

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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Appeal of Robert Styffe – Docket #2009-P-005
New Hampshire Employment Security
Personnel Appeals Board Decision on Appellant's Motion for Rehearing

May 11, 2012

On April 26, 2012, the New Hampshire Personnel Appeals Board received Appellant's Motion for Rehearing of the Board's April 18, 2012, decision in the above-titled appeal.

In accordance with the provisions of Per-A 208.03 Rehearing,

(a) Pursuant to RSA 541:3, within 30 days after the date of notice of any decision or order of the board, any party to the action or proceeding before the board, or any person directly affected thereby, may apply for rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order.

(b) In order to be considered, such request shall be delivered to the executive secretary of the board within the 30 day period specified in (a) above.

(c) Such motion for rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.

(d) The opposing party may file an objection within 5 days of the filing of the motion.

(e) The board shall not grant a motion for rehearing for 5 days after the motion is filed in order to permit the opposing party to respond. Thereafter the board shall, within 10 days of the filing of the motion, grant or deny the motion, whether or not it has received a response from the opposing party.

(f) A motion for rehearing in a case subject to appeal under RSA 541 shall be granted if it demonstrates that the board's decision is unlawful or unreasonable.

(g) Following the granting of a motion for rehearing, the board shall issue a notice as described in Per-A 206.11 (b).

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Having carefully considered the Appellant's arguments in support of the Motion for Rehearing, the Board found the following:

1. RSA 21-I:46 authorizes a quorum of the Board to conduct any business that may come before the Board. That authority is further described in Per-A 101.02, Per-A 103.02 and Per-A 203.04, and both parties had constructive notice that a quorum of the Board could hear and decide the appeal. The Board found that it was neither unlawful nor unreasonable for it to hear or decide the appeal without specifically offering the Appellant an opportunity to object to the matter being heard by a legally-constituted quorum of the Board.
2. The three-page "Yahoo! Mail" identified in the Appellant's motion as his Exhibit 11 was mistakenly omitted from the list of exhibits, but was fully considered by the Board in its deliberations and decision. In a review of the audio recording of the hearing on the merits of the appeal, the Board confirmed that the document was included in the record of the hearing, and is specifically referred to by the Chair as "Yahoo! Mail" addressed to Ms. Roy-Inarelli.
3. The Appellant failed to persuade the Board that it was unlawful or unreasonable for the Board to deny his request for the Board to grant his Motion for Discovery, and "compel the production of witness statements and physical evidence" concerning alleged communications between department personnel and the candidate ultimately selected for the position of Local Office Manager. The Appellant failed to offer evidence of any specific prohibition against agency personnel speaking with persons outside the agency about a position when the agency decides to fill that position; therefore, even if the Appellant had evidence of such alleged communication, it would have no bearing on the agency's ultimate conclusion that the Appellant lacked the personal and professional qualifications for selection to the vacancy. The Board originally denied the Appellant's request for certain information about the selected candidate at a November 3, 2010, prehearing conference conducted by Commissioners Wood, Bonafide, Johnson and Casey. Confirmation of that decision was provided in the Board's hearing notices dated December 1, 2010, and December 20, 2011. The Appellant has offered nothing between the date of his original Motion for Discovery and his current Motion for Rehearing to persuade the Board that its decision is unlawful or unreasonable.

For all the reasons set forth above, the Board voted unanimously to DENY the Appellant's Motion for Rehearing and to AFFIRM its decision denying his appeal.

THE PERSONNEL APPEALS BOARD



Patrick Wood, Chair



Philip Benafide, Vice-Chair

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Appeal of Robert Styffe – Docket #2009-P-005 New Hampshire Employment Security

April 18, 2012

A quorum¹ of the New Hampshire Personnel Appeals Board (Wood and Bonafide) met in public session on Wednesday, January 11, 2012, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeal of Robert Styffe, an employee of New Hampshire Employment Security. Mr. Styffe, who appeared *pro se*, was appealing his May 1, 2009, non-selection to the position of Local Office Manager in the NH Employment Security's Laconia Office. Richard Lavers, Chief Counsel, appeared on behalf of New Hampshire Employment Security.

Procedural history of the appeal

1. Mr. Styffe's original notice of appeal was received by the Board on May 14, 2009. Shortly thereafter, on June 4, 2009, the Appellant filed a Motion for Summary Disposition, asking the Board to grant the Appellant a salary increase in his present position, salary grade 20, to the step closest to, but not less than, the level of compensation to which he would have been entitled had he been promoted from Certifying Officer III to Local Office Manager.
2. On June 19, 2009, the Board received the State's Response to Motion for Summary Disposition and Appellee's Motion for Summary Disposition, in which the State denied the Appellant's allegations and argued that the Appellant's requested relief exceeded the jurisdictional authority of the Personnel Appeals Board. The State also asked the Board to find that the Appellant failed to complete the informal settlement process outlined in the Personnel Rules, and failed to re-apply for the position when it was posted for external recruitment, thereby failing to exhaust his administrative remedies. The State asked the Board to grant its Motion for Summary Disposition or, in the alternative, schedule the matter for a hearing on the merits of the appeal.

¹ Although RSA 21-I:46, II, authorizes quorum of the Board, consisting of any two members, to conduct its business, the Board's practice has been to allow parties to object, in most instances, if a full three-member panel is unavailable. Neither party objected to having the appeal heard by a quorum of the Board.

3. By letter dated June 26, 2009, the Appellant filed a further response with the Board titled "Rebuttal to Appellee's Response to Appellant's Motion for Summary Disposition and Response to Appellee's Motion for Summary Disposition."
4. The parties were scheduled to appear for a hearing on the merits of the appeal on November 3, 2010. However, on October 15, 2010, the Appellant filed a Motion for Discovery. He also requested that the hearing on the merits of the appeal be converted to a prehearing conference. The State's Objection to Appellant's Motion for Discovery was received on October 27, 2010.
5. At the November 3, 2010, prehearing conference, the Board formally denied both the Appellant's and Appellee's Motion for Summary Disposition. After hearing argument on the Appellant's Motion for Discovery, and the Appellee's Objection, the Board asked the State's representative to provide certain information about the Appellant's application for promotion, along with information about how he was rated during the structured interview process. The parties were advised that a hearing on the merits of the appeal was then tentatively scheduled for November 30, 2010.
6. On November 4, 2010, the Board issued formal notices to the parties to appear on November 30, 2010, for a hearing on the merits of the appeal.
7. On November 17, 2010, the Appellant notified Mr. Lavers and the Board that he would be requesting an additional postponement of his scheduled hearing in order to allow him time to review documents he had received from the agency, and prepare a written response. Mr. Lavers objected to the request to further postpone the hearing. The parties were notified on November 22, 2010, that the Appellant's request to again postpone the appeal had been granted, and the parties were asked to provide the Board with a list of dates in January or February, 2011, when both parties might be available for a hearing.
8. As a result of other scheduling priorities, no hearing dates were available until September, 2011 or January, 2012. The parties agreed that the matter could be scheduled for a hearing on the merits of the appeal on January 11, 2012.

The appeal was heard on offers of proof by the parties. The record of the hearing in this matter consists of pleadings submitted by the parties listed above in the procedural history of the appeal, the audio recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

- November 19, 2010, Appellant's Prehearing Submissions including
 1. Appellant's response to non-selection letter and request for explanation dated May 6, 2009
 2. Division of Personnel Structured Interview Grade letter dated May 5, 2009
 3. Division of Personnel Structured Interview Grade letter envelope post marked May 6, 2009

4. Appellant's follow-up request for additional information regarding non-selection dated May 8, 2009
 5. Appellant's Objection to Division of Personnel's May 5, 2009 Structured Interview Grade letter dated May 8, 2009
 6. Proposed revisions to original non-selection letter resulting from July 6, 2009 Meeting dated July 7, 2009
 7. Appellant's response to Appellee's draft revisions to July 7, 2009 proposed revisions dated July 10, 2009 and Appellant's rejection of Appellee's proposed revisions, including withdrawal of Appellant's original settlement offer
 8. Structured Interview appointment, purpose and resources letter dated April 14, 2009
- NHES letter dated November 4, 2010, with copies of:
 1. Denise Roy-Innarelli's interview notes
 2. Patrick Manion's interview notes
 3. Chris Jones' interview notes
 4. Robert Styffe's application for employment as submitted
 - NHES letter dated November 8, 2010, with copies of Denise Roy-Innarelli's notes concerning Appellant's application for promotion to Local Office Manager
 - NHES letter dated November 12, 2010, with transcripts of the interview scoring sheets as prepared by interview panel members Denise Roy-Innarelli and Christianne Jones
 - NHES letter dated November 15, 2010, with transcript of the interview scoring sheet for hiring panel member Patrick Manion

Position of the parties

The Appellant argued that according to Per 501.06 of the NH Code of Administrative Rules, candidates participating in a structured interview will be rated solely on the basis of their responses to questions asked during the interview. He suggested that if the interviewers found him to lack the qualities needed to successfully manage the office, there must have been some basis other than the quality of his responses. The Appellant argued that if the members of the interview panel wanted him to provide information to them about his prior managerial experience, they should have asked him about that specifically. He argued that when the interviewers asked questions such as "Do you have any questions for us?" or, "Are there any questions I haven't asked you that I should?" he had no way of knowing that they expected him to discuss his prior managerial experience, or that they wanted him to describe why he felt he was best for the job. The Appellant argued that his education and experience qualified him for promotion, that the agency violated the Personnel Rules by failing to give any weight to

supervisory recommendations and his record of past performance, and that the agency violated the Personnel Rules by engaging in pre-selection and refusing to promote him in order to allow the agency to recruit a specific candidate from outside the agency. Finally, the Appellant argued that he was entitled to promotion unless the agency could provide some articulable basis for its decision denying him selection to the vacancy.

Mr. Lavers argued that the burden of proof was on the Appellant, and that in order to prevail in his appeal, the Appellant needed to prove that his non-selection for promotion to the position of Local Office Manager was unlawful or unreasonable. Mr. Lavers argued that while the Appellant met the minimum qualifications for the position and obtained a respectable score on the questions asked during his structured oral interview, the Appellant failed to explain to the interviewers how his prior managerial experience in the private sector would transfer into public sector management of the local office. Mr. Lavers argued that the Appellant also failed to display a sufficient level of initiative or enthusiasm to persuade the interview panel that he was the right candidate for the job. Finally, Mr. Lavers argued that the Appellant offered no evidence of pre-selection of an external candidate.

Having carefully reviewed the evidence, and having considered the parties arguments and offers of proof, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. The Appellant was one of three in-house candidates for a position of Local Office Manager in the Laconia Office of New Hampshire Employment Security. On April 24, 2009, the Appellant participated in a structured oral interview conducted by a three-member panel that included two supervisors, Christianne Jones and Denise Roy-Inarelli, and the agency's Human Resources Administrator, Patrick Manion. Although the Appellant did not ask if there would be a second interview, he believed that if he passed the structured interview for the classification of Manager, there would be a follow-up interview during which he would have an opportunity to more fully discuss his interest in, and suitability for, the specific position vacancy. There was no second interview.
2. The structured interview questions were intended to test the applicants' knowledge and technical skills as they related to the position of Local Office Manager. The questions themselves fell into five general subject areas: knowledge of NHES mission and programs; principles of management (ability to plan, organize, coordinate and supervise staff); communications (ability to communicate effectively); knowledge of personnel rules and practices; conflict management and problem solving. In addition to evaluating the candidates' job knowledge and scoring their responses to standardized

interview questions, the members of the interview panel also were looking for evidence of certain intangible qualities, including whether or not a candidate was an "outgoing people person" who could effectively deal with employees and personnel issues, and whether or not the candidate demonstrated initiative, enthusiasm and a desire for the position. In order to help make that assessment, the interviewers asked supplemental questions including, "Are there any questions that I haven't asked you that I should?"

3. The Appellant scored 83.7% on the structured oral interview. However, the interview panel reached the unanimous conclusion that, while the Appellant met the minimum qualifications for the position and attained a respectable score on the technical portion of the interview, he did not possess critical personal and professional qualifications that would be necessary to successfully manage the Laconia District Office. The Appellant was notified by letter dated May 1, 2009, signed by Denise Roy-Inarelli, that he had not been selected for the position.
4. On May 6, 2009, the Appellant sent an email message to Ms. Roy-Inarelli, which he copied to HR Administrator Patrick Manion, requesting additional information about how Ms. Roy-Inarelli had arrived at the conclusion that the Appellant did not possess the qualities necessary to succeed as a manager of the local office. The following day, the Appellant received a letter from the NH Division of Personnel advising him, mistakenly, that he had not achieved a passing earned rating in his structured oral interview. The Appellant was able to correct the error almost immediately, and it had no effect on the selection process.
5. On May 8, 2009, Mr. Manion sent an email to the Appellant explaining that Ms. Roy-Inarelli had taken leave for the week, but would be returning the following Monday and should be able to answer the Appellant's request for information at that time. The Appellant replied to Mr. Manion by email also dated May 8, 2009, and advised Mr. Manion that although the Appellant would prefer to discuss the issue before filing a formal appeal, he was aware of the deadline for filing a timely appeal and he probably would file an appeal of his non-selection in order to preserve those rights.
6. On July 6, 2009, the Appellant met with Ms. Roy-Inarelli and Human Resources Administrator Patrick Manion (now retired) to discuss the Appellant's concerns about the selection process. At the conclusion of that meeting, the Appellant believed that they had reached an agreement to have the agency amend the letter of non-selection in exchange for the Appellant withdrawing his appeal.
7. The Appellant sent an email message to Ms. Roy-Inarelli on July 7, 2009, proposing two revisions to the Appellant's May 1, 2009, notice of non-selection. The Appellant asked the agency to add the phrase "at this time" to the first sentence of the letter so that it would read, "This letter is to notify you that I have decided not to select you for the position of Laconia Local Office Manager at this time." The Appellant also proposed replacing the second sentence of the letter in its entirety. Instead of saying, "This decision is based on my opinion that you do not possess the qualities necessary to successfully manage the constant and multifaceted issues and challenges inherent in

the local office environment,” the Appellant asked to have the letter rewritten to say, “Although you are well qualified for the position of Local Office Manager, I wish to explore the possibility of a more qualified candidate from a potentially larger pool of applicants outside of the Agency.” The Appellant formally offered to withdraw his appeal before this Board if the agency would make his recommended changes to the May 1, 2009, notice of non-selection. In a follow-up email dated July 10, 2009, the Appellant asked for the agency to notify him, on or before July 15, 2009, if his proposal was acceptable.

8. After discussing the matter with Mr. Manion and reviewing the Appellant’s proposed changes with legal counsel, Ms. Roy-Inarelli decided that she could not agree to the Appellant’s proposed changes, as she continued to believe that the Appellant lacked the personal and professional qualifications for selection to the vacancy. She indicated that she was not willing to describe the Appellant as “fully qualified.” She also indicated that she had not refused him promotion in order to recruit from outside the agency, and therefore would not include that language in the letter.
9. By letter dated July 15, 2009, Ms. Roy-Inarelli informed the Appellant that the agency would make some changes to the notice of non-selection, but not the exact changes that the Appellant had requested. Ms. Roy-Inarelli agreed to insert the phrase “at this time” to the first sentence. Ms. Roy-Inarelli also offered to revise the second paragraph to read, “While you met the minimum qualifications, achieved a respectable score of 83% on the structured interview, and have considerable management experience in private industry, you failed to adequately communicate to the interview panel an understanding of the responsibilities of the Laconia Local Office Manager position and how your skills and prior management experience would transfer to and fit the needs of this position.”
10. The Appellant found Ms. Roy-Inarelli’s suggested revision to be unacceptable and did not withdraw his appeal.
11. NH Employment Security appreciates the Appellant’s work as a Certifying Officer III, and the agency considers him to be a skilled adjudicator, assigning him to handle some of the most complex issues concerning requests for award of unemployment compensation.
12. Skills that would make an employee an effective adjudicator are different from those skills needed to manage a local office. Adjudicators work in offices that are closed to the public, and while they may be responsible for mentoring Certifying Officer I incumbents, they generally have no subordinate staff to manage. By comparison, local office managers have significant customer contact and represent “the face of the department” with customers, employers and members of the community. Local Office Managers also are responsible for managing a fairly large staff.
13. Members of the interview panel did not attempt to recruit external candidates for the position of Local Office Manager before interviewing internal candidates, and there was no evidence of pre-selection.

Rulings of Law

- A. In keeping with the provisions of Per 501.06 (a) of the NH Code of Administrative Rules, structured interviews form only a part of the total review during a selection process. The members of the interview panel complied with the requirements of Per 501.06 (c) by rating the Appellant solely on the basis of his responses to standardized job-related questions asked during the interview, and not on any prior personal knowledge they may have had about the candidate. Although they did not score his responses to supplemental questions, they were entitled to form an opinion of his suitability for the specific position based upon his reactions and responses.
- B. According to Per 602.02 of the NH Code of Administrative Rules, whenever possible, an appointing authority will fill a vacancy from within the agency based upon the employee's, "(a) Possession of the knowledge, skills, abilities and personal characteristics listed on the class specification for the vacant position; and (b) Capacity for the vacant position as evidenced by documented past performance appraisals."
- C. Although the evidence reflects that past performance appraisals were not a consideration in the selection decision, the appointing authority recognized the Appellant's skills and abilities as an adjudicator. Having determined that those skills were not the same as those required to successfully manage the activities and staff in a busy local office, the Appointing Authority concluded that the Appellant lacked the personal qualifications for appointment and notified him of that decision, citing Per 602.02 (c) as the reason for his non-selection.
- D. As set forth in Per-A 207.12 (c) of the NH Code of Administrative Rules, in order to prevail in his appeal, the Appellant needed to prove, by a preponderance of the evidence that the decision denying him selection for promotion was, "unreasonable or unlawful because: (1) The appellant met the minimum educational and work experience requirements for selection to the vacancy; (2) The appellant possessed the personal and professional qualifications for selection to the vacancy; and (3) The appointing authority abused its discretion by denying selection to the person best qualified for selection to the vacancy, or that the non-selection decision was unlawful."

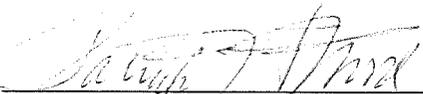
Decision and Order

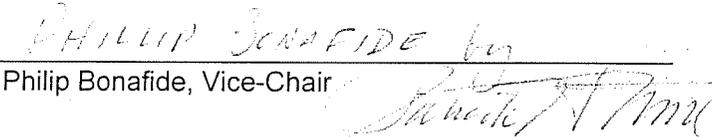
There is no dispute that the Appellant met the minimum educational and work experience requirements for selection to the position of Local Office Manager. There also is no dispute that the agency is satisfied with the Appellant's work as a Certifying Officer, and respects his skills and abilities as an adjudicator. Those skills, however, are not necessarily the same skills needed to manage an office, supervise staff and create effective relationships with claimants, job seekers, local businesses and

community organizations. The Appellant has failed to persuade the Board that the decision of the appointing authority that he did not possess the personal and professional qualifications for selection to the vacancy was unreasonable or unlawful or that the appointing authority abused its discretion in making that decision. The Appellant has not persuaded the Board that by denying him selection, the appointing authority abused its discretion, or that the non-selection decision was unreasonable or unlawful.

For all the reasons set forth above, the Board voted unanimously to DENY the appeal.

THE PERSONNEL APPEALS BOARD


Patrick Wood, Chair


Philip Bonafide, Vice-Chair

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