

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

Appeal of Henrietta DeCost

Docket #98-P-3

Department of Health and Human Services

October 31, 1997

The New Hampshire Personnel Appeals Board (Rule, Johnson and Barry) met on Wednesday, September 10, 1997, under the authority of RSA 21-I:58, to hear the appeal of Henrietta DeCost, an employee of the Department of Health and Human Services. Ms. DeCost, who was represented at the hearing by SEA Field Representative Jean Chellis, was appealing her non-selection for the position of Case Technician. Sandra Platt, Human Resources Administrator for the Department of Health and Human Services, appeared on behalf of the State.

The appeal was heard on offers of proof by the representatives of the parties. Ms. Chellis asked the Board to note for the record her objection to the Board's decision not to schedule a hearing at which the parties would be permitted to offer live witness testimony.¹ The record in this matter consists of the pleadings submitted by the parties prior to the hearing, notices and orders issued by the Board, the audio tape recording of the hearing, and documents admitted into evidence as follows:

¹ As set forth in the Board's notice and agenda, the Board permitted each party thirty minutes in which to submit documentary evidence, present oral argument and make offers of proof. If the Board then determined that it had insufficient evidence to fairly decide the appeal, it would, upon its own motion or on the motion of a party, vote to compel production of additional evidence, up to and including the testimony of witnesses.

State's Exhibits

1. Personnel Action Request Form dated March 4, 1997 for position number 41059
2. Notice of Vacancy for position number 41059, Case Technician, dated March 26, 1997
3. Referral sheet of internal applicants for position number 41059, Case Technician, dated April 3, 1997
4. Referral sheet of external applicants for position number 41059, Case Technician, dated June 17, 1997
5. Referral sheet of external applicants for position number 410-59, Case Technician, dated June 17, 1997 with notes made by Unit Supervisor Grace Mucci
6. Supplemental Job Description for Case Technician, position number 41059
7. Personnel Action Request Form dated May 23, 1997, for position number 12697
8. Notice of Vacancy for position number 12697, Case Technician, dated June 18, 1997
9. Application of Henrietta DeCost for Case Technician, position number 12697, dated June 20, 1997
10. Referral sheet of internal applicants for position number 12697, Case Technician, dated June 30, 1997
11. Referral sheet of internal applicants for position number 12697, Case Technician, dated June 23, 1997, with notes made by Unit Supervisor Grade Mucci
12. Non-selection letter sent to Henrietta DeCost on June 23, 1997, concerning position number 12697
13. Supplemental Job Description for position number 12697, Case Technician
14. Class Specification for Case Technician Trainee
15. Copy of page 41, Administrative Rules of the Division of Personnel PART Per 602, Filling Existing Vacancies

Appellant's Exhibits

1. July 22, 1997 letter from Grace Mucci to Henrietta DeCost notifying her of non-selection to position 12697
2. June 4, 1997, letter from Terry Morton to Henrietta DeCost concerning her continued employment

3. June 18, 1997 Notice of Vacancy for Case Technician position #12697
4. Class Specification for Case Technician Trainee
5. Performance Summary for Henrietta Ann DeCost dated 12/92, 12/93 and 12/94
6. Letters dated August 28, 1997 letter from JoAnn P. Goulet and August 26, 1997 from Barbara Lamarre commending Ms. DeCost's work as a CHAP Specialist²
7. 6/21/97 "Detailed Description of Experience Pertinent to Case Technician Position" provided by Ms. DeCost
8. Ms. DeCost's August 29, 1997 summary entitled "My Skills, Knowledge And Abilities"
9. Ms. DeCost's 7/1/94 summary of Outreach Activities
10. Supplemental Job Description, position 12697, Case Technician TR., I
11. September 9, 1997, professional reference for Ann DeCost completed by Desiree J. Houle, R.N.

Ms. Platt argued that in the Department of Health and Human Services, position postings specifically state that applicants must note the number of the position for which they are applying on each application. She argued that while an applicant may list more than one position number on an application, the applicant is considered for only those positions listed. She argued that Ms. DeCost was aware of that practice, as evidenced by the fact that her application for Case Technician specifies "Case Technician #12697, and that because she failed to apply for position #40159, she was not considered for that vacancy.

Ms. Chellis argued that the appellant was well-qualified for both positions and should have been considered for both vacancies. In her written submission dated August 6, 1997, Ms. Chellis argued that the job posting for Case Technician to which Ms. DeCost applied advertised two vacancies, and that although she listed only one position number, she believed she was applying for both vacancies. She argued that while the appellant was more interested in working with the Adult Case Technician caseload, she would have taken the other position had it been offered to her, and that when the appellant was interviewed for the Adult Case Technician vacancy, she believed she was also being considered for the Tanif vacancy. Ms. Chellis also argued that the Department of Health and

² Although Ms. Platt did not object to admission of Exhibit 6, she asked the Board to note that her office had no record of having received either letter.

Human Services violated Per 602.02 (a) of the Rules of the Division of Personnel by selecting an outside candidate to fill one of the Case Technician positions when there was a full-qualified applicant from inside the agency.

After considering the evidence, argument and offers of proof, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. Position #41059 (Case Technician) was posted for internal applicants in the Department of Health and Human Services on March 26, 1997, with April 1, 1997, as the deadline for receipt of in-house applications.
2. There is no evidence that Ms. DeCost applied for position #41059 when it was posted for internal applicants.
3. On April 3, 1997, DHS/OES/Portsmouth DO Supervisor Grace Mucci was notified that there were two certified in-house applicants for position #41059: Joseph Grady and Beverly Weddleton.
4. Neither of the in-house applicants was selected for the vacancy, and position #41059 was posted for external applicants.
5. On June 17, 1997, DHS/OES/Portsmouth DO Supervisor Grace Mucci was notified that there were three certified applicants for position #41059: Maureen Martinez, Kathleen McCormack and Bonnie Newton
6. On June 17, 1997, Case Technician Position #41059 was posted for external applicants.
7. On June 18, 1997, Case Technician Position #12697 was posted for internal applicants in the Department of Health and Human Services
8. On June 23, 1997, the Human Resources Office received Ms. DeCost's application for "Case Technician #12697."
9. The experience summary submitted by Ms. DeCost as part of her application specified "Detailed Description of Experience Pertinent to Case Technician Position #12697." There is no similar submission for position #41059.

10. On June 30, 1997, DHS/OES/Portsmouth DO Supervisor Grace Mucci was notified that there were four certified in-house applicants for position #12697: Henrietta DeCost, Leslie Higgins, Diane Hoaratty, and Bonnie Newton.
11. One July 23, 1997, DHS/OES/Portsmouth DO Supervisor Grace Mucci notified Human Resources that she had interviewed all three applicants for position #41059 and had selected Maureen Martinez for that position.
12. One July 23, 1997, DHS/OES/Portsmouth DO Supervisor Grace Mucci notified Human Resources that she had interviewed all four candidates for position #12697 and had selected Bonnie Newton (who also was an applicant for position #41059 but had not been selected for that vacancy).
13. Ms. DeCost was notified by letter dated July 23, 1997, that she had not been selected for position #12697. The letter, signed by Grace Mucci, Supervisor V, stated, in part, "Based on your application and the interview conducted, we feel that you do not possess all of the necessary qualifications that we were looking for, specifically in the case maintenance of a large and active caseload."
14. The information submitted by Ms. DeCost in applying for a position of Case Technician refers specifically, and solely to position #12697.
15. On her application for Case Technician position #12697, under reasons for leaving, Ms. DeCost wrote, "The Case Aide C.H.A.P. position is being eliminated, but I have wanted to be an Adult Case Technician for quite some time." The application makes no reference to the Tanif Case Technician responsibilities or her interest in those duties.

Rulings of Law

- A. Per 602.02 (a) of the Rules of the Division of Personnel requires an appointing authority, whenever possible, to fill vacancies from within the agency, basing that selection upon the applicant's possession of the knowledge, skills, abilities and personal characteristics listed on the class specification for the vacant position, and capacity for the vacant position as evidenced by documented past performance appraisals.
- B. Per 602.02 (b) of the Rules of the Division of Personnel requires an appointing authority to select the candidate who, in the opinion of the appointing authority, is most qualified for the

position. Per 603.02 (b) (1) - (3) specifies the order in which candidates must be considered.

--- However, Per 602.02 (c) does not require the appointing authority to select candidates from within the agency if, in the opinion of the appointing authority, the candidate is deemed to lack the personal or professional qualifications for promotion.

- C. While Per 602.01 (a) permits an appointing authority, upon written notice to the Director of Personnel, to fill any vacancy with the transfer of a departmental employee from any position within the same class title to a vacant position with the same class title, the Rules do not require appointing authorities to consider employees for vacancies for which they have not applied.

Ms. DeCost did not persuade the Board that she was best qualified to fill position #12697. During a period of cross-training, the appointing authority had an opportunity to observe Ms. DeCost performing some of the duties and responsibilities of the Adult Case Technician vacancy for which she applied and determined that she lacked qualifications for the vacancy. The Board was not persuaded that the appointing authority abused its discretion in selecting a candidate from outside the agency to fill that position.

All the evidence supports the agency's assertion that Ms. DeCost did not apply, nor did she intend to be considered, for Case Technician position #40159. Even if the appellant believed that the agency was considering her for both positions, that belief imposes no obligation upon the agency to consider or select a candidate who never made application for the position.³ Her application is specific, both in terms of the title of the position for which she was applying and in her comments under "Reasons for Leaving" her current position, to the Adult Case Technician position #12697. The Board found that the agency had no obligation to consider Ms. DeCost for the Adult Case Technician position for which she never had applied.

³ The agency would be well-advised, however, to ensure that any persons involved in the application, certification, interviewing and hiring process provide clear, consistent information to candidates to avoid the likelihood that another candidate might misunderstand or misconstrue the information they receive from field office personnel

Therefore, for the reasons set forth above, the Board voted unanimously to deny Ms. DeCost's appeal

THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chair



Robert J. Johnson, Commissioner



James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301
Jean Chellis, SEA Field Representative, PO Box 3303, Concord, NH 03302-3303
Sandra Platt, H. R. Administrator, Dept. Of Health and Human Services, 6 Hazen Dr.
Concord, NH 03305