

State of New Hampshire



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

*Appeal of John Shaughnessy*

*Docket #2002-D-2*

*NH Office of Emergency Management*

*Personnel Appeals Board Response to Appellant's Motion for Reconsideration of Findings, Decisions and the Order of March 1, 2002*

May 22, 2002

On March 15, 2002, the New Hampshire Personnel Appeals Board received Appellant's Motion for Reconsideration of Findings, Decisions, and the Order of March 1, 2002, in which the Board dismissed Mr. Shaughnessy's appeal for failure to appear as scheduled for the hearing on the merits of his appeal.

First, the Appellant asked Mr. Wood to recuse himself from further discussions in the appeal, arguing that the Chairman had demonstrated prejudice against the Appellant. Upon notice that there had been an allegation of prejudice, Mr. Wood withdrew from any further review, discussion, or deliberation on the appeal.<sup>1</sup> Mr. Johnson and Ms. Urban then reviewed the Appellant's Motion in conjunction with the Board's file in the instant appeal. After carefully reviewing the Motion and considering the evidence and arguments offered by the Appellant in support of the Motion, the Board (Johnson and Urban) reconsidered the Findings, Decisions, and the Order of March 1, 2002. The Board then voted to AFFIRM the decision DISMISSING the appeal.

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<sup>1</sup> Even a cursory review of the record and the tape recordings of the pre-hearing proceedings would show no prejudice on the Chairman's part. If the Chairman has personal feelings about the Appellant, he did not make them known to the other Board members. At its meeting on February 20, 2002, the motion to dismiss the appeal was made by Mr. Urban and seconded by Mr. Johnson. Chairman Wood voted with the majority, making the decision unanimous.

The Appellant reiterated that on the morning of February 20, 2002, he was suffering from an injury sustained on February 15, 2002. He said he was genuinely indisposed and, therefore, was legitimately unable to travel from Goshen to Concord for the hearing on the merits of his appeal.

That argument may have been more persuasive if the Appellant had not made a similar claim on January 9, 2002. On that date, the Appellant failed to appear for a second pre-hearing conference scheduled by the Board and the parties to address outstanding discovery issues. Rather than requesting a continuance, he simply called the Director of Personnel and the State's representative, saying he was sick and the pre-hearing conference would need to be rescheduled. The Board informed the Appellant in an order dated January 10, 2002, that he would not be penalized for his failure to appear at that time. However, he also was informed that any future requests to continue or postpone a hearing must be made in compliance with the Rules of the Personnel Appeals Board.

According to Per-A 206.03 (d) of the Board's rules:

"A request to postpone or reschedule a hearing shall include the following:

- (1) A statement detailing the steps taken to seek the other party's agreement to have the matter postponed or rescheduled; and
- (2) A statement whether the other party either agrees or disagrees with the request to reschedule or postpone the hearing."

By his own admission, the Appellant took no steps in this instance to contact the State's representative before contacting the Board in order to obtain her agreement to having the February 20<sup>th</sup> hearing postponed. He simply informed her that he already "...had contacted the Board's Executive Secretary on the morning of 2/20/02 concerning his unavailability and he did advise Ms. Smith that he had requested a continuance of the Board at that time." (See Appellant's Motion, p. 2, #7.)

The Appellant argued that his failure to provide notice or show good cause for his failure to appear prior to the morning of February 20, 2002, occurred because he "had no specific information that he would be unable to attend the hearing of 2/20/02 until the morning of 2/20/02." (See Motion, p. 2, #1 - 4.) On the contrary, the Appellant indicated that he was sufficiently incapacitated for the five days preceding his hearing that he was unable to process "service of a subpoena to several of his intended witnesses during the period of 2/15/02 - 2/19/02." (See Motion, p. 3, #19.) Under those circumstances, it would be reasonable to expect

that the Appellant would have had some reservations about his ability to go forward with the hearing on the merits of his appeal on the morning of February 20<sup>th</sup>. It also would be reasonable to expect that the Appellant would have taken the necessary steps to obtain the State's agreement and the Board's approval to postpone the hearing should such a postponement become necessary.

Assuming that the Appellant was truly uncomfortable driving the distance from Goshen to Concord as a result of the injury he says that he sustained five days earlier, he still was not exempt from the requirement for communicating that information in a timely fashion and requesting a postponement in accordance with the Board's rules. When preparing to request a postponement or rescheduling of a hearing, the rules specifically require the Appellant to contact the other party to the appeal, seek that party's agreement to have the matter postponed or rescheduled, and advise the Board whether or not that party agrees with the request. In this instance, the Appellant simply informed the State that he was not available for the hearing. He took no steps to obtain the State's concurrence before telling the Board that he wanted the hearing rescheduled.

The Appellant also argued that the Board did not exercise "due diligence in apprehending the facts before making the determination that some or all of the Appellant's witnesses were not available for the hearing and that the Appellant was not otherwise prepared to proceed on the morning of 2/20/02." (See Appellant's Motion, p. 3, #15.) Specifically, the Appellant argued that, "Mr. McLoy had been approached by the Appellant and had agreed to be a witness for the Appellant (i.e., under the protection of a subpoena)." (See Appellant's Motion, p. 2, #9.)

In a March 6, 2002 e-mail response to a message from the Appellant, attached as an exhibit to the Appellant's Motion, Mr. McLoy wrote:

"In answer to your question of whether I recalled being asked to attend a hearing on February 20<sup>th</sup> as a witness – my recollection is:

- You told me that you intended to call me as a witness in a hearing.
- I do not recall you giving me a hearing date.
- On February 20<sup>th</sup> I received a call from (forget her name) who asked if you had asked me to attend a hearing that morning. I answered in the negative at which point she said thank you and hung up. I did not have a chance to say that you had asked me to be a witness at a hearing, but that I didn't have a specific date.

I felt that it might be important for those at the hearing to have all the information so I mentioned point 3, above to Ed Murdough when I saw him later that day."

Ms. Smith provided similar information in her letter to the Board dated March 11, 2002:

"I was advised by Mr. Murdough that, after he returned to the office from the hearing on February 20<sup>th</sup>, Mr. McLoy advised him that Mr. Shaughnessy had spoken to him some time in the past about being a witness for him at the PAB, without making Mr. McLoy aware of the specific date he would be needed. Mr. McLoy further indicated that, after he had received [Ms. Smith's] telephone call, he checked his voicemail and found a message from Mr. Shaughnessy indicating that he would not need Mr. McLoy that day because he had called in sick for the hearing."

While this new evidence indicates that the Appellant had in fact spoken to Mr. McLoy at some time about appearing as a witness, the evidence confirms the Board's conclusion that on the morning of February 20<sup>th</sup>, Mr. McLoy was unaware of the scheduled hearing and that the Appellant had not spoken to him specifically about appearing as a witness on that date, with or without a subpoena.

Similarly, the Appellant argued that Mr. Musler, another of his witnesses, "could have attended, and would have attended the hearing (under the protection of a subpoena) if Appellant had been able to serve him." Again, whether or not Mr. Musler would have attended the hearing after receiving a subpoena is immaterial. The real issue is whether or not Mr. Musler was aware prior to February 20<sup>th</sup> of the date that the hearing had been scheduled. The evidence offered by the Appellant in support of his motion shows that on the morning of the hearing, Mr. Musler was away at a conference in Lawrence, Massachusetts. There is no evidence that Mr. Musler was actually aware that a hearing had been scheduled for that day or that he was expected to appear on that date, with or without a subpoena, as a witness for the Appellant.

The evidence provided by the Appellant in support of his motion confirms the Board's original finding that some or all of the Appellant's witnesses were unavailable on the morning of the hearing. The witnesses were not even aware of the fact that the Board was scheduled to hear the Appellant's case on February 20<sup>th</sup>. The Board continues to believe that the Appellant was not ready to proceed on the morning of the hearing.

Finally, the Appellant argued that, "the Board dismissed the Appellant's Appeal without allowing the Appellant to 'show cause' as to the nature and extent of his injury, disability and ability to appear." (See Appellant's Motion, p. 2, #16.) The Appellant had that opportunity before the original decision was issued dismissing the appeal. The Board was under no obligation to provide additional opportunity for the Appellant to do so.

A Motion for Reconsideration requires the Appellant to demonstrate that the Board's order dismissing the appeal was unlawful or unreasonable under the facts in evidence. The facts are as follows:

1. This was the second instance that the Appellant failed to appear as scheduled for a meeting before the Board, and failed to provide reasonable or timely notice to the State or to the Board.
2. The Appellant had been advised in an order dated January 10, 2002, that although the Board had decided not to penalize him in that instance for failing to appear as scheduled, any future communication between the Appellant, the Board, and the State with respect to the appeal or the Appellant's attendance at a Personnel Appeals Board meeting must be made in accordance with the Board's rules.
3. There was no attempt by Mr. Shaughnessy to contact Ms. Smith prior to the morning of the hearing to advise her that he might need to request a postponement of the hearing.
4. There was no attempt by Mr. Shaughnessy to obtain Ms. Smith's agreement to continue or postpone the hearing before he contacted the Board to inform them that he would not be at the hearing scheduled for that morning.
5. The March 4, 2002 assessment from Heath C. Edwards, DC, offered as evidence of the Appellant's injury, was not provided to the Board until March 15, 2002.
6. The assessment itself was made some 17 days after the date of the reported fall, 12 days after the date of the scheduled hearing, and 3 days after the date of the Board's decision dismissing the appeal.
7. None of the appellant's witnesses appeared for the hearing as scheduled.

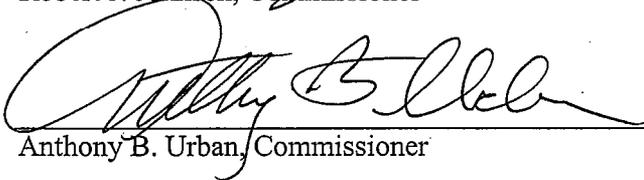
Having considered the evidence and argument offered by the Appellant in support of his motion, the Board affirmed its findings that the Appellant failed to show good cause for his failure to appear or to provide timely notice that he might be prevented from appearing as scheduled. The Board affirmed its findings that none of the Appellant's witnesses were prepared to testify on the morning of the hearing and, based on the evidence offered in support of his motion, that the Appellant's witnesses were unaware of the actual date of the hearing. The Board affirmed its conclusion that Appellant's oral request to continue did not conform to the requirements of Per-A 206.13, and his appeal should be DISMISSED in accordance with Per-A 207.03(a) of the NH Code of Administrative Rules.

Based upon the reasons set forth above, the Board voted unanimously to DENY Mr. Shaughnessy's request to reverse its decision and to AFFIRM its decision dismissing his appeal for failure to appear as scheduled.

THE NH PERSONNEL APPEALS BOARD



Robert J. Johnson, Commissioner



Anthony B. Urban, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol Street, Concord, NH 03301  
Nancy Smith, Senior Assistant Attorney General, Department of Justice, 33 Capitol Street,  
Concord, NH 03301  
Mr. John Shaughnessy, Office of Emergency Management, 107 Pleasant Street, Concord, NH  
03301  
Mr. John Shaughnessy, PO Box 152, Goshen, NH 03752

# State of New Hampshire



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Appeal of John Shaughnessy  
Docket #2002-D-2  
NH Office of Emergency Management

March 1, 2002

The New Hampshire Personnel Appeals Board (Wood, Johnson and Urban) met on Wednesday, February 20, 2002, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the New Hampshire Code of Administrative Rules (Rules of the Personnel Appeals Board) to hear the appeal of John Shaughnessy, an employee of the New Hampshire Office of Emergency Management. Mr. Shaughnessy, whose appeal was filed *pro se*, had been suspended without pay for five days on charges that he was willfully insubordinate. Senior Assistant Attorney General Nancy Smith appeared on behalf of the Office of Emergency Management. Neither Mr. Shaughnessy nor anyone representing him appeared at the hearing on the appellant's behalf.

The record of the hearing in this matter consists of the following:

1. Pleadings submitted by the parties;
2. Notices and orders issued by the Board;
3. The verbatim record of the Board's February 20<sup>th</sup> hearing in this matter including a transcript of the appellant's February 20<sup>th</sup> voice mail message to the Board's executive secretary; and
4. State's Exhibit A, the appellant's February 14, 2002 letter to Ms. Smith disclosing the evidence and the names of witnesses he intended to present at the February 20<sup>th</sup> hearing.

Based on the record, the Board made the following findings of fact:

1. The Board received Mr. Shaughnessy's appeal by letter dated November 2, 2001.
2. On November 21, 2001, the Personnel Appeals Board notified Mr. Shaughnessy and the Office of Emergency Management that the Board had scheduled a pre-hearing conference in Mr. Shaughnessy's appeal on December 12, 2001 at 9:15 a.m.
3. On November 29, 2001, Senior Assistant Attorney General Smith telephoned the Board to request copies of the appeals that Mr. Shaughnessy had filed with the Board.
4. Copies were forwarded to Ms. Smith on November 30, 2001.
5. On December 5, 2001, the Board received Ms. Smith's December 3, 2001 letter advising the Board that the Office of Emergency Management had received no prior notice of the appeal filed by Mr. Shaughnessy until copies were received from the Board. Ms. Smith reserved the agency's right to file a response, in accordance with Per-A 206.02, on or before December 10, 2001.
6. By letter dated December 7, 2001, Ms. Smith filed her formal notice of appearance and the agency's response to the appellant's allegations.
7. The Board met with the parties at the scheduled pre-hearing conference on December 12, 2001. At that meeting, the parties established February 20, 2002, as the date for the hearing on the merits of Mr. Shaughnessy's appeal. The parties agreed to appear for a second prehearing conference on January 9, 2002, to address any unresolved discovery issues. They also agreed to exchange documents and witness lists with one another by February 13, 2002.
8. On January 8, 2002, the Board received the State's Motion to Compel Discovery. Attached thereto as exhibits were the following:
  - (1) Ms. Smith's December 14, 2001 Information Request to Mr. Shaughnessy
  - (2) Mr. Shaughnessy's December 20, 2001 Response
  - (3) Mr. Shaughnessy's December 20, 2001 Request for Information
  - (4) Ms. Smith's December 31, 2001 letter to Mr. Shaughnessy
  - (5) Ms. Smith's January 3, 2002 letter to Mr. Shaughnessy responding to his Request for Information
  - (6) Ms. Smith's January 3, 2002 letter to Mr. Shaughnessy advising him of her intention to file a Motion to Compel the appellant to produce certain documents
9. When the Board convened for the pre-hearing conference, Ms. Smith informed them that she had received a telephone call from the appellant that same morning advising her that he was ill and

would not be attending the pre-hearing conference as scheduled. A similar voice mail message was left for the Director of Personnel, who forwarded the message to the Board when he received it later that afternoon.

10. On January 10,2002, the Board issued a decision on the State's Motion to Compel, ordering the appellant to produce certain documents and deliver them to Ms. Smith on or before January 16, 2002.
11. Mr. Shaughnessy objected to the order, asking the Board to reschedule the second pre-hearing conference and allow him additional time in which to comply with the specific instructions contained in the Board's order.
12. The Board denied the request to reschedule the pre-hearing conference, but agreed to allow Mr. Shaughnessy until Friday, January 18th to comply with the order. The Board also directed the parties to appear on January 23,2002, to address any remaining discovery disputes.
13. At the meeting on January 23,2002, the appellant asked the Board to dismiss the charges against him, arguing that he was entitled to protection from disciplinary action under the provisions of the State's Whistleblowers Act.
14. The Board directed the appellant to file his motion in writing at or before 5:00 p.m. on Friday, January 25,2002, and to provide a copy of the motion to Ms. Smith so that the State would have the opportunity to file a response.
15. The Board received Mr. Shaughnessy's Motion for Summary Judgment on January 25,2002. The State timely filed its Objection to that Motion on February 7,2002.
16. Shortly after 8 o'clock on Wednesday morning, February 20,2002, Mr. Shaughnessy telephoned the Board's Executive Secretary and told her that he would not be attending the hearing that morning because he had injured himself in a fall the previous Friday.
17. Mr. Shaughnessy was advised that if he failed to attend the hearing, his appeal could be dismissed. He was instructed to leave his message for the Board in the form of a voice mail message (copy attached) so that each of the individual Board members could hear directly the reasons for his absence.
18. Mr. Shaughnessy called Ms. Smith's office at approximately 8:30 a.m. on the day of the hearing and told her that he would not be attending the hearing because he had fallen on Friday afternoon, had hurt his back, and was experiencing sufficient discomfort that he felt he should not be driving.

19. During the telephone conversation with Ms. Smith, Mr. Shaughnessy did not attempt to obtain agreement to a continuance, nor did he inform Ms. Smith that he already had requested a continuance from the Board.
20. At 9:00 a.m. when the Board was scheduled to begin the hearing, all of the State's witnesses were either present and ready to testify or they were waiting at the Office of Emergency Management for Ms. Smith to call them. The State was prepared to go forward with its case on the merits of the appeal.
21. None of the witnesses on the appellant's witness list were present for the hearing, other than those persons already in attendance and ready to testify on the State's behalf.
22. George Musler and Gregg Champlin, who appeared on the appellant's witness list, were out-of-state attending a FEMA conference on the date of the hearing and would not have been available to testify.
23. George Vanderschmidt, another of the appellant's intended witnesses, was away on an extended leave from the Region I FEMA office and probably would not have been available on the date of the hearing to testify.
24. Steve McLoy, another of the appellant's intended witnesses, was at work at the Office of Emergency Management at the time of the hearing. When telephoned by Ms. Smith on the morning of the hearing at the Board's request, Mr. McLoy indicated that Mr. Shaughnessy had not asked him to appear at the hearing, had not made any arrangements with him, and had not asked him to be a witness.

#### Rulings of Law

- A. Per-A 206.13 (a): "Any party may petition the board to postpone or reschedule a hearing."
- B. Per-A 206.03 (d): "A request to postpone or reschedule a hearing shall include the following:
  - (1) A statement detailing the steps taken to seek the other party's agreement to have the matter postponed or rescheduled; and
  - (2) A statement whether the other party either agrees or disagrees with the request to reschedule or postpone the hearing."
- C. Per-A 207.03 (a): "Absent a showing of good cause as set forth below, failure of an appellant to appear for any scheduled hearing shall result in dismissal of the appeal."

D. Per-A 207.03 (c): "Good cause shall include accident, illness, or circumstances beyond the control of the party that prevents that party's appearance as scheduled."

E. Per-A 206.05:

"(a) Any party may move for dismissal of an appeal or for summary judgment.

(b) Except when made orally at a hearing, a motion to dismiss or a motion for summary judgment shall be submitted to the board in writing.

(c) Such motion shall state specifically the grounds upon which the movant asserts the right to have the appeal dismissed or an order of summary judgment issued as a matter of law.

(d) Unless such motion is accompanied by competent evidence and a supporting memorandum of law detailing the board's authority to issue such an order, the motion shall be denied."

### Decision and Order

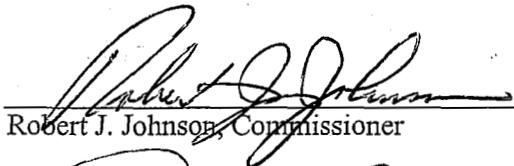
In accordance with Per-A 206.05(c), a Motion for Summary Judgment must "state specifically the grounds upon which the movant asserts the right to have the appeal dismissed or an order of summary judgment issued as a matter of law." Having reviewed the appellant's Motion for Summary Judgment and the State's Objection thereto, the Board voted unanimously to DENY the Motion for the reasons set forth in the State's Objection. The Board also voted to DENY the appellant's request to continue the hearing, and to DISMISS his appeal for failure to appear at the hearing as scheduled.

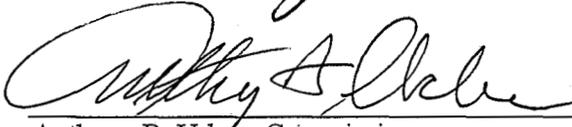
It is clear that there was no prior attempt on Mr. Shaughnessy's part to advise Ms. Smith of his intention to request a continuance or to obtain her consent before making such a request on the morning of the hearing. The absence of timely notice coupled with the fact that none of the appellant's witnesses appeared for the hearing as scheduled suggests that the appellant was not prepared to proceed with his case. There was no ten day notice of the request for the continuance. Moreover, there is no evidence of any attempt by the appellant at any time prior to the hearing to obtain Ms. Smith's agreement to a continuance. The mere assertion that the appellant was injured in a fall the week before the hearing is insufficient to establish that he was actually prevented from appearing as scheduled. Therefore, the Board is unanimous in its conclusion that there has not been a showing of good cause by Mr. Shaughnessy for his failure to appear.

Based upon the reasons set forth above, the Board voted unanimously to DENY Mr. Shaughnessy's request to postpone the hearing on the merits of his appeal and to DISMISS his appeal for failure to appear as scheduled.

THE NH PERSONNEL APPEALS BOARD

  
Patrick H. Wood, Chairman

  
Robert J. Johnson, Commissioner

  
Anthony B. Urban, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol Street, Concord, NH 03301  
Nancy Smith, Senior Assistant Attorney General, Department of Justice, 33 Capitol Street,  
Concord, NH 03301  
Mr. John Shaughnessy, Office of Emergency Management, 107 Pleasant Street, Concord, NH  
03301  
Mr. John Shaughnessy, PO Box 152, Goshen, NH 03752

Appellant's Motion to Continue  
Appeal of John Shaughnessy – Doctet #2002-D-2

Transcript of Appellant's Voice Mail Message

Recorded at the Office of the Executive Secretary to the NH Personnel Appeals Board

8:08 A.M., February 20, 2002, At 603-271-1421

Yes, Mary Ann, at your request I'm making this call and leaving this voice recorded message. As I conveyed to you in our previous conversation, I fell, this is John Shaughnessy calling, by the way. And I'm at home, 863-1476. And I fell, I was on my way up to a meeting in Stratford Friday, and I fell on a parking lot and hurt my back. I didn't really notice the real stiffness and the symptoms until the following morning and I had numbness in my leg and so much so that sitting in any one position fifteen minutes or so it became to where I didn't have a lot of feeling in my leg. So, I've been kind of nursing that along and hoping I could make the hearing this morning, but as it turns out it's not significantly better, and that's what's keeping me from being there. And you indicated to me that there might be some prejudice against me and my case might be dismissed if I wasn't able to make it in today, and I'm simply physically not able to make the drive, so I don't know what to say. I'd just like the Board not to have prejudiced my case because of this illness. I did go day to day trying to make it in, but otherwise I would have called earlier. I simply didn't know that I wouldn't be able to make it until this morning. So that's the situation, and I do a Motion for a Continuance on that basis, on the basis of the fact that I'm simply unable to make it in. Thank you. Good bye.

# State of New Hampshire



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*Appeal of John Shaughnessy*  
*Docket #2002-D-2*  
*Office of Emergency Management*

January 10, 2002

The New Hampshire Personnel Appeals Board met in public session on Wednesday, December 12, 2001, and convened a first pre-hearing conference in the above titled appeal. Senior Assistant Attorney General Nancy Smith appeared on behalf of the agency. John Shaughnessy, the appellant, appeared pro se. At that meeting, the parties agreed to appear for a second pre-hearing conference on Wednesday, January 9, 2002, to address any unresolved discovery issues. The Board (Wood, Johnson and Urban) met in public session on Wednesday, January 9, 2002, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the Rules of the Personnel Appeals Board for the second pre-hearing conference.

Senior Assistant Attorney General Nancy Smith appeared on behalf of the agency. Ms. Smith advised the Board that she had received a voice mail message from Mr. Shaughnessy that morning, in which Mr. Shaughnessy stated that he was ill and would not be attending the meeting. In the message, Ms. Smith said, the appellant indicated that he would contact the Director of Personnel about the continuance as well. Neither Mr. Shaughnessy nor anyone representing the appellant appeared as scheduled. The Board recessed the meeting briefly while its Executive Secretary checked her office to see if there were any messages from Mr. Shaughnessy. Although there were no calls made directly to the Board, the Board later

confirmed that Ms. Shaughnessy had left voice mail for the Director of Personnel, asking Mr. Manning to convey a message to the Board concerning the appellant's need to continue the pre-hearing conference.

The Board decided not to penalize the employee, based on his representation that he was ill, for his failure to appear. However, in the future, any communication between the appellant and the Board concerning the appeal or the appellant's attendance at a Personnel Appeals Board meeting should be directed to the Board's Executive Secretary as well as to the agency's representative in accordance with Board's Rules (Chapters Per-A 100-200).

At the meeting, the Board reviewed the documents filed by the State and discussed with Ms. Smith the State's Motion to Compel Discovery. The Board then ordered the appellant to produce the following documents:

- 1) Any notes, handwritten or otherwise, memorandum, minutes, or other type of written or electronic record in his possession, other than those provided by Ms. Smith to Mr. Shaughnessy in the documents enclosed with Ms. Smith's letter of January 3, 2002, concerning meetings, communications or discussions in which he was involved that were mentioned in the September 19, 2001 letter of discipline, including those listed in Ms. Smith's December 14, 2001 Information Request, #5 (attached).
- 2) Any notes, handwritten or otherwise, memorandum, minutes, or other type of written or electronic record in his possession, other than those provided by Ms. Smith to Mr. Shaughnessy in the documents enclosed with Ms. Smith's letter of January 3, 2002, that the appellant believes support his position that the September 19, 2001 discipline was imposed in retaliation for his filing a Whistleblower's complaint with the New Hampshire Department of Labor under RSA 275-E.
- 3) Any notes, handwritten or otherwise, memorandum, minutes, or other type of written or electronic record in his possession, other than those provided by Ms. Smith to Mr. Shaughnessy in the documents enclosed with Ms. Smith's letter of January 3, 2002, that the appellant believes support his contention that Director Fogg acted "with bad faith and malice" in imposing the discipline of September 19, 2001.

Such documents shall be presented to Attorney Smith no later than 5:00 p.m. January 16, 2002.  
This order is effective as of the date of its issuance.

If Mr. Shaughnessy believes that he can not comply with this order by the date specified, he must submit that explanation in writing to the Board and to Ms. Smith by January 16, 2002 at or before noon. Unless Mr. Shaughnessy can show good cause as to why he can't comply with this order, the Board shall refuse to admit into evidence any of the documents described by this order that are not presented to Attorney Smith by the time and date specified.

Finally, in a letter to Ms. Smith dated December 20, 2001, Mr. Shaughnessy advised Ms. Smith of his new mailing address, but he provided no such notification to the Board for its records. The appellant shall be responsible for notifying the Board of any further changes in his mailing address or telephone number. Otherwise, the Board shall not be responsible for any errors in notice or delayed notification that could occur as a result. This notice is being sent to the address provided by Ms. Smith as well as to Mr. Shaughnessy's office address and his state e-mail account.

For the Personnel Appeals Board



Mary Ann Steele

Executive Secretary to the NH Personnel Appeals Board

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Senior Assistant Attorney General Nancy Smith, Department of Justice, 33 Capitol St.,  
Concord, NH 03301  
John Shaughnessy, NH Office of Emergency Management, 107 Pleasant Street, Concord,  
NH 03301  
John Shaughnessy, PO Box 152, Goshen, NH 03752  
Via e-mail to: [johns@nhoem.state.nh.us](mailto:johns@nhoem.state.nh.us)  
Via e-mail to: [nsmith@doj.state.nh.us](mailto:nsmith@doj.state.nh.us)

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### APPEAL OF JOHN SHAUGHNESSY

Office of Emergency Management

December 12, 2001

By letter dated November 2, 2001, John Shaughnessy, an employee of the New Hampshire Office of Emergency Management requested a hearing before the New Hampshire Personnel Appeals Board, alleging that Emergency Management Director Fogg had failed to act on a grievance that the appellant had filed. Specifically, the appellant alleged that Deputy Director Murdough had "improperly chastised" the appellant and "published that chastisement to two of [the appellant's] supervisors, knowing that his chastisement was contrived, unfounded, made in bad faith and ... with malice toward [the appellant]." Mr. Shaughnessy indicated that he asked Director Fogg to discipline the Deputy Director as a result of that communication, but that Director Fogg had failed to do so.

Members of the Board, including Chairman Patrick Wood and Commissioners Lisa Rule, Robert Johnson, and Anthony Urban, reviewed that request at their meeting on Wednesday, November 14, 2001. The Board then made the following findings:

The Board's statutory authority to hear and decide appeals is defined by RSA 21-I:46, which states, in pertinent part:

The personnel appeals board shall hear and decide appeals as provided by RSA 21-I:57 and 21-I:58 and appeals of decisions arising out of application of the rules adopted by the director of personnel except those related to:

- (a) Performance evaluations of classified employees; provided, however, that an employee who is disciplined or has other adverse action taken against him as the result of an evaluation may appeal that action.
- (b) The refusal of an appointing authority to grant a leave of absence without pay.
- (c) Classification decisions of the director of personnel when the reasons for appeal are based on any of the following:
  - (1) The personal qualifications of an employee exceed the minimum requirements for the position in question.
  - (2) The employee has held the position for a long period of time.
  - (3) Any positions previously held by the employee or any examinations passed by the employee which are not required for the position in question.
  - (4) The employee has reached the maximum of the assigned salary grade.
  - (5) The cost of living or related economic factors.

Per-A 203.01 of the NH Code of Administrative Rules also provides that:

"Pursuant to RSA 21-I:46, the personnel appeals board shall hear and decide appeals as provided by RSA 21-I:57 and 21-I:58, appeals of decisions arising out of application of the rules adopted by the director of personnel, and appeals as specified in RSA 21-I:52 arising out of an alleged conflict of interest."

Having reviewed the appellant's November 2, 2001, request for a hearing, and the documents attached to that request, the Board found that the issues raised by the appellant are not an appeal of an agency decision arising out of an application of the personnel rules as contemplated by RSA 21-I:46, 52, 57, or 58. Accordingly, the Board voted unanimously to DISMISS the appeal for lack of subject matter jurisdiction.

FOR THE PERSONNEL APPEALS BOARD

  
Patrick H. Wood, Chairman

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301  
John Shaughnessy, 80 Pleasant Street, Concord, NH 03301  
Woodbury Fogg, Director, NH Office of Emergency Management, 107 Pleasant St.,  
Concord, NH 03301