

# State of New Hampshire

PERSONNEL APPEALS BOARD  
Edward J. Haseltine, Chairman  
Gerald Allard  
Loretta Platt



EXECUTIVE SECRETARY  
Mary Ann Steele

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

88-P-100

## MOTION FOR RECONSIDERATION APPEAL OF WAYNE BROCK

April 4, 1988

On September 29, 1987, the State Employees' Association filed with the Personnel Appeals Board a motion for reconsideration of the Board's September 14, 1987 decision denying Mr. Brock a de novo hearing before the Personnel Appeals Board to appeal a November 21, 1986 decision of the Promotion Appeals Tribunal. At its meeting of March 29, 1988, the Personnel Appeals Board, Commissioners Cushman and Platt sitting, reviewed this appeal and made the following findings and rulings.

The appellant argued that he had not been afforded a "public" hearing before the Board when it determined that Mr. Brock should not be granted a de novo hearing before the Personnel Appeals Board, citing RSA 21-I:58 as the legal basis for this entitlement. Further, Mr. Brock contended that his non-selection was not based upon a finding that he lacked certain "personal and professional qualifications." The appellant stated his "indication, however, was that the Promotion Board's objecting to his personal appearance was based upon the fact that he is overweight. As such, this decision would have to be considered based to some extent upon a handicapping condition, clearly illegal under state and federal law, as well as the personnel rules."

On October 7, 1986, the Personnel Appeals Board adopted procedural rules pursuant to the provisions of RSA 541:A, under the authority of RSA 21-I:46. Per-A 209.04(c) of those Rules provides that, "(a) Either party may appeal to the Board for rehearing and reconsideration as provided in section 204.06. (b) Such party may provide the Board with a copy of the transcript of the hearing before the Tribunal. (c) The Board may review the evidence submitted at the hearing before the Tribunal or may order a rehearing of the matter before the full Board." In this instance, as outlined in the Board's decision of September 14, 1987, the Board reviewed the promotional appeal of Mr. Brock and found that the Department of Corrections had exercised its prerogative in selecting for promotion those candidates found to be most qualified and suitable for the vacant positions.

The appellant stated that "when he began the application process, [he] was found by the Division of Personnel to meet the minimum qualifications for the position to which he sought to be promoted." That finding by the Division of Personnel only indicates that the appellant was found to meet the minimum requirements to be considered for promotion to the vacancy. Certification by Personnel does not, however, include any indication of the candidate's ability, capacity or suitability for the position to which he seeks promotion.

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The appellant argued that "Both Dr. Powell and the Tribunal gave great weight to the decisions of this Promotion Board. Nothing in the record indicates who was on the Promotion Board or how many individuals were on it. No record from the Promotion Board was presented to the Tribunal, and it is clear that no such record exists." The Board found no reason to overturn its original decision based upon this argument, noting that the appellant had not objected to the promotional board process utilized by the agency, nor to the constitution of that board. Further, the appellant had sufficient opportunity both prior to and during his hearing before the Promotional Appeals Tribunal to request a copy of the record of the promotion board, or to object to the absence of same during the hearing.

Finally, the appellant argued that the real basis for his non-selection was his being over-weight, and that denial of promotion on that basis was a violation of his rights under state and federal law. The Board noted, however, that at no time during the hearing before the Tribunal did the appellant discuss his weight as a handicapping condition, nor that any determination had been sought or given that the appellant can or should be considered a handicapped person.

The Board determined that its original decision was supported by the record, and authorized under the Rules of the Personnel Appeals Board adopted pursuant to the provisions of RSA 21-I:46. For the foregoing reasons, the Board voted to reaffirm its earlier decision, denying Mr. Brock's request for another public hearing on his denial of promotion.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE  
Executive Secretary

cc: Stephen J. McCormack, SEA Field Representative

Thomas Tarr, Director of Field Services  
Department of Corrections

Ronald L. Powell, Commissioner  
Department of Corrections

Virginia A. Vogel  
Director of Personnel

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## APPEAL OF WAYNE BROCK AND BRUCE GRISWOLD

September 14, 1987

The State Employees' Association, on behalf of Wayne Brock and Bruce Griswold, appealed the November 21, 1986 decision of the Promotion Appeals Tribunal, denying Messrs. Brock and Griswold selection to positions of Probation/Parole Officer I. That request was filed on December 2, 1986. In support of their appeal, the appellants cited Per 302.03 of the "Rules of the Department of Personnel," that "whenever possible and reasonable, permanent employees must receive preference in selection over probationary and part-time employees. Subsequent to filing his request for reconsideration, Mr. Griswold notified the Board on April 3, 1987, that he was withdrawing his appeal.

In the case of Mr. Brock, the Board, pursuant to Per-A 209.04(c) of the "Rules of the Personnel Appeals Board," reviewed the record of the hearing and the evidence submitted and found that he was deemed to lack certain personal and/or professional qualifications in the estimation of the interview panel. Further, the Board found that the panel had been questioned by the Commissioner of Corrections to determine if, in fact, preference had been given to permanent employees to promote them if "possible and reasonable." The Board found that the Commissioner concurred with the decision of the interview panel, having determined that the candidate lacked certain personal and professional qualifications for the vacancy. The Board noted Commissioner Powell's letter of August 25, 1986, which relayed the interview panel's finding that Mr. Brock was not willing to relocate, and that while he "received high ratings for education and experience, the board unanimously ranked [him] lower in the 'over-all assessment' category because of [his] personal appearance." Further, the Commissioner stated that the interview panel had found his answers to be "lengthy and verbose."

The interview panel, the Director of Field Services, and the Commissioner of the Department of Corrections did not find it possible or reasonable to promote Mr. Brock, and indicated through their testimony that they found certain personal and professional qualifications lacking in the appellant.

The Board found no violation of the Personnel Rules relative to selection. The Tribunal determined that the Department of Corrections had exercised its prerogative in selecting for promotion those candidates found to be most qualified and suitable for the vacant positions. The

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Board therefore voted unanimously to deny the request for a hearing before the full Board to appeal the Tribunal's decision.

FOR THE PERSONNEL APPEALS BOARD

*Mary Ann Steele*

MARY ANN STEELE  
Executive Secretary

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cc: Stephen McCormack, Field Representative  
Stat? Employees' Association

Thomas Tarr, Director  
Field Services, Dept. of Corrections

Commissioner Ronald Powell  
Department of Corrections

Richard Greenwood, Personnel Officer  
Department of Corrections

Virginia Vogel  
Director of Personnel