

State of New Hampshire



PERSONNEL APPEALS BOARD
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Appeal of Lester Eldridge, Jr.

Docket #00-P-6

Department of Corrections

July 20, 2000

The New Hampshire Personnel Appeals Board (Wood, Rule and Johnson) met on Wednesday, May 17, 2000, under the authority of RSA 21-I:58, to hear the appeal of Sgt. Lester Eldridge, an employee of the New Hampshire Department of Corrections. Sgt. Eldridge, who appeared *pro se*, was appealing the Department's decision denying him selection to the position of Unit Manager. John Vinson, Corrections Counsel, appeared for the State.

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 pleadings submitted by the parties prior to the hearing, 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. Letter from the promotion board members
2. Letter from Sgt Eldridge to Linda Flynn dated February 25, 2000
3. Response from Linda Flynn dated March 2, 2000

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4. Letter from Sgt. Eldridge to Linda Flynn dated March 20,2000
5. DOC PPD 2.1.g.2 (page 9)
6. Page 3 of the Personnel Rules defining ",Certification"and "Class Specification"
7. Page #5 of the Personnel Rules defining "Minimum Qualifications"
8. Pages 17-19 of the Personnel Rules (Per 301.03)
9. Posting for Unit Manager position dated June 23, 1999
10. Posting for Unit Manager position dated January 7,2000
11. Pages 30-31 of the Personnel Rules - Posting Requirements
12. Pages 35-36 of the Personnel Rules - Certification and Disqualification
13. PPD 2.1. 14, procedures for filling vacancies and internal selection
14. Memos between the Department's Human Resource Administrator and Sgt. Eldridge
15. Memos between the Administrative Director, Secure Psychiatric Unit and Sgt. Eldridge

In addition to the exhibits offered and admitted into the record at the hearing, on May 31, 2000, Sgt. Eldridge submitted a request for the Board to receive additional evidence that he discovered after the conclusion of his hearing that he believed would demonstrate that the selected candidate did not meet the minimum qualifications for selection to the vacant Unit Manager position. Sgt. Eldridge indicated that a copy of his request had been forwarded to Atty. Vinson. The Board held the record open for an additional ten days to allow the Department to respond. To date, neither a response nor an objection from the Department has been received. Therefore, ten days after receipt of the request to admit additional documents into evidence, the Board admitted those documents as follows:

Appellant's Exhibits

16. May 30,2000 memo from Sgt. P. Cascio to Sgt. Lester Eldridge
17. Summit Unit Post Order effective March 1997 through March 2001

State's Exhibits

The State offered no documents into evidence. In accordance with the Board's order dated May 5, 2000, the Department did provide documents for an *in camera* review by the Board that included:

1. Kathleen Anderson's application for the Unit Manager position
2. Associate in Science in Human Services (Mental Health) degree diploma
3. Undergraduate Transcripts from New Hampshire Technical College
4. Notre Dame College Transcript
5. Part C from the Technical Assistance Manual of the Division of Personnel
6. Board results for the candidates for the Unit Manager position at the Secure Psychiatric Unit

Sgt. Eldridge asserted that he had applied for, but was not selected for the position of Unit Manager at the Secure Psychiatric Unit at the New Hampshire State Prison. He argued that a mistake had been made in certifying Kathleen Anderson, the selected candidate, as meeting the minimum qualifications for selection to the position. He argued that Ms. Anderson never supervised any staff member and therefore would not meet the minimum qualification for supervisory experience. Sgt. Eldridge also argued that the supplemental job description posted for the vacancy did not appear to be complete or valid, and that the job description was changed improperly without approval by Division of Personnel. Sgt. Eldridge argued that the Personnel Rules are clear and exact with respect to certification, and that the evidence would demonstrate that the certification decision in Ms. Anderson's case violated the Rules of the Division of Personnel.

Attorney John Vinson asked the Board to review and grant his Motion to Dismiss. Attorney Vinson argued that the certification decision was made by Lisa Currier, the agency's Human Resources Administrator, who had been designated by the Director of Personnel as one of the agency representatives authorized to certify applications for

position vacancies. He argued that since Ms. Currier had certified Ms. Anderson as a qualified candidate, the Board would have no authority to review that decision.

Sgt. Eldridge argued that every system includes checks and balances, and that giving someone authority to certify applications does not necessarily mean that every certification decision is accurate. He argued that the Board did have jurisdiction to decide the appeal, and should do so on the basis of the documents admitted into evidence and those provided for an *in camera* review.

After a brief recess, the Board, advised the parties that it had reviewed the statutes with respect to its jurisdiction. The Board indicated that although it is barred from hearing appeals based on an applicant exceeding the qualifications for a position, the Board does have the authority to hear appeals based on whether or not someone meets the minimum qualifications to be a candidate. Accordingly, the Board ruled that it would look at the information relating to Ms. Anderson's qualifications *in camera*, and would determine whether or not the Board believed that she met the minimum qualifications for Unit Manager. The Board also said that it would review the supplemental job descriptions, receive evidence on the correctness of the posted job description(s) and their impact on the selection process, and receive evidence concerning Sgt. Eldridges' own qualifications.

Having reviewed the evidence and having considered the arguments offered by the parties, the Board made the following findings of fact and rulings of law.

Findings of Fact

1. The minimum qualifications for certification as a Corrections Unit Manager as listed on the approved class specification are as follows:
Education: Bachelor's degree from a recognized college or university with major study in social work, public administration, criminal justice, or penology. Each

additional year of approved formal education may be substituted for one year of required work experience.

Experience: Five years' experience in law enforcement or in the corrections field with at least four years working in a penal institution including three years in administration and supervision. Each additional year of approved work experience may be substituted for one year of required formal education.

2. Sgt. Eldridge meets the minimum qualifications for certification as a Corrections Unit Manager.
3. Ms. Anderson's qualifications include an Associate's degree in Human Services/Mental Health, and at the time of application, she was enrolled in an undergraduate program at Notre Dame College, majoring in psychology. She has approximately nine years of experience working for the Department of Corrections, including work as a Corrections Officer, and work as a Case Counselor/Case Manager at the Summit unit. Ms. Anderson also has approximately twelve years of experience part-time in the Army Reserve National Guard, currently serving as a Staff Sergeant/Section Chief - Medical Supervisor.
4. Ms. Anderson was certified as meeting the minimum qualifications as a Unit Manager, although it does not appear that Ms. Anderson possesses the supervisory experience reflected in the class specification for "three years in administration and supervision [in a penal institution]."
5. Of the eight candidates who competed for promotion to Unit Manager, Sgt. Eldridge was ranked second by the Promotion Board.
6. Ms. Anderson scored 34.59 on the "factor rating" described by the department's policy and procedure manual compared to Sgt. Eldridge's score of 40.74.
7. Ms. Anderson scored 42.33 on her oral board presentation, compared to Sgt. Eldridge's 32.66.
8. Ms. Anderson's overall total score was 76.92 compared to Sgt. Eldridge's total of 73.40. The candidate who ranked third in the process scored a total of 65.41 over all.

9. By letter dated March 2, 2000, Linda Flynn, Administrative Director for the Division of Medical and Forensic Services at the Department of Corrections, advised Sgt. Eldridge that, "Although the point system [used to assess candidates for promotion] is a measure of how you compared to your peers who applied for the position, it is not a true indicator of whether or not you would have been selected for the position. Your preparation and comfort during the interview was held in positive regard. You did not, however, have exposure to a clinical setting or knowledge of psychiatric treatment that is necessary for the Unit Manager Position within the Secure Psychiatric Unit."

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..." [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)]

Decision and Order

On the evidence, argument and offers of proof, the Board found that the Department of Corrections selected Ms. Anderson for the position of Corrections Unit Manager at the Secure Psychiatric Unit based on her certification as an eligible candidate, upon the relevancy of her formal educational training, and her clinical experience. The Board found that the Department certified her and selected her in good faith, believing her to be

the candidate best suited for selection to the position at the Secure Psychiatric Unit. Nevertheless, the evidence supports Sgt. Eldridge's assertion that Ms. Anderson did not meet the minimum supervisory qualifications for the position as they were posted.

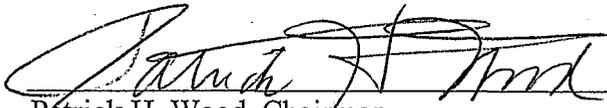
For purposes of deciding Sgt. Eldridge's appeal of his own non-selection, however, absent evidence that Sgt. Eldridge would have been selected for promotion to the vacancy if Ms. Anderson had not been a candidate, the certification decision in and of itself is not dispositive of the appeal. Ms. Flynn's letter clearly relates the basis for the decision that Sgt. Eldridge did not possess the particular experience required to address the particular needs of the Secure Psychiatric Unit. As such, the Department's decision comports with Per 602.02 (d). There is no apparent abuse of discretion, and the Board finds that the Department was not required to select Sgt. Eldridge for promotion based on his certification or his ranking by the Promotion Board.

Accordingly, on the evidence, argument and offers of proof, the Board voted unanimously to DENY Sgt. Eldridge's appeal. In so doing, the Board found that the Department of Corrections did not violate the Rules of the Division of Personnel in denying him selection for promotion, based on its belief that Sgt. Eldridge had insufficient clinical experience for the Unit Manager position assigned to the Secure Psychiatric Unit.

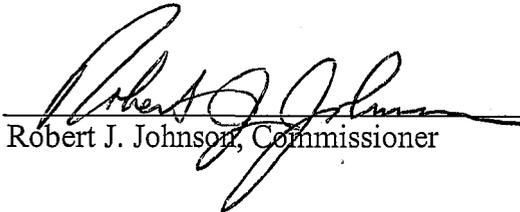
The Board also found that an error may have occurred in certifying Ms. Anderson as meeting the minimum qualifications for the position. Therefore, the Board recommends that the Department of Corrections submit Ms. Anderson's application for review by the Director of Personnel who can determine the relevancy and sufficiency of her education and experience for certification as a Corrections Unit Manager. Further, given the somewhat generic nature of the class specification for Corrections Unit Manager, the handwritten addition to the supplemental job description that was posted with the notice of position vacancy appears to indicate an attempt to clarify the specific internal

requirements for particular vacancies as they occur. If that is the case, and if that clarification has not been approved by the Director of Personnel, the Department should address that issue with the Director of Personnel so that applicants for future vacancies will have clear notice of the requirements for both certification and selection.

THE PERSONNEL APPEALS BOARD


Patrick H. Wood, Chairman


Lisa A. Rule, Commissioner


Robert J. Johnson, Commissioner

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