

# State of New Hampshire

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APPEAL OF DONALD C. DAVIS, JR.  
Reconsideration - Rehearing Request

September 14, 1987

On July 27, 1987, the State Employees' Association appealed the July 8, 1987 decision of the Promotion Appeals Tribunal relative to Mr. Donald Davis' non-selection to the position of Park Manager V., Mt. Sunapee State Park. In support of his request for a hearing before the Personnel Appeals Board, the appellant addressed three issues: 1) the number of employees at Mt. Sunapee listed in the Tribunal's decision was incorrect, 2) the Division of Personnel, not the Parks Division, had the authority to determine Mr. Davis' qualifications for the vacant position, 3) "Not promoting Mr. Davis, given the facts, is unreasonable and not following the intent of the Rules of Personnel."

On July 31, 1987, the Division of Personnel provided the Department of Resources and Economic Development with a copy of the appeal request. The Division of Parks and Recreation responded to the Appeals Board on August 17, 1987 to the issues raised in Mr. McCormack's hearing request.

The Board, pursuant to Per-A 209.04 (c) of the "Rules of the Personnel Appeals Board," reviewed the evidence submitted at the hearing as well as the hearing request and response, and made the following findings.

Mr. Carpenter, Supervisor of Parks Operation, concurred with documentation provided by the appellant that the number of employees referenced in the Tribunal's July 8, 1987 decision was inaccurate. The figures presented at the hearing reflected the number of employees in the Parks Division as a whole, not Mt. Sunapee State Park. Mr. Carpenter agreed that Sunapee employs 13 permanent and 86 seasonal employees in the winter months, and 13 permanent and 25 seasonal employees in the summer months. He also stated that approximately 140 seasonal employees are added at the two state ski areas in the winter months. He further stated, "In addition to the permanent and seasonal staff at Mt. Sunapee, there are approximately another 60 employees that work for three concessionaires in the wintertime." He noted that while not directly supervised by the park staff, "...we work very closely with the concessionaires in providing the same host training, employee indoctrination, etc., that our employees are given."

The Board agreed that the number of employees cited in the decision was inaccurate. Mr. Carpenter's testimony at the promotional appeal hearing indicated that, "...the parks managed by Mr. Davis are not extensive, most are not staffed, and none demand the kind of supervisory or budgetary experience required of the Manager V position." The Board did not find this testimony inconsistent with the revised staffing figures outlined above.

The appellant, in his request for a hearing before the Board, stated that the Division of Personnel, not the Parks Division, had the authority to determine which candidates are qualified for a position. The Board concurred but noted that such a determination by the Division of Personnel relates merely to certification that the applicant meets the minimum qualifications for the position in question. The Division of Parks and Recreation further cited PART Per 302.03 (b) (2), "If the appointing authority finds certain professional and personal qualifications lacking in even ostensibly qualified candidates for promotion, employees may be denied promotion."

The appellant stated, Mr. Davis was found qualified for the position but denied promotion. It is stated in PART Per 302.03(a) that 'a vacancy shall be filled whenever possible and reasonable by promotion of a qualified permanent employee from within the department or agency'."

In reviewing the term "qualified," the New Hampshire Supreme Court has stated:

"The plaintiffs argue that the term 'qualified' is merely a term used by the department of personnel to describe permanent State employees. We disagree. Rather, the term 'qualified' refers to the professional and personal qualifications of applicants to fill a vacant position.. ." Appeal of William Golding and Robert Washburn, 121 NH 1055 (1981).

Thus, despite the appellant's contention that he was "qualified" for the position of Manager V, the appointing authority deemed him to lack certain personal or professional qualifications for this particular position. The Board found nothing improper in the Tribunal's decision to uphold the agency's decision to deny him promotion.

Finally, the appellant argued, "...if Mr. Davis was promoted and found to not meet the required work standard he could have been removed and given a position similar to the one from which he was promoted, PART Per 302.23 (c) (1)." As was pointed out by Mr. Carpenter in his August 17, 1987 letter to the Board, the appellant's argument, "...is incomplete. The missing part of the quote is 'if such a position is available.'" Mr. Carpenter stated, "We would not hold this Park Manager II [position] open. This is the only permanent Park Manager II in the system so I don't know where such a position would be available." The Board concurs.

APPEAL OF DONALD C. DAVIS, JR.

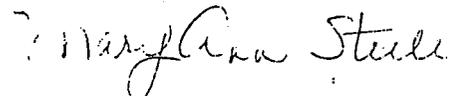
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Nothing in the "Rules" could be construed as to guarantee comparable employment to an individual should that individual fail to meet the work standard of the position to which he is promoted. The Board did not find this argument convincing if, in fact, it were intended to support the contention that promoting Mr. Davis was both "reasonable and possible."

Based upon the foregoing, the Board affirmed the decision of the Tribunal. Mr. Davis' appeal is therefore denied.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE  
Executive Secretary

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cc: Stephen McCormack, SEA Field Representative  
William Carpenter, Parks Division, D.R.E.D.  
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88-P-123

PROMOTION APPEALS TRIBUNAL DECISION

In the Matter Of:

DONALD C. DAVIS, JR.

July 8, 1987

The Promotion Appeals Tribunal met on June 10, 1987, to hear the appeal of Donald C. Davis, Jr., an employee of the Department of Resources and Economic Development, Division of Parks and Recreation. Mr. Davis, represented by SEA Field Representative Stephen McCormack, was appealing his non-selection to the position of Parks Manager V, Mt. Sunapee State Park. William Carpenter, Supervisor of Parks Operation, represented the Division. Tribunal members included Commissioner Edward Haseltine and Personnel Officers George Liouzis and Edwin Goodrich.

The appellant testified that he is currently employed as a Manager II for the Division and that he manages a number of smaller parks during the summer months, then works as Head Groomer at Mt. Sunapee during the winter. He further testified that he was the only in-house candidate certified by the Division of Personnel as meeting the minimum qualifications for promotion to the vacant position.

In response to questions from the Tribunal, the appellant indicated that he had requested the reasons for his non-selection and that those reasons were provided to him in a January 27, 1987 letter from William Carpenter, Supervisor of Parks Operations. The reasons cited included "limited supervisory experience with large staff units, limited experience in promotional activity, limited budgeting experience." Mr. Davis contended that since he had been certified as meeting the minimum requirements for the position, he should have been given the opportunity to prove himself on the job and that, further, the six month probationary period would provide the Department time to train him in areas where they felt his experience was insufficient. The appellant also stated that there are few full-time, permanent vacancies in the Parks Division and that long-term employees such as himself should be given the opportunity to be promoted when such vacancies occur.

William Carpenter, Supervisor of Parks Operations, testified that Mr. Davis was the only in-house candidate for the position. Regarding certification of Mr. Davis' application, he testified that the Parks Division had, in fact, questioned the basis upon which the appellant's application for the Manager V position was certified, feeling that he lacked the requisite experience to be considered a viable candidate for the position at Mt. Sunapee. In describing the Manager V position, Mr. Carpenter indicated that Mt. Sunapee employs 80 year-round full-time

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In the Matter Of:  
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personnel, as well as 500 seasonal employees during the summer, and 140 seasonal employees during the winter months. Additionally, he testified that Mt. Sunapee's operating budget is in excess of \$1 million and is expected to generate more than \$2 million in revenues. In reviewing Mr. Davis' qualifications for the vacancy, Mr. Carpenter stated that the parks managed by Mr. Davis are not extensive, most are not staffed, and none demand the kind of supervisory or budgetary experience required of the Manager V position. Mr. Carpenter stated that the Division had sought to fill the position with a candidate who possessed the requisite skills and experience to operate within the framework of a large park complex so that a minimum of training would be required. He also indicated that Mr. Davis had limited the geographic area in which he would accept employment to the Sunapee-Sutton area, therefore eliminating the possibility of gaining the necessary experience at a Manager III or IV level at one of the other parks in the State system. Regarding Mr. Davis' experience at Mt. Sunapee itself, Mr. Carpenter testified that the appellant worked primarily at night and had not been exposed to the detailed operation of a large State Park complex.

Upon review of the testimony and evidence presented, the Tribunal made the following findings. Donald C. Davis applied for the position of Manager V at Mt. Sunapee State Park. Review of his application and work experience by the Division of Parks and Recreation resulted in a unanimous decision that the appellant did not possess the necessary skills to perform the duties required of a Manager V. When questioned by the Division about possible interest in applying for other positions in the State Park system, the appellant indicated he was interested in a very specific, limited geographical area, thereby decreasing the likelihood of gaining work experience in promotional activities, budgeting and supervision. The Parks Division determined that Mr. Davis had neither the experience nor personal qualifications for the vacant position which then resulted in his non-selection.

The Tribunal voted unanimously to uphold the decision of the Division of Parks and Recreation in denying Mr. Davis promotion to the position of Manager V, Mt. Sunapee State Park. Mr. Davis' appeal is, therefore, denied.

FOR THE PROMOTION APPEALS TRIBUNAL



MARY ANN STEELE

Executive Secretary

N. H. Personnel Appeals Board

cc: Stephen McCormack, SEA Field Representative  
William Carpenter, Supervisor of Parks Operations  
Ai Nolin, Administrator, Dept. of Resources  
and Economic Development  
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