

State of New Hampshire



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

Appeal of Sherrie Tucker

Docket No. **92-D-1**

February 7, 1992

Sherrie Tucker is an employee of the Postsecondary Education Commission. She appeals a written warning issued to her on January 22, **1991**, for willful insubordination.¹ Ms. Tucker is represented by State Employees' Association Field Representative **Stephen McCormack**. The agency is represented by James A. Busselle, its Executive Director.

The Postsecondary Education Commission employs a computer software system called **Micro Fairs** in managing its client database and performing some of its functions. The system contains confidential information and is accordingly equipped with various security features. Of note, users are assigned security clearance levels (1-5) and must be identified and utilize passwords in order to access the system. The system keeps track of all of such "log-ons" and identifies the **accessor** by means of the passwords. There is a master password which, when used, is not recorded as

¹ The letter as originally issued **warned** Ms. **Tucker** to correct instances of inappropriate and unethical conduct. These portions of the warning were withdrawn at Director **Busselle's** level in the appeal and adjustment process. Accordingly, those aspects of the letter of warning have not been considered **by** the Board.

previously noted. The main purpose of the master password of concern here is to afford the person given the duties of "security **administrator**" a means to access the system and assign passwords, re-synchronize the system with the users and perform a few other functions. The evidence as a whole suggests that the agency has not maximized the security features of Micro **Faids**. There are only a few users who work closely together and the general approach to system security within the office is moderately casual. It is in this context that the instant matter arises.

Sherrie Tucker is a Senior Clerk Interviewer. She reports directly to Mr. Ronald Wilson, Student Financial Aid Coordinator. At the end of 1990, Mr. Wilson went to England on vacation. While he was away, Tucker felt the need to access information in Micro **Faids** beyond security level 3, her clearance level. She routinely accessed this higher level information often doing so with Wilson's permission using his password after he logged on to the system. As this was not an available option, Tucker asked Mr. Busselle for approval to use his password in order to access information needed in her work up to security level 5, the highest level. Mr. Busselle gave this approval, which was given "until Mr. Wilson returned" (Exhibit VIII). The master password was available to Tucker and may have been used by her when she was initially trained in the comparatively new Micro **Faids** system. Tucker was authorized to access Micro **Faids** using Busselle's password, or her own, and was to cease using **Busselle's** when Wilson returned. She was not authorized to use the master password.

Mr. Wilson returned on January 4, 1991. On that day, he and Busselle both observed Tucker using Micro Faids. After Tucker left for the day, Wilson logged on and reviewed a screen showing access to the system listed by the various passwords.² Mr. **Wilson's** review of the screen, apparently accessed using the master password, revealed that the last day **Busselle's** password had been used was the prior day, the last day **Tucker's** was used was December 19, 1990. As both men had seen Tucker using the computer on January 4, the conclusion was reached that Tucker must have either accessed Micro **Faids** using the master password or **Wilson's**, neither of which she was authorized to use. Accordingly, the letter of warning at issue here was prepared and issued to Ms. Tucker.

For her part, Tucker says she did access the system on January 4, and she did so, as authorized, by using Busselle's password. She points out that when she accessed the system early in the morning, Mr. Wilson had not yet returned. She says she **doesn't** know why the system does not show **Busselle's** password ("Duke") having been used on January 4, but she remembers that there were difficulties with the computer "**clock**" which records the date and times of log-ons. She says the clock had to be fixed the prior fall, which Mr. Wilson also recalls. She feels the clock may be 12

² In light of this history and testimony that Wilson and Tucker no longer got along well, it is interesting to speculate why Wilson turned his attention to this particular matter so promptly. However, such speculation calls into question the significance of the discipline under appeal herein, but is of little technical relevance to our assessment of the facts adduced at hearing, although it may relate to **any** remedy to be ultimately determined.

hours out of phase so that her morning log-on using Busselle's password may have been recorded by the computer as January 3, rather than the fourth.

For his part, Mr. Wilson says that the clock appears to have been working correctly when he accessed the system on the afternoon of the fourth and the computer shows a log-on for him on the fourth, consistent with the possibility of Tucker using his password, less so with the possibility of the clock being 12 hours out of phase. Mr. Wilson notes in the instant letter of warning that he informed Tucker on December 12, 1990, that she was to use only the password assigned to her for work with Micro Faids. Obviously, this was temporarily modified by Mr. **Busselle's** approval of her use of his password until Mr. Wilson returned. It is, as allegedly proved by the **computer's** own password access records, the use of the master password or Mr. Wilson's, and Ms. Tucker's denial thereof, that is contended to constitute willful insubordination in light of the notice of December 12 from Ms. **Tucker's** supervisors regarding the use of passwords. Accordingly, they urge that the instant letter of warning to upheld.

Per 308.03(2)(b) provides that willful insubordination may be grounds for discharge in certain cases, while in other cases one written warning prior to discharge may be warranted. Assuming arguendo that the facts set forth above could constitute "willful insubordination," the written warning must stand unless Ms. Tucker meets her burden to prove that, by a preponderance of the evidence, she was not willfully insubordinate. It appears to the Board, that

Ms. Tucker meets her burden only if she persuades us that there was a problem with the clock and that she in fact used Mr. **Busselle's** password on January 4, 1991. Otherwise, she used the master password or Mr. **Wilson's** code without express authority and apparently after having been told not to do so by Mr. Wilson on December 12, which the Board feels constitutes a cognizable case of willful insubordination under Per 308.03. On all of the evidence, the Board is not fully persuaded that Ms. Tucker has met her burden. However, the Board is also of the view that the instant letter of warning has achieved its intended purpose as well as possible. Accordingly, on all of the evidence and as a matter of equity, the Board concludes that the instant letter of warning must be sustained, but that it shall cease to have any weight for discharge or future disciplinary proceedings as of the date of hearing hereon, December 4, 1991.

So Ordered.

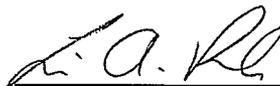
The Personnel Appeals Board



Mark J. **Bennett**, Acting Chairman



Robert J. **Johnson**, Commissioner



Lisa A. **Rule**, Commissioner

cc:

James A. Busselle
Postsecondary Commission
Ronald Wilson
Postsecondary Commission
Stephen McCormack
State Employees' Association
Virginia A. Vogel
Director of Personnel