

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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95-D-905

APPEAL OF BARBARA WELLS
Docket #95-D-5
New Hampshire Hospital

January 9, 1996

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Rule) met Wednesday, August 16, 1995, under the authority of RSA 21-I:58, to hear the appeal of Barbara Wells, a Switchboard Operator at New Hampshire Hospital. Ms. Wells, who was represented at the August 16th hearing by SEA Field Representative Dennis Martino, was appealing an August 16, 1994, written warning for failing to meet the work standard by allegedly giving "medical" advice to visitors to the hospital. Marie Ann Lang appeared on behalf of New Hampshire Hospital.

At the initial hearing, Mr. Martino asserted that if the appellant were permitted to present testimonial evidence, Ms. Wells would be able to prove that her suggestion about using Domeboro¹ was an off-hand remark made to a co-worker, not to a hospital visitor, and that a casual remark about use of an over-the-counter remedy could not be considered "medical advice" as charged in the letter of warning. Mr. Martino asserted that Sally Ann Maxfield would testify that Ms. Wells was speaking with a co-worker, not a visitor, when the discussion about Domeboro occurred. He also asserted that either Ms. Bodine or Ms. Maxfield would testify that she had apologized to Ms. Wells after the written warning was issued and had offered to retract the complaint. He offered to prove through Ms. Wells' testimony that there had been some sort of "tiff" between Ms. Wells and a co-worker, and that the charge against Ms. Wells was made in retaliation for that incident.

¹ Domeboro is an over-the-counter astringent solution for treatment of minor skin irritations such as poison ivy.

Ms. Lang offered to prove through the testimony of Charles Goodale, Chief of Security, and through the testimony of Jackie Bodine and Sally Ann Maxfield, that on August 3, 1994, Ms. Wells gave medical advice to a visitor, suggesting that the person try Domeboro. She offered to prove that Ms. Bodine and Ms. Maxfield, having witnessed the exchange, called a drug store to get information about Domeboro, and then communicated their concerns about Ms. Wells' conduct to their supervisor. She asserted that both Ms. Bodine and Ms. Maxfield would testify that Ms. Wells is a good-hearted person and was not acting with any malice, but that she was not qualified to give the kind of advice she was giving. She offered to prove that before issuing the written warning, Security Chief Goodale had investigated the allegation by speaking with Ms. Wells, Ms. Bodine and Ms. Maxfield. She also offered to prove that Ms. Wells had already been disciplined for an earlier incident involving "boundary issues" after Ms. Wells failed to promptly transfer a possible suicide threat to the appropriate clinician or service provider. Ms. Lang argued that the Rules of the Division of Personnel describe the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance, and that the evidence would support the agency's decision to issue a letter of warning to Ms. Wells for failing to meet the work standard.

After hearing the parties' offers of proof, the Board determined that it had insufficient evidence upon which to decide the appeal. The Board scheduled the parties to appear on November 1, 1995, to produce additional evidence in the form of testimony by any or all of the four persons directly involved in the incident(s) giving rise to the appeal. Jean Chellis, SEA Field Representative, appeared on the appellant's behalf. Marie Lang appeared on behalf of New Hampshire Hospital.

The Board received sworn testimony from the following persons:

Charles I. Goodale, Chief of Security, New Hampshire Hospital
Jacqueline Bodine, Switchboard Operator (retired), New Hampshire Hospital
Sally Ann Maxfield, Switchboard Operator, New Hampshire Hospital
Barbara Wells, Appellant

The Board also admitted the following evidence into the record:

NHH 1 - November 4, 1994 letter signed by Charles I. Goodale (with copies to B. Wells, S. Courage and M. Lange)
NHH 2 - August 4, 1994 statement written by Jackie Bodine concerning events on August 3, 1994
NHH 3 - August 4, 1994 statement written by Sally Ann Maxfield concerning events on August 3, 1994

Mr. Goodale, Chief of Security at New Hampshire Hospital, testified that he is Ms. Wells' immediate supervisor. He testified that when he returned from two weeks of annual leave in the summer of 1994, he was advised by his assistant, Don Palmer, that there had been a problem involving Barbara Wells. Mr. Goodale learned that Jackie Bodine and Sally Ann Maxfield had accused Ms. Wells of giving medical advice to a visitor to the hospital. Mr. Goodale undertook an investigation of the incident. He testified that he reviewed the written statements submitted by Ms. Bodine and Ms. Maxfield to Mr. Palmer, and that he met with Ms. Bodine and Ms. Maxfield to discuss their allegations. Mr. Goodale testified that he also met with Ms. Wells to discuss their complaints. He testified that after completing his review, he concluded that Ms. Wells had inappropriately given medical advice to a visitor. On August 16, 1994, he issued her a written warning for failing to meet the work standard.

Ms. Bodine testified that she was working with Ms. Wells on August 3, 1994, when she heard Ms. Wells telling a person visiting the hospital to try using Domeboro for a broken leg. She testified that this was not the first time she had heard Ms. Wells giving advice to visitors, and although she knew that Ms. Wells' actions were well-intentioned, she believed that the incident was serious enough to warrant reporting it to her supervisor. Ms. Bodine testified that after hearing the remark, she discussed the incident with Sally Ann Maxfield, who also had overheard the remark being made. She testified that they called a drugstore to find out what Domeboro was, and learned that it is used to treat skin irritations such as poison ivy. She testified that she and Ms. Maxfield reported the incident to Don Palmer, the Assistant Security Chief who was on duty on the date of the incident. She testified that Mr. Palmer directed her and Ms. Maxfield to submit written statements outlining their concerns.

Ms. Bodine testified that she had worked for three years as a switchboard operator at New Hampshire Hospital, and also had worked previously for the Sarasota Sheriff's Department. She testified that throughout her career, she had never heard any operator or dispatcher except for Ms. Wells giving advice to visitors. Ms. Bodine testified that although she and Ms. Wells were friends, she considered Ms. Wells' conduct too potentially dangerous to ignore. She testified that her statement about the incident was accurate, that she had never apologized to Ms. Wells for having reported the incident, and that she had never offered to retract the complaint.

Sally Ann Maxfield testified that she was on duty when she heard Ms. Wells talking with a visitor whose leg was in a cast. She testified that the person was complaining that her leg wasn't healing, and Ms. Wells suggested that she should try Domeboro. She testified that after discussing the incident with Ms. Bodine, they called a drugstore and learned that Domeboro is usually used to treat poison ivy, and that while it probably wouldn't hurt to use it, using it wouldn't help either. Ms. Maxfield testified that she spoke with Assistant Security Chief Palmer about the incident. Ms. Maxfield testified that neither she nor Ms. Bodine wanted to get Ms. Wells in trouble, but that something had to be done because medical advice should only

be given by a doctor. Ms. Maxfield testified that she and Ms. Wells were friends, but that she had never apologized to Ms. Wells for having made the report, and had never offered to retract her complaint about Ms. Wells' conduct.

Upon direct examination, Ms. Wells denied that the August 3, 1994, incident giving rise to the warning ever occurred. She testified that although her own family had used Domeboro "for generations," she "would never prescribe anything like that to anyone." Ms. Wells denied that she had recommended effacanesia to a person with a blood disease, and asserted that she knew nothing about the medication or its use. However, she testified that she was aware of an incident in which another employee had suggested effacanesia to Ms. Bodine.

When asked if she ever would give medical advice to anyone visiting the switchboard area, she responded, "Where would I get the time? We're so busy all of the time." When asked what might have prompted Ms. Bodine and Ms. Maxfield to accuse her falsely of giving medical advice to a visitor, Ms. Wells testified that there had been a bad incident involving Jackie Bodine when she and Ms. Bodine were working on the switchboard on August 4, 1994. She testified that Ms. Bodine had accused a patient's visitor of being a liar. Ms. Wells stated that she had reported the incident to Mr. Goodale, but that nothing had been done about it. When asked about her relationship with Ms. Bodine, and Ms. Bodine's testimony that she and Ms. Wells were friends, Ms. Wells testified that "friends" are people you've known for twenty years. Ms. Wells testified that she tries to get along with everyone, and that she and Ms. Bodine could only have been considered "working friends" in that sense. Ms. Wells gave a similar description of her relationship with Ms. Maxfield, and testified that although she had never had a problem working with Ms. Maxfield, others had. She testified that as long as Ms. Maxfield had been employed at the switchboard, there had been problems among the staff.

After considering the sworn testimony of Mr. Goodale, Ms. Bodine and Ms. Maxfield in light of Ms. Lang's earlier offers of proof, the Board found that their testimony was consistent with the offers of proof made at the August 16, 1995, hearing. By comparison, Ms. Wells' testimony was not consistent with the offers of proof made by Mr. Martino on that date, nor was it entirely consistent with the representations made by Ms. Wells and her representative throughout the informal settlement process. Where Mr. Martino had offered to prove that there was a discussion about Domeboro between Ms. Wells and a co-worker, Ms. Wells denied that any such discussion occurred.

In her January 16, 1995, letter of appeal, Ms. Chellis stated, "Ms. Wells denies that she has been giving 'medical' advice to visitors, and specifically denies the original allegation that on

August 3, 1994 she told a visitor with a blood disease to take [Domeboro]."² (Emphasis added.) Through the process of informal settlement, the written warning was revised in December, 1994, to accurately reflect Ms. Bodine's and Ms. Maxfield's allegations.

On December 20, 1994, after the warning had been amended, Ms. Chellis requested a meeting with the Acting Commissioner of the Department of Health and Human Services to review the warning. Although Ms. Chellis asserted that Ms. Wells denied giving "medical" advice, she did not make a similar assertion about giving advice generally. Similarly, she asserted that Ms. Wells denied "the original allegation." However, she did not address the revised allegation that she had suggested the use of Domeboro to someone with a broken or injured leg rather than to someone with a blood disorder.

In her December 20, 1994, request, Ms. Chellis also raised a new basis for appeal, alleging that at the "Step II" informal settlement meeting with Dr. Gorman on December 14, 1994, Ms. Wells had asserted that the complaints by her co-workers were actually prompted by "a bad incident where a co-worker called a little girl who was a visitor to the hospital a liar." Ms. Chellis' letter did not specify which co-worker was involved in the alleged incident.

In her January 16, 1995, request for a hearing before the Personnel Appeals Board, Ms. Chellis stated, "Ms. Wells believes that incident [in which a co-worker allegedly called a visitor a liar] led her co-workers to issue the complaints that led to her August 16, 1994, letter of warning." That issue was raised again at the August 16, 1995, Personnel Appeals Board hearing when Mr. Martino offered to prove that the complaints against Ms. Wells were in retaliation for a "tiff" with a co-worker. However, Mr. Martino made no offers of proof relative to the substance of the alleged "tiff."

At the November 1, 1995, hearing, Ms. Wells testified that Ms. Bodine had called a visitor a liar, and that nothing had been done about it, even after Ms. Wells had reported the incident to Mr. Goodale. Ms. Chellis had an opportunity to question Ms. Bodine about this alleged "tiff," and to question Mr. Goodale about his alleged failure to address Ms. Wells' complaint. However, the appellant did not pursue either issue. Accordingly, the Board found no evidence to corroborate Ms. Wells' assertions.

Per-A 203.01 of the Rules of the Personnel Appeals Board establishes that the employee has the burden of proof in disciplinary appeals. In this instance, Ms. Wells failed to persuade the Board

² The original letter of warning alleged that Ms. Wells had given advice about the use of Domeboro to a person with a blood disease. On December 16, 1994, New Hampshire Hospital Superintendent Paul Gorman advised Ms. Chellis that, as a result of his meeting with her on December 1, 1994, he was having the written warning revised to reflect the allegations made by Ms. Bodine and Ms. Wells, that Ms. Wells had recommended Domeboro to a person with a broken leg, not to a person with a blood disorder.

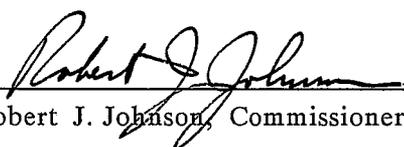
that the reports of the incident giving rise to the warning were false, or that her co-workers who made the complaints about her had any reason to misrepresent the facts, or were acting in retaliation for any other incident or event. In the Board's opinion, Mr. Goodale, Ms. Bodine and Ms. Maxfield were all very credible witnesses. Their testimony was consistent with the evidence and earlier offers of proof, and the weight of the evidence supports New Hampshire Hospital's allegations that Ms. Wells gave advice to a visitor concerning the use of Domeboro. Ms. Wells' testimony, on the other hand, was not consistent with the evidence or offers of proof. Although there was ample opportunity for the appellant to question Ms. Bodine and Ms. Maxfield about their alleged motives for making a false report about Ms. Wells' conduct, the appellant elected not to question the witnesses on that point. Ms. Wells also offered no evidence that either Ms. Bodine or Ms. Maxfield had mischaracterized their relationship with the appellant prior to the incident, or that they had attempted to shift "blame" to Ms. Wells for any problems in the workplace.

Having considered the testimony and evidence, the Board found that Ms. Wells failed to meet the work standard by giving advice about the use of a non-prescription drug to a New Hampshire Hospital visitor. The Board found that Ms. Wells exercised poor judgement in giving out such advice, and that her conduct warranted disciplinary action. The Board also found that the agency acted within its discretion by issuing her a written warning as the least severe form of discipline to correct her unsatisfactory work performance. Accordingly, the Board voted unanimously to deny Ms. Wells' appeal.

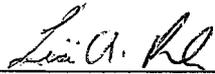
THE PERSONNEL APPEALS BOARD



Patrick J. McNicholas, Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Dennis Martino, SEA Field Representative
Marie Ann Lang, NHH Human Resources Administrator

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95-D-905

APPEAL OF BARBARA WELLS
Docket #95 -D-5

New Hampshire Hospital

August 31, 1995

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Rule) met Wednesday, August 16, 1995, to hear the appeal of Barbara Wells. Ms. Wells, who was represented at the hearing by SEA Field Representative Dennis Martino, is employed by New Hampshire Hospital as a switchboard operator. She was appealing an August 16, 1994 warning for failing to meet the work standard by allegedly giving "medical" advice to visitors to the hospital. Marie Ann Lang appeared on behalf of New Hampshire Hospital.

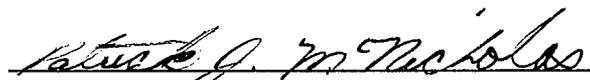
In addition to hearing the parties' offers of proof in this matter, the Board heard oral argument on the appellant's Motion to Dismiss. The appellant requested that the Board order the removal of the warning from Ms. Wells' personnel file based on New Hampshire Hospital's alleged failure to comply with Per-A 202.08 in a timely fashion. The Board took that motion under advisement.

After hearing the parties' offers of proof, the Board determined that it had insufficient evidence to decide the appeal. Therefore, under the authority of Per-A 203.09 of the Rules of the Personnel Appeals Board, the Board voted to require the parties to produce additional evidence in the form of testimony by any or all of the four persons directly involved in the incident(s) giving rise to the appeal. The four potential witnesses shall include the appellant, her supervisor, and the two co-workers who complained of Ms. Wells' conduct. Having decided to permit the parties to examine and cross-examine these witnesses, the Board voted to deny the appellant's Motion to Dismiss. The appellant now has ample warning of which witnesses may be expected to testify at the further hearing, and will have an opportunity to elicit from those witnesses the testimony which was proffered at the August 16, 1995 meeting.

The Board has scheduled this matter for further hearing at 9:00 a.m. on November 1, 1995 in Room 411 of the State House Annex, Concord, New Hampshire. Motions to reschedule this matter must be received by the Board within ten days of the date of this order to be considered.

The Board has allotted one hour to complete the hearing in this hearing. To the extent possible, the parties shall limit the scope of their evidence to those matters raised as offers of proof.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson, Commissioner


Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Dennis Martino, SEA Field Representative
Marie Ann Lang, NHH Human Resources Administrator