

State of New Hampshire



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

Mailed
6-8-01

Appeal of Elaine Surrell

Docket #01-D-4

New Hampshire Department of Health and Human Services

The New Hampshire Personnel Appeals Board (Wood, Rule, and Johnson) met in public session, on Wednesday, April 11, 2001, under the authority of RSA 21-I:59 and Per-A 100-200 of the Code of Administrative Rules, to hear the appeal of Elaine Surrell, an employee of the Department of Health and Human Services. Ms. Surrell, who was represented at the hearing by SEA Field Representative Donald P. Taylor, was appealing a March 17, 2000 written warning issued to her for failing to meet work standards. Attorney John Martin appeared on behalf of the, State.

In accordance with Per-A 207.02 (b) of the Code of Administrative Rules/Rules of the Personnel Appeals Board, the hearing in this matter was conducted on offers of proof by the representatives of the parties. The record of the hearing consists of the audio tape recording of the April 11, 2001 hearing, documents submitted by the parties prior to the hearing, notices and orders issued by the Board, and documents admitted into evidence as follows:

Appellant's Exhibits

1. Letter of Warning issued to Ms. Surrell, dated March 17, 2000
2. April 10, 2000 appeal to Patricia Grover and Betsy Wilder
3. June 21, 2000 letter from Betsy Wilder to Kate McGovern

4. June 30,2000 appeal to Joan Whitfield
5. August 21,2000 letter from Virginia Lamberton to Kate McGovern
6. September 6,2000 appeal to Donald Shumway
7. October 4,2000 letter from Stephen R. Davis to Thomas Hardiman
8. October 13,2000 appeal to Thomas Manning
9. October 17,2000 letter from Thomas Manning to Donald P. Taylor

State's Exhibits

1. Performance summary dated August 26, 1998
2. Letter of Warning to Ms. Surrell dated May 12, 1999
3. Performance summary for Ms. Surrell dated November 15, 1999
4. Letter of Warning issued to Ms. Susrell dated March 17,2000
5. April 12,2001 report from Attorney John Martin (provided after the hearing at the Board's request)

In the letter of appeal filed on Ms. Surrell's behalf on November 3,2000, Mr. Taylor wrote:

"Ms. Surrell is truly only guilty of some simple errors which are a fact of life in the extremely complex work patterns of a CPSW [Child Protective Service Worker], and fall far short of 'failure to meet work standards.' Much of the letter of warning holds the appellant responsible for mistakes made by others. Significant portions of the letter of warning rely on unverified statements by clients, leaving Ms. Surrell to then prove her innocence."

Mr. Taylor argued that it was unfair and unreasonable for the Department of Health and Human Services to hold Ms. Surrell responsible for "bumps in the process" when responsibility for problems should be shared with the others who were involved in the process. Mr. Taylor explained that case management requires Ms. Surrell to interact with a number of "other players," including co-workers, supervisors, other service agencies and their employees, GALs

and CASAs (Guardians Ad Litem and Court Appointed Special Advocates), parents, and foster parents. He argued that child protective service is difficult, and there will always be complaints from those who feel that the process is faulty, particularly when the need for service exceeds the available resources. Mr. Taylor argued that it was a credit to Ms. Surrell and to CPSWs in general that they are able to provide the level of service that they do given the complexity of their work and the size of their caseloads.

Mr. Taylor argued that Ms. Surrell's supervisors made a real "leap of faith" when they assumed that if there were any complaints about the appellant's performance, the complaints themselves were sufficient to justify a written warning. He argued that if the Board were to ignore all of the unverified complaints and the unproven allegations contained in the letter, the only things left would be some simple errors, none of which would be sufficient in and of themselves, to support a written warning.

Finally, Mr. Taylor argued that it was unreasonable for the appellant's supervisors to include in the corrective action plan a requirement that the appellant's supervisors would receive "no more complaints from people who feel 'discriminated against or judged' by [her]." Mr. Taylor argued that while it might be reasonable to hold the appellant accountable for any "founded complaints," Ms. Surrell certainly could not control the behavior of everyone involved in the process and therefore had no way of controlling whether or not the agency received complaints.

Mr. Martin argued that the Department's decision to issue a written warning to Ms. Surrell for failure to meet work standards was both reasonable and appropriate. He argued that although any one incident might seem insufficient in and of itself to warrant formal discipline, cumulatively, the number and nature of the complaints received as well as the behaviors observed by Ms. Surrell's supervisors supported their decision to issue a written warning.

Mr. Martin summarized the complaints and observed behaviors giving rise to the warning as follows:

- The appellant failed to make timely, regular home visits to some of the children in her caseload, and she failed sometimes to return calls or maintain appropriate communications with parents, foster parents, parent aides, or service providers.
- The appellant missed some critical court reporting deadlines and on more than one occasion failed to apprise parents, foster parents, parent aides, or service providers of critical information including scheduled hearings or changes in visitation schedules.
- The appellant failed to submit to her supervisor weekly work schedules, telephone logs, copies of correspondence, or copies of reports to the court 5 days prior to hearings, as had been required by the corrective action plan outlined in her first written warning.

Mr. Martin argued that because of personnel cuts and hiring freezes, jobs throughout the agency had become more difficult and employees had to work harder, continually resetting priorities in order to keep up with work demands. However, he said, the appellant had demonstrated repeatedly that she was capable of meeting the work standard. Therefore, when her work became erratic and unsatisfactory, the agency had no real choice but to issue her a written warning as the least severe form of discipline.

On the evidence, argument, and offers of proof, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. Ms. Surrell was hired by the Department of Health and Human Services as a Social Worker Trainee in December, 1994.
2. Between 1994 and 1998, Ms., Surrell was promoted within the department through a series of classifications including Social Worker I, Child Protective Service Worker Trainee, and Child Protective Service Worker I, until her most recent promotion in August, 1998, to Child Protective Service Worker II.

3. Child Protective Service Workers are responsible for a variety of complex, time-critical case management and case coordination activities associated with delivery of services to children who are under the supervision of the Division for Children, Youth and Families.
4. Ms. Surrell's duties and responsibilities as a CPSW II include frequent interactions with family members, guardians, advocates, service providers, caseworkers, authorities, and fellow employees. Ms. Surrell also is required to make regular home visits to the children in her caseload.
5. Although Ms. Surrell has received at least two satisfactory performance evaluations in her current position, those evaluations indicate that the appellant needs to communicate more effectively, be more timely in returning telephone calls, and work on prioritizing assignments to assist her in meeting deadlines.
6. In May, 1999, Ms. Surrell received a first written warning for Failure to meet work standards.
7. The warning included a detailed, six-part corrective action plan that required Ms. Surrell to keep her supervisor apprised of her activities by submitting to her a weekly work schedule, a telephone call log, and copies of all of her out-going correspondence. The plan called for relocation of Ms. Surrell's office so that her calls could be more carefully monitored. The plan also required Ms. Surrell to maintain appropriate professional and interpersonal communications inside and outside of the office.
8. Ms. Surrell received another satisfactory performance evaluation in November, 1999, and was rated as meeting expectations in all categories. The evaluator noted, among other things, significant improvement in Ms. Surrell's interpersonal communications, although she again identified meeting deadlines and interacting appropriately with the public as areas in need of improvement.
9. Over the course of approximately four months following that evaluation, Ms. Surrell's supervisors received a number of complaints from parents, foster parents, advocates, case workers, and service providers that Ms. Surrell was not returning phone calls, that she was not making regular visits to all of the children in her caseload, and that she was not providing timely reports to the court when required to do so.

10. Ms. Surrell claimed to have made more direct contacts with certain children in her caseload than the Division's records indicated because she simply did not note the visits either in the case record or in the "Bridges" database; however, she admitted that she did not complete as many home visits to children in her caseload as the terms of the "Eric L." agreement require.
11. Ms. Surrell indicated that she had not visited one of the children in her caseload because she believed that the child's foster parent was "inappropriate," but the appellant failed to offer a reasonable explanation why that assessment would not have created a more urgent need for regular visits.
12. Ms. Surrell said that she had not visited another of the children in her caseload because there was no formal "finding" formally transferring the case to her caseload.
13. Foster parents for at least two of the children in Ms. Surrell's caseload asked the appellant's supervisors to assign another social worker to the children because they believed that Ms. Surrell had shown no interest in the children, had developed no relationship with them, and was not providing the level of support that children in foster care needed.
14. Although Ms. Surrell's caseload and working conditions were similar to those of her co-workers, Ms. Surrell's supervisors received a large and disproportionate number of complaints about her from other service providers, parents and foster parents, guardians and advocates.

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 for offenses including, but not limited to: (1) Failure to meet any work standard... [Per 1001.03 (a)]
- B. "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-A207.12 (b)]

- C. "In all cases, the personnel appeals board may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just." [RSA 21-I:58, I]

Decision and Order

Mr. Taylor characterized the warning as "largely a cataloging of events that didn't proceed smoothly." He argued that the Department acted unreasonably by holding Ms. Surrell responsible for the mistakes of others and intimating that she had shirked or neglected her duties, thereby failing to meet the work standard. He argued that although Ms. Surrell had made mistakes and had misunderstood her responsibilities occasionally, none of her work or her conduct warranted a written warning.

Mr. Martin argued that individually, any of the incidents or problems described in the warning might not be sufficient to justify formal discipline. However, he argued, considered in their entirety, they constituted failure to meet the work standard and warranted a written warning. Mr. Martin argued that the appellant's supervisors, after counseling the appellant and evaluating her performance, realized that she "just wasn't getting it." He argued that the next logical step in attempting to improve Ms. Surrell's performance was a written warning as the least severe form of discipline to correct the problems that had been identified.

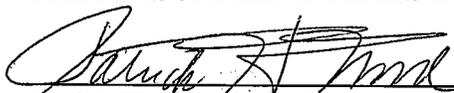
Having considered the evidence and argument offered by the parties, the Board voted unanimously to uphold the agency's decision to issue the written warning giving rise to this appeal. The evidence does not support the appellant's claims that she had been singled out, that

she had been held to an unreasonable standard, or that she had been disciplined for the mistakes of others.

The Board appreciates the appellant's frustration at having to coordinate so many of her activities with other employees, agencies, advocates, and interested parties. Nevertheless, that frustration did not excuse her from prioritizing the work to be performed and carrying out the responsibilities that had been assigned to her, particularly in conducting home visits with the children in her caseload and maintaining appropriate communications with foster parents and service providers.

For the reasons set forth above, the Board voted unanimously to DENY Ms. Surrell's appeal and to affirm the agency's decision to issue her a written warning dated March 17, 2000, for failure to meet the work standard.

THE PERSONNEL APPEALS BOARD


Patrick H. Wood, Chairperson


Lisa A. Rule, Commissioner


Robert J. Johnson, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301
Donald P. Taylor, SEA Field Representative, PO Box 3303, Concord, NH 03302-3303
Atty. John Martin, Office of Program Support, 129 Pleasant St., concord, NH 03301-

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