

State of New Hampshire



PERSONNEL APPEALS BOARD

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

Appeal of Mary L. Schweitzer

Docket #02-D-001

New Hampshire Veterans Home

October 24, 2001

The New Hampshire Personnel Appeals Board (Wood, Rule, Urban) met on Wednesday, October 3, 2001, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NHCAR (Rules of the Personnel Appeals Board) to hear the appeal of Mary L. Schweitzer, an employee of the Veterans Home. Ms. Schweitzer, who was represented at the hearing by SEA Field Representative Jean Chellis, was appealing an April 19, 2001 written warning issued to her by W. Blake Tuttle, Resident Services Director, for alleged unprofessional behavior. Mr. Tuttle appeared on behalf of the Veterans Home.

Without objection, the appeal was heard on offers of proof by the representatives of the parties. The record of the appeal in this matter consists of the pleadings submitted by the parties prior to the hearing, 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

- A. V.A. Standards that govern social service
- B. Federal Register, Volume 5, No, 4, Thursday, January 6, 2000

Appellant's Exhibits

1. April 19, 2001 letter of warning issued to Mary L. Scliweitzer by W. Blake Tuttle
2. A publication of the New Hampshire Long-Term Care Ombudsman Program titled Your Riglits As A Resident.
3. A copy of a thank-you note from Mrs. Frank Mitchell to Mary L. Scliweitzer

Having carefully considered the evidence, argument, aiid offers of proof, tlie Board made the following findings of fact and rulings of law.

Findings of Fact

The material facts are not in dispute.

1. The New Hampshire Veterans Home is a residential care facility for New Hampshire Veterans of the Armed Forces of the United States.
2. Under Veterans Administration standards for Social Services at facilities like the Veterans Home, social worlters must be involved in development of individual care plans by identifying residents with impaired psychosocial well-being and assisting in a comprehensive assessment of the residents to ensure that those displaying mental or psychosocial adjustment difficulty will receive appropriate treatment and services to correct the assessed problem (State's A).
3. Social Worlters at the Veterans Home are assigned to one of three units based on their interest, experience, aiid the nature of residents being sewed.
4. Ms. Scliweitzer, a veteran herself, worlts as a Social Worlter on South, a unit that houses veterans who typically are more physically aiid emotionally independent than residents on eitlier of the remaining two units.
5. The second unit houses residents whose greatest needs are medical and who therefore require less in tenns of boundaries aiid discipline.
6. Welch, tlie third unit, is a secure residential unit designed to safely care for veterans suffering from dementia.

7. Each of the residents on Welch has a guardian or someone with power of attorney who would be involved with the social worker and treatment team members in developing that resident's individual care plan.
8. In August, 2000, the Veterans Home asked Ms. Schweitzer to assist them by volunteering to provide transportation to and from the Veterans Home for Kathleen Mitchell, the wife of a resident on the Welch Unit.
9. Ms. Mitchell lived in Keene not far from Ms. Schweitzer's home in Peterborough, and Ms. Schweitzer understood that if she agreed to transport Ms. Mitchell to and from the Home, it would be a courtesy, not a work assignment.
10. Ms. Schweitzer brought Ms. Mitchell to and from the Veterans Home every three to four weeks; and over the course of several months the two women developed a friendly relationship.
11. Ms. Schweitzer was not assigned to work with either of the Mitchells in a professional capacity and she did not participate in the interdisciplinary team meetings at which Mr. Mitchell's individual care plan was developed or revised.
12. Ms. Schweitzer was not officially apprised of changes in Mr. Mitchell's particular needs or problems, or of specific issues being addressed with Ms. Mitchell by Social Services at the Veterans Home.
13. Ellen Douville, the social worker on Welch, was aware of the relationship between Ms. Schweitzer and Ms. Mitchell, and although Ms. Schweitzer was not part of the interdisciplinary team coordinating Mr. Mitchell's care, Ms. Douville did update her on Mr. Mitchell's condition.
14. The parties note that neither Ms. Schweitzer nor Ms. Douville have degrees in Social Work.
15. Terminally ill patients have the right to receive visitors without restrictions.
16. Blaine Tuttle, the Residential Services Director, was aware of the relationship that had developed between the appellant and Ms. Mitchell, and on March 7, 2001, Mr. Tuttle, informed the appellant that Mr. Mitchell's condition had worsened and he was not expected to live.
17. That evening, Ms. Schweitzer telephoned Ms. Mitchell at her home and, at Ms. Mitchell's request, agreed to give her a ride to the Veterans Home the following day.

18. Although Ms. Schweitzer could have used the Veterans Home's voice messaging and beeper system to contact Mr. Tuttle or Ms. Douville, Ms. Schweitzer telephoned Mr. Tuttle's home and left him a message, asking if he would apprise Ms. Douville the following morning of Ms. Mitchell's plans to visit her husband that day.
19. Ms. Douville had other commitments on March 8th and was not available when Ms. Mitchell arrived.
20. Mr. Mitchell passed away two days later.
21. There was never any belief on the part of the Veterans Home that Ms. Schweitzer's actions were ill-intended or self-serving, and the administration understood that Ms. Schweitzer had put herself out considerably to perform an act of kindness and meet a perceived need.
22. Ms. Mitchell sent a thank you note dated March 15, 2001, to Ms. Schweitzer in which she thanked the appellant for her helpfulness and kindness.
23. On April 29, 2001, Mr. Tuttle issued a written warning to Ms. Schweitzer for unprofessional behavior for allegedly violating a therapeutic relationship between the Mitchells and the unit social worker by arranging a visit without consulting her first.
24. Before appealing the written warning to the Personnel Appeals Board, Ms. Schweitzer sought resolution through the process of informal settlement described by Per 202 of the Rules of the Division of Personnel.
25. In his May 23, 2001 letter denying her request for informal settlement, Mr. Tuttle indicated that Ms. Schweitzer needed to communicate with her fellow social workers when dealing with one of their clients.
26. In his June 18, 2001 letter denying her request for informal settlement, Commandant Barry Conway indicated that Ellen Douville, Mr. Mitchell's social worker, needed to be aware of any activities involving a resident on her unit, and that Ms. Schweitzer should have consulted her before agreeing to bring Ms. Mitchell to the Veterans Home.

Rulings of Law

- A. "An appointing authority shall be authorized to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance or misconduct." [Per 1001.03 (a) Written Warning]
- B. "The Residents' Bill of Rights" also known as the Patients' Bill of Rights was first enacted into law as part of the Older Americans' Act of 1965. RSA 151.21 adopts the federal statute as law in the State of New Hampshire." [SEA Exhibit 2, Your Rights as a Resident, The New Hampshire Long-Term Care Ombudsman Program, Department of Health and Human Services, Concord, New Hampshire, 1994, p. 1]
- C. "The resident shall be entitled to have his parents, if a minor, or his spouse, or next of kin, or his personal representative, if an adult, visit the facility, without restriction, if the resident is considered terminally ill by the physician responsible for his care.", [RSA 151:21 XIX]

Standard of Review

"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." [Per-A 207.12 (b)]

Decision and Order

The Veterans Home was responsible for initiating a relationship between Ms. Schweitzer and the Mitchells to address Ms. Mitchell's transportation needs, and the Home was aware of the relationship that had developed between Ms. Schweitzer and Ms. Mitchell. Nevertheless, Mr. Tuttle characterized Ms. Douville's communication with Ms. Scliweitzer about Mr. Mitchell's condition as "a courtesy," not as any form of professional peer-to-peer communication or consultation. Ms. Schweitzer was not involved in developing or revising Mr. Mitchell's individual care plan, nor was she informed of the various "nuances" concerning Ms. Mitchell's needs. With the exception of Ms. Douville's courtesies and Mr. Tuttle's report that Mr. Mitchell was near death, Ms. Scliweitzer was not apprised of any changes to the resident's individualized care plan. Therefore, the Board found that Ms. Scliweitzer's relationship with the family was best described as that of an aide, not as an employee of the Veterans Home. Accordingly, the Board found that she was not accountable in this instance for breaching any professional obligation to consult Ms. Douville or to obtain her permission before bringing Ms. Mitchell to the Veterans Home on March 8, 2001. Ms. Schweitzer's conduct in this particular instance is best viewed as an act of kindness, not as demonstration of unprofessional behavior.

The Veterans Home prides itself on compassionate care and recognition of each resident's individual needs. Nevertlieless, it needs a policy in place that addresses both the rights and responsibilities of staff members who develop relatioiisliips with residents or their family members, particularly when those relationships are encouraged or at least initiated by the agency itself. Without such a policy in place, the evidence in this case will not support a warning 'for unprofessional behavior.

Mr. Tuttle indicated that the Veterans Home is currently working on standards of practice that shiould address circumstances like this in the future. Commandant Conway wrote in his letter of June 18, 2001, "...this is all oportune time for the social services department to put together a Social Services Policy and Procedure unique to the Veterans Home." The Board agrees. The Veterans Home may want to contact New Hampshire Hospital to discuss the Hospital's "Boundary Policy" and to determine if a similar policy would be appropriate.

The Board found that the appellant met her burden of proof, demonstrating by a preponderance of the evidence that the disciplinary action was unwarranted and unjust in light of the facts in evidence. Therefore, the Board voted to GRANT Ms. Schweitzer's appeal. The written warning shall be removed from Ms. Schweitzer's personnel file and shall be replaced with a copy of the Board's order granting her appeal.

THE PERSONNEL APPEALS BOARD


Patrick H. Wood, Chairman


Lisa A. Rule, Commissioner


Anthony B. Urban, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301
Louise Paquette, Human Resources Coordinator, NH Veterans Home, 129 Winter St., PO
Box 229, Tilton, NH 03276-0229
Jean Chellis, SEA Field Representative, PO Box 3303, Concord, NH 03302-3303