

State of New Hampshire



PERSONNEL APPEALS BOARD
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APPEAL OF LISA ETHZER

Docket #95-P-2

New Hampshire Veterans Home

March 13, 1997

The New Hampshire Personnel Appeals Board (Miller, Johnson and Rule) met Wednesday, October 23, 1996, under the authority of RSA 21-I:58, to hear the appeal of Lisa Ethier, an employee of the New Hampshire Veterans Home, who was appealing her non-selection for promotion in June, 1995, to the position of Cook II. The appellant was represented at the hearing by SEA Field Representative Stephen McCormack. Louise Clogston, Human Resources Coordinator and Commandant Barry Conway appeared on behalf of the Veterans Home. The appeal was made on offers of proof. The record in this matter consists of the audio tape recording of the hearing, and documents submitted by the parties.

Mr. McCormack argued that the Veterans Home violated the Rules of the Division of Personnel by denying Ms. Ethier selection for promotion, failing to notify her of her non-selection before hiring an external candidate, and selecting a candidate from outside of the agency without first having undertaken a recruitment to fill the vacancy. Ms. Clogston and Mr. Conway argued that although Ms. Ethier met the minimum qualifications for promotion, the appointing authority did not believe she was ready to take on the supervisory responsibilities of the position, and therefore chose to fill the vacancy from outside the agency. They argued that they had already received an application from a qualified candidate outside of the agency, and believing that the candidate met all the requirements of the position, they did not need to utilize the recruitment process in order to seek additional qualified candidates.

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The following facts are not in dispute:

1. On February 8, 1995, the Veterans Home received notice of resignation from a Cook II.
2. The vacancy was posted on February 14, 1995. Ms. Ethier was one of three in-house applicants for the position. At the time, she was a full-time initial probationary employee working as a Food Service Worker.
3. Permission to fill the position was received from the Division of Personnel on February 17, 1995.
4. The Cook II vacancy was temporarily assigned to Nursing until June 8, 1995.
5. On June 1, 1995, Ms. Clogston discussed the position with the Dietary Director, who informed her that he did not believe any of the in-house candidates were "ready" for promotion. Specifically, he indicated that Ms. Ethier would not be a "good fit."
6. None of the in-house candidates were interviewed for selection to the vacancy.
7. The Veterans Home did not engage in an outside recruitment to fill the position of Cook II.
8. On June 1, 1995, the Veterans Home received an application for the vacancy from Jennifer Collins, who had worked for the Home previously in a part-time capacity.
9. Ms. Collins' application was certified on June 2, 1995, and she was selected to fill the vacancy on June 9, 1995.
10. On June 20, 1995, Ms. Ethier received notification of non-selection for the vacancy, and filed a timely appeal therefrom.

Mr. McCormack argued that the selection process which the Veterans Home utilized in filling the Cook II vacancy constituted a blatant violation of the Rules of the Division of Personnel. He argued that the agency had denied the in-house applicants an opportunity to discuss their qualifications in an interview, and failed to notify them of their non-selection until some eleven days after Ms. Collins had been hired. He pointed to the chronology of events, noting that although the agency had permission to fill the Cook II position in February, 1995, it assigned that position to Nursing until June, apparently waiting until Ms. Collins' application had been received and certified before filling

the position. He argued that the only appropriate remedy would be to order the agency to vacate the Cook II position and immediately promote Ms. Ethier to that vacancy.

The State argued that there was no requirement for an agency to interview in-house applicants, and that in this case all of the candidates, including Ms. Collins, were well known to the agency. The State argued that the Veterans Home had an obligation to select the candidate best qualified to fill the vacancy, and in selecting Ms. Collins had selected a candidate who had worked for the Veterans Home in the past during vacations from school. The State also argued that there was no need to engage in outside recruitment when a fully qualified candidate's application was already on file.

Mr. Conway argued that the Personnel Rules do not mandate the selection of an in-house candidate, only the order in which candidates are considered for a vacancy. Mr. Conway said that the agency has a reputation for promoting from within, and that this selection represented something of a departure from the usual course. However, he noted that the in-house applicants received due consideration before the decision was made to select Ms. Collins.

On the evidence, argument and offers of proof, the Board voted to deny Ms. Ethier's appeal. In light of the uncontroverted offer of proof that the Veterans Home usually promotes from within, the Board is unwilling to find that the agency knowingly violated the Rules during the selection process, or that a punitive order requiring removal of the selected candidate would be appropriate. The Rules authorize an appointing authority to select the candidate best suited to fill a vacancy, and in reviewing both Ms. Ethier's and Ms. Collins' applications for employment, it was apparent that Ms. Collins' education and experience made her the more attractive candidate.

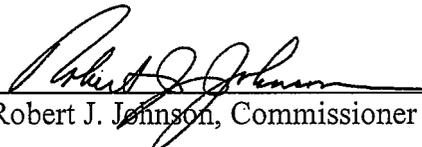
In reaching that decision, however, the Board noted that the Veterans Home showed little regard for its in-house applicants. While the Rules do not require an agency to interview in-house applicants, in this instance, providing the in-house applicants an opportunity to discuss the requirements of the position and their own qualifications to fill such a position would not have delayed the ultimate selection to fill the vacancy. Furthermore, if the agency believed that the in-house candidates were

not "ready" for promotion, the agency should have provided more timely notice that they had been found to lack personal or professional qualifications for promotion.

THE PERSONNEL APPEALS BOARD



Lawrence H. Miller, Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lambertson, Director of Personnel
Stephen J. McCormack, SEA Field Representative
Louise Clogston, Human Resources Coordinator, NH Veterans Home