en banc*.

² Attorney John Vanacore filed the appellant's original notice of appeal on his behalf on May 27, 2004. By letter dated April 12, 2005, Attorney Vanacore advised the Board that he no longer represented the appellant with respect to his current appeal to the Personnel Appeals Board.

You can appeal that at any time.’’ At a prehearing conference convened by the Board on April 12,2005, the Board declined to accept a late-filed appeal of the January 16,2004, warning, advising the parties that no one is authorized to extend the deadline established by RSA 21-I:58 for filing an appeal with the Board. As a result, the January 16, 2004, written warning remains a part of the appellant’s personnel file and is valid as a basis for further discipline as described by Chapter Per 1000 of the NH Code of Administrative Rules.

The record of the hearing in the instant appeal consists of pleadings submitted by the parties³, notices and orders issued by the Board, the audio tape recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

State's Exhibits

1. List of Exhibits 1-21
2. Offers of Proof for Testimony of: CPPO Richard Allen, PPO Serene Eastman, Diane Dudley, Esq., PPO Scott Dodge, PPO Gregory Mourgenos, Deputy Strafford County Attorney Thomas Velardi, Esq., Mrs. Can-ie McGowan, Chief Mark McGowan, Chief Investigator Mark Wefers
3. Letter of Warning dated May 19,2004 issued to Robert Meegan with attachments as follows:
 - 1) Letter of Counseling dated September 22,2003
 - 2) Letter of Warning dated January 16,2004
 - 3) Letter from Robert Meegan to Thomas Velardi, Deputy County Attorney
 - 4) NHDOC Policy and Procedure Directive 2.30 DOC Code of Ethics
 - 5) NHDOC Policy and Procedure Directive 2.16 Rules and Guidance for DOC Employees
4. Employee Investigation dated March 19, 2004: Complainant: PPO II Scott Dodge, Accused: PPO II Robert Meegan, with attachments including:
 - 1) Notification of Administrative Rights of Employee under Investigation
 - 2) Statement from PPO Dodge of January 26, 2004
 - 3) Statement from PPO Serene Eastman dated January 27, 2004
 - 4) Meino from PPO Gregory Mourgenos dated January 28, 2004
 - 5) Meino from Robert Meegan dated February 10,2004

³ At a prehearing conference convened by the Board on April 13, 2005, the appellant advised the Board that he intended to file a Motion for Discovery to obtain certain investigative documents from the Department of Corrections, and, a Motion to have Attorney Vinson removed as counsel for the State. On June 21, 2005, the Board received those Motions. Neither Motion was provided to Attorney Vinson prior to the hearing. The Board found that the Motions were not timely-filed, and voted unanimously to deny them.

- 6) Memo from Robert Meegan dated February 11, 2004
- 7) NH Supreme Court Case State v. Carl Laurie
- 8) Letter from PPO Robert Meegan to Deputy County Attorney Thomas Velardi dated January 29, 2004
- 9) Characteristic Duties and Responsibilities for Probation Parole Officer II
- 10) NHDOC P.P.D. 2.30 DOC Code of Ethics
- 11) NHDOC P.P.D. 2.16 Rules and Guidance for DOC Employees
5. Memorandum dated January 27, 2004 from PPO Serene Eastman to CPPO Richard Allen
6. Memorandum dated January 27, 2004, from PPO Scott Dodge to CPPO Richard Allen
7. Memorandum dated January 27, 2004, from PPO Gregory Mourgenos to CPPO Richard Allen
8. Memo dated February 4, 2004 and February 10, 2004, from PPO Robert Meegan to Larry Blaisdell, Director of Field Services, in response to Notification of Administrative Rights of Employees Under Investigation of Complaint
9. Letter of Complaint from Mr. and Mrs. Mark McGowan dated February 2, 2004
10. Letter of Complaint from Mrs. Carrie McGowan dated February 2, 2004
11. Notice of Complaint to PPO Robert Meegan dated February 3, 2004, regarding Letter of Complaint by Mr. and Mrs. McGowan (with attachment)
12. Memo from PPO Robert Meegan dated February 4, 2004, in response to Notice of Complaint by Mr. and Mrs. McGowan
13. Memo regarding Performance Expectations dated August 4, 2004, given to PPO Robert Meegan by CPPO Richard Allen
14. Letter of Counseling for Unprofessional and Disrespectful Behavior dated September 22, 2004, to PPO Robert Meegan from CPPO Richard Allen
15. Yearly Performance Evaluation for PPO Robert Meegan given December 31, 2003
16. Yearly Performance Evaluation for PPO Robert Meegan given October 21, 2002
17. Yearly Performance Evaluation for PPO Robert Meegan given February 20, 2001
18. Yearly Performance Evaluation for PPO Robert Meegan given July 30, 1997
19. Yearly Performance Evaluation for PPO Robert Meegan given July 26, 1996
20. Yearly Performance Evaluation for PPO Robert Meegan given August 14, 1995
21. Yearly Performance Evaluation for PPO Robert Meegan given July 14, 1994

The appellant objected to admission of the State's exhibits into the record of the hearing, stating he never received notice that they were to be offered into evidence. Attorney Vinson indicated that he had notified the appellant by email of the documents he intended to offer. The appellant stated that his email had not been working for several days, preventing him from receiving anything Attorney Vinson might have sent. Attorney Vinson noted that all of the evidence had been provided to the appellant either in the

normal course of his employment, or in connection with the investigation and resulting disciplinary action.

The appellant then objected to State's Exhibits 9-14 and 22, arguing that they involve an "unfounded investigation" and that the documents were to be "sealed." He indicated that he had requested a copy of any such documents and alleged that Attorney Vinson told him such a file did not exist. He said that the Board should not enter the documents related to the McGowan complaint as they were "sealed" and included "unfounded allegations."

The Board reminded the parties that in order to determine whether or not the warning should stand, the State had to establish that the information Director Blaisdell relied upon in issuing the warning was substantially accurate enough to determine that conduct had occurred that warranted disciplinary action. If the State failed to sustain that burden, the letter of warning would have to be withdrawn.

The Board advised the appellant that he could offer evidence and argument to support his assertion that the warning had no basis in fact and should then be discounted. However, the authenticity, admissibility and relevance of the documents being offered into evidence did not depend upon the outcome of a Department of Corrections/Division of Field Services investigation in which those documents were reviewed.

Attorney Vinson argued that there were two complaints, both of which were addressed in the letter of warning: 1) that the appellant had discussed Mr. Dodge and Mr. Dodge's credibility with the county attorney, and 2) that the appellant had made allegations that Ms. McGowan was having an inappropriate relationship with Mr. Dodge. The Board determined that the appellant had seen each of the documents except for that offered as State's Exhibit 22. The State withdrew Exhibit 22.

The Board admitted State's Exhibits 1 – 21, and noted the appellant's exception. The Board informed the appellant that the issue of delivery and receipt of the list of exhibits could still be considered a basis for future objections if appropriate.

Narrative Summary

In August, 2002, Michael McAllister, Assistant Director of the Division of Field Services gave written notice to the appellant, Robert Meegan, that he was to be reassigned to the Dover District Office when he returned from vacation. The reassignment was not voluntary, and the appellant took exception to his being transferred "against his wishes."

The appellant made no secret of his dissatisfaction with his supervisor. In a letter dated March 6, 2003, addressed to CPPO Allen and copied to Director Blaisdell, Assistant Director Forties, Assistant Director McAllister and Attorney Vanacore, the appellant wrote, "I wish to inform you that Your staff meeting on this date was the second worst staff meeting I've ever been to ever, anywhere I've worked." He criticized CPPO Allen for being late to his own meeting, stating, "I say your staff meeting because it was quite clear this was for your pontification and no input was expected or wanted." The appellant characterized CPPO Allen's presentation on the issue of "supervision" versus "PSIs" as "ludicrous." He accused CPPO Allen and CPPO Jones in another instance of caring only, "...that your small personal egos were not involved in what you perceive was glory so you look to create dispersion [sic] on those doing the job." He complained that CPPO Allen never recognized him for "praise" his work had received from outside agencies, writing, "...since my arrival all feedback has been positive to you. Yet you continue to attempt to find fault with my every action. You attempt to do this publicly as a show of power. Be not surprised that you and I are now at war despite my best attempts to avoid such."

Disagreements within the office continued, and in June 2003, CPPO Allen replied via email to the appellant's complaint about Scott Dodge, writing, "Bob, After your complaint about Scott not refilling the state car with gas, I looked at the mileage log and

detennined your complaint should not have been directed to Scott. Other PPO's used the car with and after Scott did for a total of 51 miles. The recent memo that the covering officers should check the cars for gas should take care of this except for your problem with Scott, which I see as a more important issue. I encourage you both to try to get along."

Ill the appellant's performance appraisal completed in December, 2003, Chief Probation/Parole Officer Richard Allen ranked the appellant as "below expectations" in the area of cooperation and teamwork. CPPO Allen wrote, "PPO Meegan has had difficulties with another officer in the Dover office, against whom he has repeated a number of complaints on June 11, 2003, including not refueling the state car, when that officer was not the last one to use the car. He criticized that officer's supervision in the Spencer case. He also repeatedly complained about that officer's entering a home with questionable jurisdiction, in April/May 2003 (Please see note on PPO Meegan's June 10, 2003 home visit), though that officer was commended for his performance of duty. This animosity created needless tension in the office and has not proinoted office teamwork."

The appellant signed the performance appraisal "under protest." His written response stated, "Officer in question has Laurie issues. CPPO was directed to pull the sworn testimony in the Spencer case – note 2 cases dropped against Spencer. Further Rochester PD prosecutor stated the officer changed his story 2x, she will not prosecute his case..." Later in the performance appraisal the appellant wrote, "This employee was ordered to this office against his wishes. I feel this is an attempt to put whatever grudge they can on me..."

On the same performance appraisal, CPPO Allen rated the appellant's "Leadership/Performance Modeling," as, "Lacfts consistency as a model of acceptable work behavior." The appellant responded by writing, "Failure to follow a chief who has had multiple complaints founded on him does not constitute leadership failure..."

On or about December 26, 2003, the appellant had a private conversation with PPO Serene Eastman, in which he told her that he had been approached by Deputy County Attorney Thomas Velardi about PPO Scott Dodge, and that Velardi had told him Dodge had credibility issues. The appellant suggested that Ms. Eastman talk to Mr. Dodge and persuade him to transfer out of the Dover District Office or risk ruining his career. Instead of talking immediately to Mr. Dodge, Ms. Eastman spoke with Deputy County Attorney Velardi, who advised her that it was Mr. Meegan who approached him and broached the subject of Mr. Dodge's credibility.

On January 26, 2004, Probation/Parole Officers Mourgenos, Eastman and Dodge informed CPPO Richard Allen that the appellant had told Officer Eastman that Deputy County Attorney Thomas Velardi had approached him to discuss problems with Officer Dodge's credibility. CPPO Allen asked Officers Mourgenos, Eastman and Dodge for written statements detailing their understanding of what had transpired between Officers Meegan and Eastman, and Officer Meegan and Deputy County Attorney Velardi.

In his statement dated January 26, 2004, Probation/Parole Officer Scott Dodge wrote, "Officer Meegan has focused a substantial amount of attention on me since he came to the Dover field office; it has created such an environment for me that I feel I am walking on egg shells when I come to work. I can no longer ignore Officer Meegan's behavior. PPO Meegan has gone to an outside agency to try and enlist their help in forcing me to transfer out of Dover... In going to an outside agency alleging 'Laurie Issues' Officer Meegan has placed my career in jeopardy. I am worried about my ability to function day to day in the office, I am worried that my credibility will be ruined with the Court and I am worried about my promotion potential. I strongly believe that PPO Meegan is creating a hostile work place for me in an attempt to force me to transfer out of the office. I am requesting that you either investigate this or call for an investigation by the Department."

In her statement dated January 27, 2004, PPO Serene Eastman advised Chief Probation/Parole Officer Richard Allen, that the appellant informed her in a telephone conversation at the end of December, that, "...he had been confronted by the County Attorney's office about Scott [Dodge]. He then explained that the County Attorney's office is concerned about 'Laurie Issues' that Scott may have... I spoke with Attorney Velardi in the beginning of January about this. He advised me that he did not call Bob and that Bob had called him and told him... On January 23, 2004, I decided to tell Scott while out of the office. I advised him of what happened and that I confirmed with Attorney Velardi that he did not call Bob and that there were no 'Laurie Issues' being pursued."

In his statement dated January 28, 2004, PPO Gregory Mourgenos wrote that PPO Eastman had discussed a telephone conversation that she and the appellant had in December, in which the appellant told her that, "...he had been approached by Deputy County Attorney Thomas Velardi about Dodge's reliability as a witness. Meegan wanted Eastman to speak with Dodge, and have him transfer to Concord so that his career would not be ruined." PPO Mourgenos wrote, "On January 14, 2004, while in the Strafford County Superior Court, I spoke briefly with Deputy County Attorney Velardi about Meegan and Dodge. Velardi indicated that Meegan had approached him and informed him that he (Meegan) thought Dodge may have 'Laurie Issues.'" (State's Exhibit 4)

On January 28, 2004, CPPO Allen spoke to the appellant and asked him to explain how his discussion with Deputy County Attorney Velardi concerning Officer Dodge's credibility had occurred, specifically, whether it was the appellant or Attorney Velardi who initiated the discussion. The appellant told CPPO Allen that he could not remember.

On February 2, 2004, the appellant received notification that the Department of Corrections was initiating an investigation into an allegation, "That on December 26, 2003, you falsely told PPO Serene Eastman that Deputy County Attorney Thomas Valardi (sic) approached you to tell you that PPO Dodge had witness reliability and court

credibility issues, and should therefore apply for a transfer, that it was you who told DCA Valardi (sic) that PPO Scott Dodge had witness reliability and court credibility issues, a defamatory and untrue statement intentionally made, and a possible violation of PPD 2.16, RULES AND GUIDANCE FOR DEPARTMENTAL EMPLOYEES."

On February 3, 2004, the appellant also received a "Notice of Complaint" indicating that CPPO Allen had received a telephone call from Carrie McGowan, as well as a letter from Mark and Carrie McGowan, complaining that the appellant had defamed her character by suggesting that Mrs. McGowan was having an affair with someone from Probation and Parole.

In his February 4, 2004, "Response to Notice of Investigation of a Complaint dated 02-03-04" (hand-dated 2-10-04) the appellant wrote, "It was 27 December not 26 December [that he spolte with Ms. Eastman]. You will note that 27 December 03 (Saturday) was a day off for me and Ms. Eastman. If you speak to Ms. Eastman or look at my phone bill, you will note that we were both off duty at home. How the Department can construe that they had any control over what was or wasn't said is beyond my wildest imagination. This is called 'free speech in America.'" He indicated that other officers and support staff had also questioned Mr. Dodge's "credibility/reliability." He concluded the response saying, "Lastly, I will remind you that any conversation or correspondence I may or may not have had with DCA Velardi is protected under the Federal Whistle Blowers Act. I have never made any false, defamatory statements against Mr. Dodge. My statements were intentional and were either factual or my own opinions based upon those facts...."

In a second memo dated February 4, 2004 (hand-dated 2-11-04) addressed to Chief Probation/Parole Officer Allen and Director Blaisdell concerning "McGowan Complaint," the appellant wrote, "I will einphatically state I have complained of Mr. Dodge's credibility. The ONLY reference I made ever to Ms. McGowan was in my complaint about Mr. Dodge..." He also wrote, "This is an exact quote from a confidential memo and to a confidential letter I sent to Tom Velardi of the County Attorney's Office.

I never used the work [sic] 'affair' or would state that under oath. I further state that Mi. Dodge, not Ms. McGowan, was the subject of the multi-page credibility complaint..."

On March 10, 2004, Chief Investigator Mark Wefers submitted his report of the investigation to Field Services Division Director Blaisdell. His summary of the investigation indicates, in part, "P/PO II Meegan says that he cannot remember if he approached Attorney Velardi, or if Velardi approached him, nor can he remember what he told P/PO Eastman about who approached whom. Meegan states further that his concerns regarding P/PO II Dodge's credibility are legitimate, that his efforts to resolve this through the chain of command were fruitless, and that he was within his rights, indeed duty-bound, to communicate the information to Velardi." In his offer of proof, the appellant argued that his right to correspond with Deputy County Attorney Velardi was protected by the Federal Whistleblowers Act.

According to the State's Offer of Proof, Deputy County Attorney Velardi was not concerned about Officer Dodge's credibility, and was well aware of the appellant's hostility toward Dodge, at least with respect to the handling of the Spencer case. (Part of State's Exhibit 2) Deputy County Attorney Velardi told the DOC Investigator that he did not contact PPO Meegan. He indicated that PPO Meegan had telephoned him complaining of Dodge's "credibility" and "Laurie" issues, and that he followed up with a letter dated January 29, 2004, Re: Scott Dodge, which began, "Per a previous conversation, I felt it was time to inform you of what I feel are serious questions about Mr. Dodge's honesty. I encourage you to conduct corroborating investigations into these serious matters. I have already brought this up through my own chain of command..."

Can-ie McGowan attributed the appellant's remarks about PPO Dodge having "an unprofessional relationship" with her as an attempt by the appellant to retaliate against her for her participation in the investigation of a probationer's complaint against the appellant. She complained that his comments, both written and verbal, to the Deputy County Attorney were unfounded and defamatory.

Having reviewed all the evidence and offers of proof, the Board found that the appellant's written complaints to Deputy County Attorney Velardi about Officer Dodge go beyond the issue of credibility in court. He accused Officer Dodge of misusing a State vehicle to visit interns at UNH and threatening to lie about the purpose of his visit to avoid paying a parking ticket. He accused Officer Dodge of changing his testimony in the Spencer case. He complained about Officer Dodge's handling of a suicide, and CPPO Allen's mismanagement of information provided to him about the case. He also complained that Officer Dodge had a "less than professional friendship with the (married) Director of the Strafford County Academy Program."

The charges contained in the letter are numerous and substantial. They include:

- Failure to adhere to values of Integrity, Respect and Professionalism
- Failure to be forthright, honest and truthful with the staff of other agencies and colleagues
- Failure to conduct yourself in a manner that reflects credit on the Department
- Failure to interact with members of the public, co-workers and management in a positive and supportive way
- Failure to obey a written order
- Making a false or misleading statement
- Inappropriate conduct or language
- Failure to conduct yourself at all times with kindness and respect, and to avoid strife that may affect duty performance
- Failure to follow policies and procedures and PPD 2.30 Department of Corrections Code of Ethics, for failing to "maintain relationships with colleagues to promote mutual respect within the profession and improve the quality of service"

Findings of Fact

1. The appellant's assertion that Deputy County Attorney Velardi approached him to discuss Officer Dodge is unsupported by any of the evidence.
2. The appellant's oral and written statements to Deputy County Attorney Velardi concerning Officer Dodge's personal and professional conduct were clearly intended to damage Officer Dodge's credibility and reputation.

3. The appellant's assertion that Officer Dodge and Carrie McGowan were engaged in an inappropriate relationship were clearly intended to damage both Officer Dodge's and Mrs. McGowan's reputations.
4. The appellant was not disciplined for raising a complaint as a Whistleblower, but for misrepresenting information about another officer in the Dover District Office.

Rulings of Law

1. The Federal Whistleblower Protection Act applies only to those who actually work for the Federal government.
2. Whistleblower protection for State employees is defined by RSA 275-E:2 which states:
 - I. No employer shall discharge, threaten, or otherwise discriminate against any employee regarding such employee's compensation, terms, conditions, location, or privileges of employment because:
 - (a) The employee, in good faith, reports or causes to be reported, verbally or in writing, what the employee has reasonable cause to believe is a violation of any law or rule adopted under the laws of this state, a political subdivision of this state, or the United States; or
 - (b) The employee, in good faith, participates, verbally or in writing, in an investigation, hearing, or inquiry conducted by any governmental entity, including a court action, which concerns allegations that the employer has violated any law or rule adopted under the laws of this state, a political subdivision of this state, or the United States.
 - II. Paragraph I of this section shall not apply to any employee unless the employee first brought the alleged violation to the attention of a person having supervisory authority with the employer, and then allowed the employer a reasonable opportunity to correct that violation, unless the employee had specific reason to believe that reporting such a violation to his employer would not result in promptly remedying the violation.
3. The appellant's complaints to Deputy County Attorney Velardi concerning Scott Dodge's performance of his duties, his reason for visiting UNH or his payment of a parking ticket at UNH, his credibility with the courts, or his personal relationships with a married woman do not constitute a "good faith" report of "what the employee has reasonable cause to believe is a violation of any law or rule adopted under the

laws of this state, a political subdivision of this state, or the United States," and would not be protected activities within the meaning of RSA 275-E:2.

4. Per 1001.03 (a) provides authority for an appointing authority to issue a written warning, the least severe form of discipline, "for an appointing authority to correct an employee's unsatisfactory work performance or misconduct for offenses including, but not limited to: (a) (1) Failure to meet any work standard."
5. The Department of Corrections acted appropriately in issuing the appellant a written warning under the provisions of Per 1001.03 (a)(1) for failing to meet work standards in his role as a Probation/Parole Officers as a result of his making derogatory and unsubstantiated complaints about a co-worker, and later misrepresenting the circumstances about how that information was transmitted to an officer of the court.

Discussion

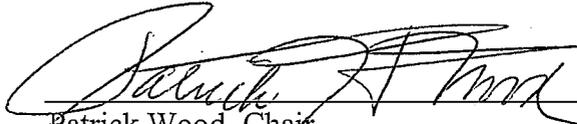
It is clear from Officer Meegan's written statements and his offers of proof that he is dissatisfied with his own supervisors, and finds Officer Dodge's performance to be less than satisfactory. It also is clear that he believes, albeit incorrectly, that Officer Dodge has "credibility issues" with the court. It is equally clear that Officer Meegan believes he is "doing the right thing" by challenging management's abilities and Officer Dodge's performance of his duties.

Those beliefs, however sincere, do not excuse his decision to raise the issue with Deputy County Attorney Velardi and then misrepresent the nature of that contact with his co-worker, Serene Eastman, in an effort to have her persuade Officer Dodge to transfer out of the Dover District Office. They also do not excuse his decision to suggest impropriety in a relationship between a co-worker and another public employee, unless the existence of such a relationship, if one existed, resulted in a violation of rule or law. In this case, the report of the alleged relationship had no apparent purpose except to discredit the two named individuals.

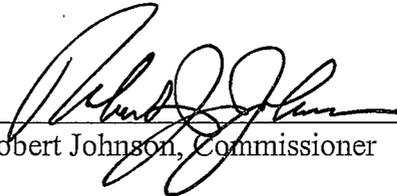
Decision and Order

On all the evidence, argument and offers of proof, the Board voted unanimously to DENY the appeal, finding that the Department was correct in its decision to issue the appellant a written warning for failure to meet work standards.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD

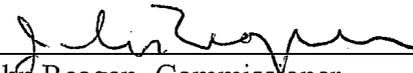


Patrick Wood, Chair



Robert Johnson, Commissioner

Philip Bonafide, Commissioner



John Reagan, Commissioner

cc: Karen A. Levchuk, Director of Personnel
Robert Meegan, Appellant
John Vinson, Corrections Counsel