

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
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## *Appeal of Wayne Brock*

*Docket #00-P-4*

*Department of Corrections*

*January 18, 2000*

The New Hampshire Personnel Appeals Board (Wood, Rule and Johnson) met on Wednesday, January 5, 2000, under the authority of RSA 21-I:58, to hear the appeal of Wayne Brock, an employee of the New Hampshire Department of Corrections. Mr. Brock, who was represented at the hearing by SEA Field Representative Stephen J. McCormack, was appealing the Department's July 6, 1999 decision not to select him for promotion to Program Specialist III. Staff Counsel John Vinson appeared for the Department of Corrections.

Without objection by either party, the appeal was heard on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of the pleadings submitted by the parties, notices and orders issued by the Board, the audio tape recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

### Appellant's Exhibits

1. November 3, 1999 letter from Thoinas F. Manning, Director of Personnel, to Stephen J. McCormack, SEA Field Representative, Re: Appeal of Wayne Brock, Non-Selection for Promotion
2. October 28, 1999 letter from Stephen J. McCormack to Thoinas Manning, Re: Appeal of Wayne Brock, Non-Selection for Promotion

3. October 18, 1999 letter from Don Veno, Director, Department of Corrections to Stephen J. McCormack, Re: Appeal of Wayne Brock
4. August 31, 1999 appeal letter from Stephen J. McCormack to Henry Risley, Commissioner of Corrections, Re: Appeal of Wayne Brock
5. August 26, 1999 appeal letter from Warden John Sanfilippo to Stephen J. McCormack, Re: Appeal of Wayne Brock
6. August 2, 1999 appeal letter from Stephen J. McCormack to John Sanfilippo, Re: Appeal of Wayne Brock
7. July 28, 1999 letter from John Sanfilippo to Thomas Hardiman, Re: Appeal of Wayne Brock
8. July 13, 1999 letter from Thomas F. Hardiman to John Sanfilippo Re: Appeal of Wayne Brock
9. July 6, 1999 letter from John Sanfilippo to Wayne Brock, Re: Non-Selection for Promotion
10. June 30, 1999 letter from Dennis J. McCabe, Supervisor of Examinations, Division of Personnel, to Wayne Brock, Re: Structured Interview Score
11. Posting of Position Vacancy, Department of Corrections - Program Specialist III
12. PART Per 602 - Filling Existing Vacancies, Rules of the Division of Personnel
13. Policy and Procedure Directive, s.1., NH Department of Corrections, Subject: Personnel Selection, Promotion and Retention within the Department of Corrections

#### State's Exhibits

- A. State of New Hampshire Performance Summary signed by Mr. Brock on 8/15/97
- B. August 19, 1996 letter to Wayne Brock notifying him of non-selection for the position of Probation/Parole Officer

### Position of the Parties

The appellant argued that the Department of Corrections violated its own policies and procedures and the Rules of the Division of Personnel by using only the structured interview process outlined by Per 501.06 of the Rules of the Division of Personnel rather than the complete selection process outlined by Per 602.02 of the Rules and Department of Corrections PPD 2.1. Specifically, Mr. McCormack argued that Mr. Brock participated in a structured interview to determine whether or not he met the minimum eligibility requirements to be considered a qualified candidate for selection to the position of Program Specialist III. He argued that the Department of Corrections then had an obligation under Per 602.02 of the Rules and Department of Corrections PPD 2.1., to further test the employee's possession of the knowledge, skills, abilities and personal characteristics listed on the class specification for the vacant position, and to determine his capacity for the vacant position as evidenced by reviewing and weighing his past performance appraisals.

Mr. McCormack argued that Assistant Commissioner Edda Cantor had assured Mr. Brock that the scores on the structured interview provided by the Division of Personnel simply established the candidates' eligibility for promotion. He argued that the appellant was never informed that the selection would be based upon the Division of Personnel's ranking of the candidates. Mr. Brock asserted that he was the most qualified candidate based upon his skills, ability and knowledge, and that a properly conducted oral board interview and a review of his past performance evaluations would have provided evidence that he was the best qualified candidate.

Mr. McCormack also argued PPD 2.1. authorizes only the Commissioner or Assistant Commissioner to select candidates for positions at salary grade 18 and above. He argued that the Department of Corrections violated its own Policy and Procedure Directive by allowing Warden Sanfilippo to make the selection decision and to notify the candidates of that decision.

Attorney Vinson argued that the candidates had clear notice that the structured interview process would be used for selection instead of the Department's own selection process. He noted that in Appellant's Exhibit 11, it stated, "This position requires a structured Interview as required under the NH Div. of Personnel Administrative Rules Testing Standards. Candidates will be rated on the following categories. This structured process supersedes our DOC Factor rating process." He argued that the persons best qualified to determine the appellant's capacity for the vacancy were the persons who conducted the structured interview, including two wardens and the Assistant Commissioner. He argued that the Division of Personnel's ranking then established the ranking of the various candidates' skill, knowledge and ability. He argued that the Department reasonably determined that Mr. Brock was not the most qualified candidate, gave him due notice of his non-selection, and carried out its obligations under Per 602 of the Rules of the Division of Personnel to select the candidate who, in the opinion of the appointing authority, was best qualified and most suited to the vacancy.

The following facts are not in dispute:

1. Mr. Brock made application for promotion to the position of Program Specialist III, DOC, Lakes Region Facility.
2. He participated in a structured oral interview for the position and, by letter dated June 30, 1999, signed by Dennis J. McCabe, Supervisor of Examinations, was notified that he had earned a passing grade of 72.3%.
3. According to the Notice of Position Vacancy (SEA Exhibit #11), the structured interview process superseded the Department's own "Factor Rating Process," and was intended to measure the applicants' skills, knowledge and abilities as follows: "40% Skills to deliver substance abuse treatment and skills in supervising counselors; 40% Knowledge of substance abuse systems and global understanding of those systems; and 20% Ability to verbalize clinical approach to agency systems." .

4. Department of Corrections PPD 2.1 provides, in part, "Pay grade 18 and higher selections require the Directors to present a slate of candidates, including their recommendation, to the Commissioner for approval (or in his absence the Assistant Commissioner)."
5. The selection decision was affirmed by Don Veno, Director of Administration on October 18, 1999.
6. The decision not to select Mr. Brock was appealed to the Commissioner's Office and was not over-turned.
7. Warden Sanfilippo held a meeting on August 24, 1999 at the Lakes Region Facility to permit Mr. Brock to "rebut" the selection decision. According to Mr. Sanfilippo's letter, Mr. Brock told Warden Sanfilippo that, "...under the advice of his attorney and in the light of pending litigation, he declined."
8. Mr. Brock's August 6, 1997 Performance Evaluation reported him as meeting expectations over-all, but below expectations in terms of his speaking in a courteous and helpful manner with the public and his co-workers, and below expectations in his personal appearance.
9. Mr. Brock's August 6, 1997 Performance Evaluation indicates that, "Wayne produces a high volume of work" and "good quality" clinical work. However, the reviewer noted difficulties as follows: "...[H]e does encounter difficulty and accompanying stress by overextending himself." "Wayne has a habit of making sarcastic comments to co-workers which express his displeasure with their actions. This needs to change and he needs to be more diplomatic." "When Wayne is frustrated or angry about a job situation he has a tendency to hold onto his anger and not ask for help which appears to perpetuate his anger and frustration." "At times, Wayne allows himself to become overwhelmed by job frustration and does not arrive at the most effective solutions to the issues." "Must improve the condition of his clothing and his personal grooming."
10. The appellant's supervisor assessed his performance overall as, "Wayne brings very good clinical skills to the job. He is a hard worker, although he does not always prioritize and use his time effectively. He has excellent knowledge of the system and relates effectively to immediate co-workers. Wayne's weak points are his tendency to use sarcastic remarks

to express his frustration in an indirect manner, his holding onto frustration and anger with resolution and his personal appearance."

11. The Department of Corrections had articulable reasons why it did not consider Mr. Brock the best qualified candidate for promotion.

#### Rulings of Law

- A. "Whenever possible, selection by the appointing authority to fill a vacancy shall be made from within an agency and shall be based upon the employee's: (1) Possession of the knowledge, skills, abilities and personal characteristics listed on the class specification for the vacant position; and (2) Capacity for the vacant position as evidenced by documented past performance appraisals." [Per 602.02 (a)]
- B. "The most qualified candidate for the position, in the opinion of the appointing authority, shall be selected from designated groups of employees considered in the following order: (1) Full-time employees; (2) Former full-time agency employees who have been laid off within the past 3 years; (3) Probationary employees; and (4) Part-time employees." [Per 602.02 (c)]
- C. "Candidates may be denied selection if, in the opinion of the appointing authority, they are deemed to lack personal or professional qualifications for promotion." [Per 602.02 (d)]
- D. "If an employee is not selected after applying for a posted position, the appointing authority shall notify the employee in writing and shall state the reason(s) why the employee was not selected." [Per 602.02 (e)]
- E. "When a structured interview forms a part of the total review for a position, the director [of personnel] shall appoint, or authorize the appointing authority to appoint, a structured interview board in accordance with the following: (1) A structured interview board shall consist of interview panel members who are not related to the candidate; and (2) At least one interview board member shall be technically familiar with the character of work in the position for which interviews are being conducted." [Per 501.06 (a)]
- F. "The examination method shall be a structured interview when an appointing authority is seeking administrative, managerial, or supervisory candidates who meet technical requirements, such as those requiring post-secondary and advanced degrees and substantive

experience. Under these conditions, the structured interview shall consist of specific questions related to experience in technical and administrative areas." [Per 501.01 (a)]

### Decision and Order

The appellant failed to persuade the Board that the Department of Corrections was required to hold a second set of interviews, that the Board should declare the selection process "flawed, [or] illegal," or that the selection process needed "to be redone in accordance with applicable rules, regulations and policy." Those persons who reasonably might have been expected to make up the oral interview board were the persons who did interview the appellant for the position in question. They had the opportunity to assess his appearance and demeanor, oral expression, adaptability and attitude, job skills and knowledge, and general suitability for the position.

As the Department's policy specifies, "The hiring authority has the final say as to who is selected." The evidence reflects that the Department accepted the rankings established by the Division of Personnel, and that the Department was not persuaded that Mr. Brock was the candidate most qualified or best suited for promotion.

Although the appellant asserted that he was the most qualified candidate for promotion, he failed to offer evidence to support that assertion. The appellant also failed to persuade the Board that the process utilized by the Department of Corrections in filling the Program Specialist III position violated the Rules of the Division of Personnel, or that some other process would have yielded a different result. Finally, the evidence reflects that when Mr. Brock was given an opportunity to challenge the selection decision, he declined to do so, asserting instead that the Department committed a procedural error requiring correction.

Therefore, on the evidence, argument and offers of proof, the Board voted unanimously to DENY Mr. Brock's appeal. In so doing, the Board found that the Department of Corrections complied with the Division of Personnel's requirement for performance of a structured oral interview, that the Department considered the appellant's past performance in determining who was best qualified for promotion, and that the Department was not prohibited from making its selection decision based in part on the structured oral interview.

THE PERSONNEL APPEALS BOARD

  
Patrick H. Wood, Chairman

  
Lisa A. Rule, Commissioner

  
Robert J. Johnson, Commissioner

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