

State of New Hampshire



PERSONNEL APPEALS BOARD

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APPEAL OF ROGER BURNHAM

DOCKET #96-P-3

Department of Fish and Game

June 3, 1996

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, May 8, 1996, under the authority of RSA 21-I:58, to hear the appeal of Roger Burnham, an employee of the Fish and Game Department, concerning his non-selection to the position of Fish Culturist V (Superintendent, North Hampton Fishery). Robert Fawcett, Supervisor of Hatcheries, appeared on behalf of the Fish and Game Department. Jay Hendy, a co-worker of the appellant's, appeared on Mr. Burnham's behalf. The appeal was heard on offers of proof by the representatives of the parties.

Mr. Hendy argued that Roger Burnham was the most qualified in-house candidate for promotion, and that the Fish and Game Department violated Per 602.02 (a), (b) and (c) by selecting an external candidate to fill the Hatchery Superintendent position rather than promoting the appellant. He argued that it was both possible and reasonable to promote Mr. Burnham to Fish Culturist V because the appellant successfully completed the structured oral interview for promotion, receiving the highest score of all the in-house candidates. He also argued that by failing to provide Mr. Burnham with a formal assessment of his performance during his temporary promotion to Superintendent, the Fish and Game Department did not properly assess his capacity for the vacancy, thereby violating Per 602.03 (a) (2) and Per 801.06 (a) of the Rules of the Division of Personnel. He concluded that Mr. Burnham did not receive the preference to which he was entitled in the selection process as the most qualified, in-house candidate.

Mr. Fawcett argued that the agency complied with the Rules of the Division of Personnel in its selection process, and that Mr. Burnham had been denied selection for promotion because he was found to lack certain personal and professional qualifications for promotion. He argued that Mr. Burnham and the other in-house candidates had received the preference to which they were entitled in that they were offered the opportunity to apply for promotion and to compete in a structured interview for the vacancy before any external candidates were considered. He also argued that assessing Mr. Burnham's performance was an issue separate and apart from the process of filling a vacancy, and should have no bearing on the appropriateness of the decision.

to deny Mr. Burnham selection to the Fish Culturist V position.

Having reviewed the documentary evidence offered by the parties, and in consideration of the oral arguments and offers of proof by the representatives of the parties, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. The Supplemental Job Description for the position of Fish Culturist V describes the basic purpose of that position as follows: "...to supervise technical support staff in performing fish cultivation activities related to the operation and maintenance of a regional fish hatchery."
2. Mr. Burnham was one of three permanent employees who responded to a July 26, 1995, in-house posting for promotion to the position of Fish Culturist V (Superintendent) at the Hampton Fish Hatchery.
3. At the time of his application for promotion, Mr. Burnham was the Acting Superintendent, having been appointed eleven months earlier to fill that position on an emergency basis. Prior to the temporary promotion, Mr. Burnham was the Fish Culturist IV (foreman) at the facility.
4. As Acting Superintendent, Mr. Burnham received no written performance evaluations, nor was he advised that his performance as Acting Superintendent had been unsatisfactory.
5. Mr. Burnham received notification by letter dated September 13, 1995, that he was scheduled to participate in a structured interview for the position of Fish Culturist V on September 28, 1995. The letter advised Mr. Burnham that the structured interview questions would relate to work traits which had been identified as necessary for successful job performance, and that his answers would be scored numerically. The letter also identified five subject areas which candidates were expected to use as a resource in preparing for the structured interview.
6. Of the three in-house candidates who applied for promotion, Mr. Burnham received the highest rating on the structured interview. None of the in-house candidates was selected to fill the Fish Culturist V position.

7. Mr. Burnham was notified by letter dated October 6, 1995, that he had not been selected to fill the permanent Fish Culturist V position. In the opinion of the interview panel, Mr. Burnham did not demonstrate satisfactory managerial skills or the ability to establish and maintain positive working relationships with associates.
8. In subsequent communication, Mr. Burnham was informed that some of his answers to the structured interview questions revealed that he lacked the technical knowledge of fish culture required by the position.
10. The position of Fish Culturist V was filled by selection of a candidate from outside of the agency. In the opinion of the selection panel, that candidate possessed the knowledge, skills and abilities necessary to successfully perform the duties and responsibilities of the Hatchery Superintendent at the Hampton Hatchery.

Rulings of Law

- A. Per 602.02 (a) provides that, "Whenever possible, selection by the appointing authority to fill a vacancy shall be made from within and 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.
- B. Per 602.02 (b) requires the appointing authority to select the most qualified candidate for a position, giving first priority in selection to full-time employees of the agency.
- C. Per 602.02 (c) provides that, "Candidates may be denied selection if, in the opinion of the appointing authority, they are deemed to lack personal or professional qualifications for promotion."
- D. Per 602.02 does not require an appointing authority to select an in-house candidate simply because that individual meets the minimum requirements for selection.
- E. Per 801.06 requires each appointing authority to conduct at least one evaluation per year for each full-time classified employee, and to conduct more frequent evaluations when employees are on special assignments.

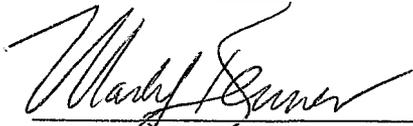
The Board found that the Fish and Game Department complied with the Rules of the Division of Personnel with regard to the selection process. The agency gave proper preference to their

internal candidates, giving them an opportunity to apply for the vacancy and participate in a structured interview before any external candidates were considered for the vacancy. In assessing the candidates' capacity for the vacant position, the Fish and Game Department conducted structured oral interviews, selecting subject areas related to the basic purpose and accountabilities of the position being filled. The agency provided written notification to the appellant of his non-selection, specifying the reasons for non-selection.

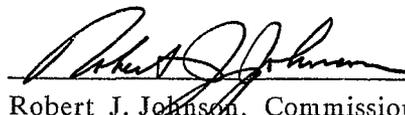
The Board agrees with the appellant that he should have received an annual evaluation of his performance in accordance with Per 801.06 of the Rules, particularly in light of his special assignment as Acting Superintendent. However, the Board does not agree that the agency's failure to apprise him of deficiencies in his performance creates any obligation on the part of the agency to promote him. If capacity for the vacant position had been assessed by a review of documented past performance appraisals, and if the agency had apprised Mr. Burnham of deficiencies in his performance, there is no reason to believe that having written documentation of any such deficiencies would have improved his opportunities for promotion.

Therefore, on the evidence, oral argument and offers of proof, the Board voted unanimously to deny Mr. Burnham's appeal.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Roger Burnham, Box 254, New Hampton, NH 03256
Robert Fawcett, Superintendent of Hatcheries, Fish and Game Department