

State of New Hampshire



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

APPEAL OF EARL GAGE NEW HAMPSHIRE HOSPITAL

Docket # 2003-D-008

March 1, 2004

Issued March 28, 2007

The New Hampshire Personnel Appeals Board (Wood, Johnson, and Urban) met on Wednesday, October 8, 2003, under the authority of RSA 21-I:58, I, to hear the appeal of Earl Gage, an employee of the New Hampshire Hospital. Mr. Gage, who was represented at the hearing by Jean F. Chellis, SEA representative, was appealing his December 11, 2002, letter of warning and suspension without pay for five days for violating the trust that the Hospital had given Mr. Gage in the execution of his duties as a Security Officer II and for failure to meet the job standard as evidenced by his failure to follow established practice and procedures, i.e. the departmental procedure for "patient valuables and contraband" and the Contraband Report form. Attorney Cynthia Ickes and Ms. Marie Lang, the Human Resources Administrator for New Hampshire Hospital, appeared on behalf of the Agency.

This appeal was heard on a full evidentiary basis. The record of the hearing in this matter consists of pleadings submitted by the parties to the hearing, the audio tape recording of the hearing on the merits of the appeal, notices and orders issued by the Board, the documents admitted into evidence, and the testimony of various witnesses. By agreement, the parties submitted the following exhibits:

*Appeal of Earl Gage
Department of Health and Human Services
Docket # 2003-0-008
Page 1 of 18*

Exhibits Submitted Jointly

- a-1 05/22/01 letter of counseling issued to Earl Gage
- a-2 12111102 letter of warning/notice of suspension without pay
- a-3 Patient Valuables/Personal Belongings (NHH policy)
- a-4 Search for Contraband (NHH policy)
- a-5 Campus Police Daily Communications Logs (redacted)
- a-6 February 14, 2003 letter from NHH Superintendent Chet Batchelder
- a-7 May 13, 2003 letter from the Director of Division of Personnel

The State submitted certain additional exhibits as follows:

- ST-1 SOP - Enforcement of New Hampshire Hospital Policies, Rules and Regulations
- ST-2 SOP - Investigations
- ST-3 SOP - Daily Communications Log
- ST-4 SOP - Patient Valuables and Contraband
- ST-5 Excerpts from the Employee Handbook signed by Earl Gage on March 6, 1998.
- ST-6 Dispatch log from Manchester Police Department dated 11120102

The appellant objected to State's Exhibits 1, 2, 5, and 6 with regard to relevance. After discussion, it was agreed that number 5 would be admitted solely for the purposes of Item 6 on Page 23. Items 3 and 4 were admitted subject to determination of relevance. Items 1, 2, and 6 were held and not admitted at this time; although this decision would be reviewed as the hearing proceeded. If they were presented into evidence and sufficient relevance appeared to the Board at the time, they would be admitted; otherwise they would not be admitted.

In addition, the Appellant presented a number of exhibits as listed below that were admitted without objection, other than the standard caveat concerning their relevance:

Union Exhibit 3 Contraband Report dated 11-20-02, control number 02-3880

Union Exhibit 4 Possessed Property Report dated 11-20-02, case number 02-3880

Union Exhibits 6, 7, 8, 9, 10, and 11 Photocopies of photographs of the New Hampshire Hospital
Campus Police Office

Union Exhibit 2, a memorandum from Sandra Glover, and Union Exhibit 5, a Possessed Property Report dated November 22, 2002, were not admitted at this time

In addition to the exhibits, testimony was received from the following witnesses:

1. Charles I. Goodale
2. Sandra Glover
3. Patrick Rockburn
4. Frank M. Harris
5. Appellant, Earl Gage

Mr. Goodale who has been the Chief of Campus Police for twenty years, testified that it was standard operating procedure in the Department for the Chief to sign off on procedures and policies affecting the Department. He testified that while there did not appear to be the signature of the Chief on the State's Exhibits 1 and 2, they had been approved by the Chief. He also testified that Mr. Gage had worked with the Chief on the Patient Valuables and Contraband Policy following the letter of counseling that had been given to Mr. Gage concerning the handling of firearms, Exhibit a-1. This occurred in 2001 and related to an item that was in the drawers in the desk shown in Union Exhibit 6 at the left of the photograph. He testified that officers within the Department do not have firearms training, and, therefore, there is a heightened level of concern whenever firearms of any sort are in the Department. The letter of counseling to Mr. Gage related to a situation in which there was a gun in the second drawer of the cabinet with a loaded clip next to the gun. The Chief further testified that Officer Gage helped set up the templates for

the Contraband Report and the Lost and Found Report and policy. Also Mr. Gage recommended obtaining a safe for firearms and other similar items. The Chief testified that in the office there are two safes plus a wall safe, and one of these is the "firearms safe."

The Chief then reviewed the policies relating to firearms. First he said there was a requirement of notification and a clear notation in the log of the presence and location of the gun with the make, model, and serial number. Secondly, the gun must be made safe, especially if it is a semiautomatic. The clip must be removed, the officer must make sure the chamber is empty, and a pencil should be put in the slide. Alternatively, the gun should be "field stripped."

With regard to the incident for which Mr. Gage was suspended, the Chief testified that the gun was retrieved on a Friday, and he heard about the incident on Monday. The desk that Officer Gage used was also used by other officers and was often used for case files with which Mr. Gage was routinely involved. Some times the desk was locked; other times it was not. According to the information the Chief received, there were papers and a clipboard over the gun and that the gun was in a cocked position in the bottom drawer of the desk, although there was apparently room in the safe for the gun. The Chief indicated his expectation as to the location of the gun was that it would either be in the safe shown in Union Exhibit 11 or in the wall safe, but a gun should never be left in the drawer of a desk.

The Chief testified that when he came in on Monday Deputy Chief Harris either gave him the gun or showed it to him. At that time, it was in the Chief's desk in an evidence bag or possessed property bag with a Possessed Property Report attached to the bag. The Chief further testified that Ms. Glover has access to his desk upon request, as well as the Deputy Chief and Lieutenant Rockburn. The Chief was then asked questions about Union Exhibit 5 which is a Possessed Property Report dated November 22, 2002. He testified that the signature appeared to be that of Deputy Chief Harris. Union Exhibit 5 was then admitted into evidence.

The Possessed Property Report dated November 20, 2002, Union Exhibit 4, was then discussed and the Investigation Control Number identified. It was the Chief's understanding that an investigation had been undertaken to determine whether the pistol had been stolen, and he felt that was within the realm of the initial investigation to be conducted by an officer of the Department. The other option would have been to turn the gun over to the Manchester Police Department or the State Police and to meet with them to allow them to take the firearm. He said it was unexpected that the Department would take possession of the gun, and it was not the ordinary situation. The Chief testified that the officers in his department are considered to be part-time police officers under RSA 135:42, 42, and 43. Their jurisdiction is limited to the campus of the New Hampshire Hospital.

The Chief then discussed the State's Exhibits 1 and 2, the enforcement of New Hampshire Hospital's policies, rules and regulations, and the SOP dealing with investigations. The Chief referred to the second paragraph F as being the problem area in the particular circumstances with Mr. Gage. He testified that when he saw the gun, he did not see Union Exhibit 4 which is the Possessed Property Report dated November 20, 2002, and he did not see that report until after he had seen the gun. He noted that in Union Exhibit 4, it does not refer to any ammunition having been recovered with the gun, although Union Exhibit 5 does show the presence of ammunition.

The Chief said the check by his officers with NCIC was appropriate to determine whether there had been a Brady Act violation. He was not sure whether Officer Gage had been requested to do the investigation, or whether Mr. Gage had requested permission to do the investigation.

With regard to the memo from Ms. Glover, Union Exhibit 2, the Chief indicated that he was given a copy around December 17, 2002 and identified the memorandum. Union Exhibit 2 was then admitted into evidence.

The Chief further testified that he felt Officer Gage's actions with regard to the gun and the method by which it was handled were blatant violations of the standard operating procedures as well as the procedures requiring the completion of forms.

The Chief testified that officers normally having access to the desk were the Deputy Chief, Lieutenant Rockburn, Ms. Glover, and Officer Gage. He said it was his understanding that Officer Lombard found the gun in the drawer and pointed it out to Officer Drewes. He reviewed the daily log, the policies, and the notes of the officers in determining what he thought should be done by the Department with regard to the actions of Officer Gage. He felt there had been a violation of the trust he has in Officer Gage with regard to the mishandling of the firearm by Officer Gage. He said the public at the time did not have complete access to the office, but it was semi-private, and the doors were not locked. The procedure now is that the doors are locked from the inside.

The Chief testified that on November 20, 2002, he met with Officer Gage before Officer Gage went to Manchester to pick up the patient's weapon. The Chief then left for a medical appointment and was gone for the rest of the day. He said that when he spoke with Officer Gage prior to his leaving for the day, it was at the front of the office. He was unsure of the time.

The Chief was then asked to comment upon State's Exhibit 3, which is the office procedures for the daily communications log, and in particular paragraph III.D. relating to the requirement that the police staff read and initial the log on a daily basis.

The Chief was asked whether the firearms safe was ever called the valuables safe, and he said it probably was. The combination to the wall safe is given to all of the officers. Also the safe shown in Union Exhibit 11 is a dial safe, and all of the officers have that combination. He said there was an evidence locker that was the lower drawer of the safe shown in Union Exhibit 11. The Chief further testified that Officer Gage requested the purchase of an evidence safe, but due to financial constraints such a safe has not been purchased.

The "evidence" safe is accessed, he said, on a supervisory level by Lieutenant Rockburn, Deputy Chief Harris, himself, and Officer Gage. The desk was used by all of the line staff, and it was routine to have the desk open at least 90% of the time.

The Chief said he did not take the gun out of the bag, but only observed it in the bag when he came in on Monday. When asked why the evidence safe was not purchased, he testified there were not sufficient funds in his budget to do so.

Mr. Gage then testified that he had worked initially as a YDC Youth Counselor II before becoming a security officer and was upgraded to Security Officer II about two years before the hearing. He testified he did work on the SOP concerning police pursuit, search of vehicles, but he was not sure whether he was instrumental in the final version of the SOP. He did agree that it was the obligation of every officer to be familiar with the policies.

With regard to the counseling letter in 2001, Mr. Gage said he was made aware that his handling of a gun at that time was improper. He said he was a new officer and was not fully familiar with all of the procedures. With regard to the incident of November 2002, he said he was asked to go and recover a weapon from the residence of a patient at the Hospital. He further testified that they called the Manchester Police as a courtesy and to advise them of their presence in Manchester. When asked if he was familiar with the limited jurisdiction of New Hampshire Hospital Campus Police, he said he was familiar with that limitation. He said that the Chief did not ask him to have the Manchester Police Department pick up the weapon. He said their dispatch office called Manchester Police, and he had a conversation with the Manchester Police Department while he was at the residence. Mr. Gage further testified that he had gone into the residence, found the pistol and was prepared to leave at the time the Manchester Police Department arrived. He said they had no interest in possessing the gun and that it was his opinion that they did not want to take possession of the gun. He told the Manchester Police that he had the gun

secured in the trunk and that the parts of the gun had been separated. He said it was unloaded at the time, and the bullets had been removed from the gun and placed in an ammunition box, also in the trunk.

Mr. Gage testified that it was his understanding that the resident at the Hospital said she had bought the gun at a local gun shop. He was concerned about this because it was his understanding that guns should not be sold to people with mental illness. Accordingly, he was wondering whether she had falsified the application and also whether the gun had been stolen. He was asked why he did not put the gun into an evidence bag, and he said he did not have an evidence bag.

Upon his return to the campus police station, Deputy Chief Harris gave him ideas on who to call to investigate the status of the gun and that at one point, he had actually handed the gun to Deputy Chief Harris. Mr. Gage said he secured the gun in the desk drawer, put it under papers, folders and the clipboard, and locked the drawer. He said the bottom safe was not available. He said the top portion of the desk safe was the dietary money vault and the second safe was for patient valuables. If it was stored in there, there could be a question on the chain of custody because a number of people would have access to that safe. He testified he did not know who had keys to that safe. He further testified that in his opinion the gun was safe in his locked desk drawer.

Mr. Gage testified that he had spoken to the Deputy Chief about the investigation, and the date of November 20, 2002 on the reporting form was the date of the start of the report. He further testified that he was sort of considered the "Ritalin Boy," because of his energy level, and that sometimes in evaluations it was identified that he had a problem with policies.

Mr. Gage testified that he did not indicate on the Possessed Property Report or on the Contraband Report that there was ammunition.

When asked if he thought he was being treated differently, he said that he felt he was. Because of his knowledge and ability, he felt he was being held to a higher standard and that his case load was 31 cases, while the next highest case load of any officer was three.

Mr. Gage was asked about the investigatory meeting on November 26, 2002. He said there was no discussion of past evaluations or the Contraband Report or the logs. The second meeting, on December 11, 2002, was held in the medical suite, which is a private office. He said the Chief was unhappy about what he had to do, but the Chief asked him to read the letter and asked if he understood what the letter said. Mr. Gage indicated that he did, and he left the office. He was asked if he felt the Chief was open to rebuttal, and he said that in his opinion the Chief was absolutely not willing to hear any rebuttal. He said he had no contact from the Chief between November 26, 2002 and December 11, 2002.

He was asked if anyone else knew the gun was in the office, and he said that Officers Lombard, Shapiro and a third officer knew, as well as the Dispatcher. He was asked a series of questions concerning the gun, specifically:

Was the gun cocked? No.

Was the gun in a plastic bag? No.

Was it ever signed off on the Patient Valuables and Contraband Form in accordance with SOP?

He testified it was not signed off by any officer.

With regard to weapons and contraband, he said that often the contraband would be put in the second drawer of the safe shown on Union Exhibit 8. It was his understanding that the Chief, the Deputy Chief, Lieutenant Rockburn, and he were the only persons who had access to that drawer. He also testified that the weapons/contraband drawers were unlocked at all times, and he felt it was not a safe place for the pistol. He also testified that it was a safety hazard to have a knife in the unlocked area of the desk.

With regard to his request for an evidence locker, he felt the cost for such a safe would be \$70-80, and he did not know where the \$500 - 600 figure came from. He said the bottom safe drawer was not available

since there was cocaine in there. The other safe contained patient valuables. The wall safe was not appropriate as it was not a gun locker and everyone had the combination. He said ammunition could be kept in the camera/photo room in a master box for safekeeping. The ammunition he recovered at the patient's home was put into his personal locked mailbox. He asked who knew it was there, and he said probably no one else, although the Chief has a master key to all of the mailboxes.

Mr. Gage said that he checked on November 21, to see if the gun was still in the drawer. He said he was scheduled to come in at 7:00 PM on the 21st, when he received a call from Officer Lombard at home asking about who was handling the gun. He also talked to Dispatcher Alex Diaz who told him that he was being trashed regarding the gun and that it was gone. He said he arrived at 11:00 and after training, checked to see if the gun was still in the desk. At around 3:00 AM, he called to see if the desk was still locked, and Officer Drewes said the desk was locked. When he came into the office on November 22, the gun was not in the desk, and he then contacted Sergeant Nolan. He said that Sergeant Nolan had known that the gun was there in the desk and was involved with the process of going to Manchester to pick up the gun as well as being involved in the situation dealing with how to handle the gun.

Mr. Gage further testified that some time between 7:30 and 8:00 AM on November 22, he saw the gun in the Chief's desk, and was told by Ms. Glover that the gun was in the Chief's desk and that she had seen it there a couple of times during the day. He said that she was upset and that his case had been screwed up as well as the chain of custody for the gun.

Mr. Gage further testified that on November 22, the Deputy Chief told him he had the gun, This conversation took place when Officer Gage was going off duty. The Deputy Chief said he had talked or would be talking to Officer Lombard and Lieutenant Rockburn. The Deputy also asked where the ammunition was and Officer Gage, after being told to do so, went and retrieved the ammunition. He said there were no log entries concerning events surrounding the gun, and that after this incident, his relationship with the officers became terrible.

Ms. Sandra Glover then testified that she has been the radio dispatcher for the New Hampshire Hospital, Police Communications Specialist I, for 23 years. She said she has had entry to the Chief's desk in order to get keys and to account for them, especially for student doctors. She said that she had had access to the desks since 1989 and that the Chief, in her opinion, knew that she had access to his desk. With regard to Union Memo II, she identified that she had written it and said that assigning a control number to files was one of her duties. She said she had taken the keys out of the top right drawer of the Chief's desk and looked in the other drawers for any other keys that the Chief might have left there. She was asked if she had heard any conversation between the Chief and Earl Gage before Earl left for Manchester on the morning of November 20. She said she did not remember any conversation. She did say that guns were locked in the safe for police officers if they happen to be coming into the Hospital.

She was asked if she had ever been requested not to log an investigation or in any way limiting an investigation. Some times at the request of a supervisor, she might be asked to do so. She wondered whether the gun that was in the log entry was the gun that had been brought back from Manchester by Officer Gage, and she was not sure.

Lieutenant Patrick Rockburn then testified saying that he had been a supervisor for three and a half years, and that he is a certified police officer and has a bachelor's degree in criminal justice. He said he was working the third shift which was 11:00 PM until 7:00 AM. The only contact he had with the officers on the day shift would be between 7:00 and 7:30. Lieutenant Rockburn testified that around 1:00 AM following the retrieval of the gun, Officer Lombard opened the top right drawer and asked what was with the gun in the drawer. He said the hammer was cocked and the safety was not on.

Lieutenant Rockburn said he was familiar with the type of gun and that he took it out and field stripped it. He was asked whether there was any paperwork with the gun, and he said he did not see any paperwork. He said the gun was not in an evidence bag and there was no ticket with it. It was in a wooden desk drawer. He said he placed it in plastic baggies and put it in the Chief's desk and put a control number on it. He notified Deputy Chief Harris in the morning and had the magazine separated from the gun. He said

the desk that the gun was in when they found it was unlocked. He said this was the first time he had dealt with an unsecured firearm, and he was not exactly sure what should be done with it, so he placed it in the Chief's desk. He said to his knowledge, there were no active criminal charges pending and did not know of any reason why the gun would be considered evidence. He thought it was possessed property.

He did not confirm that this was the weapon that Officer Gage had obtained previously. As earlier testified, he gave the gun to Deputy Harris at the end of his shift. He said he did know that Ms. Glover had keys to the Chief's desk. He also testified that Officer Gage did not tell him at 7:00 AM that the gun was missing.

When asked about any expectation of privacy with regard to the desk that Officer Gage was using, he said there was certainly less expectation of privacy than with the Chief's desk. He said more people had access to the desk used by Mr. Gage in order to access the files that they may be working on than would have access to the Chief's desk. He does not remember whether he had to unlock the desk, but he may have. Some times it was locked and some times it was not locked.

Deputy Chief Frank Harris then testified. He said he alternated between the 3:00 to 11:00 shift and the day shift which would be 7:00 to 3:00. He said he was somewhat surprised when Officer Gage returned from Manchester with the weapon because it was his understanding that the weapon was to have been given to the Manchester Police Department. He was not aware of any arrangements that might have been made concerning who was to have the gun as far as specifics, although he was surprised to see it. He said he looked at the weapon to determine whether it was safe, and felt that it was. He said it was unloaded at the time and that he had a very limited conversation with Mr. Gage. He said that Officer Gage had called a sport shop to see where the patient had gotten the gun. He did not think there was really an investigation going on, but it was more acts of curiosity being resolved by Officer Gage. When asked if he had given any other instructions to Officer Gage, he merely said that Officer Gage was to "take care of it." By this he meant that it should be secured and put in a safe with a two-key system, preferably the wall safe. Standard operating procedures require that it be put in an evidence bag and in a locker. He testified

that this was a highly unusual event and that documentation was critical. On the log it should be noted where the gun was placed, the identification of the gun, and where the ammunition was located.

About two days after Officer Gage took possession of the gun, he said Lieutenant Rockburn told him about the firearm being located in the desk drawer with the hammer back and the magazine in but not loaded. He said the gun was in the top right drawer with files on top of it. When the firearm was moved to the Chief's desk, it was in the second or third drawer on the left side of the Chief's desk, and it stayed in that drawer for a couple of hours. It had been placed in an evidence bag with the Possessed Property Form filled out. The gun was then put in the bottom safe shown in Union Exhibit 11 and the second key to the safe was put into his locked desk. The Deputy testified that there are always evidence bags available. He said that when asked, Mr. Gage had told him about the ammunition he had put in the lock box.

He was asked whether he had questioned Mr. Gage regarding what he had done with the gun and he testified that it was not his responsibility. It was his basic understanding that Officer Gage was to go to Manchester with another officer and the patient and to notify the Manchester Police Department to whom the gun was to be given for safekeeping. He said he did not recall why he had that understanding, but that was what he thought was supposed to happen. He said he did not tell Mr. Gage to put the gun into the gun locker.

With regard to the letter of counseling, he said the primary purpose was to limit the unauthorized access to a weapon. He further testified that the log entries were to provide notification of the gun and where it was located. He said there was no notification in the log that the gun had been put in the Chief's desk either. He said when he saw the gun there, it had been field stripped, i.e. broken into four pieces, and was in a plastic bag. He said that bag plus the ammunition was then put into an evidence bag and the firearm put in the bottom safe.

The Deputy said that in his opinion the gun could very well have been given to the State Police because they have a very good working relationship with them. He said the Possessed Property Report does not

show him in the chain of custody. He said he did not know whether Ms. Glover would have gone into the desk and that keys are often stored overnight in the Chief's desk on the right side. Some times that desk is left unlocked, he said, although not usually. He said there had been one time he had been told that people had been rummaging through the Chief's desk, and so from that point on, he did his best to make sure that the desk was always locked.

He further testified that Officer Gage used the drawers in the desk as his own personal drawers, although there are other files in those drawers for ongoing cases that other officers needed, and that the desk was certainly not dedicated to Officer Gage. He also testified that the micro-cassette recorder was there. He said that sometimes the desk was locked and sometimes it was not. He said he would be surprised if any of the other officers considered the desk to be a secure desk. He further testified that he did not know who had keys to the desk Mr. Gage used. He was puzzled as to why Mr. Gage could not wait for the Manchester Police Department to arrive at the residence of the patient before taking the pistol out of the residence and putting it in the trunk of his car.

Based upon review of the documents submitted into evidence and the testimony of the witnesses, the Board makes the following findings:

1. Mr. Gage was requested on November 20, 2002 to go to a patient's residence in Manchester to retrieve a weapon the patient had said she had at her home and with which she said she would commit suicide upon her discharge.
2. The New Hampshire Hospital Campus Police notified the Manchester Police that a New Hampshire Hospital officer, a mental health worker and the patient were going to the patient's residence in Manchester to retrieve a gun, and Manchester Police requested the officer to contact them when he arrived on the scene.
3. The Manchester Police were advised at 10:25 AM that Officer Gage was at the residence of the patient and that he was all set, but wanted to have a Manchester Police officer on the scene before he left.

4. The Manchester Police noted that the report from Officer Gage was that he was doing paperwork and the gun was going with him, but that he was required to contact the Manchester Police Department.
5. The Manchester Police arrived at the patient's home at 10:52 and within seconds after seeing the Manchester Police officers, Officer Gage left the scene.
6. Officer Gage then returned to the New Hampshire Hospital.
7. Officer Gage made some contact with national agencies to determine whether the pistol had been stolen, but took no action to contact the State Police.
8. Under New Hampshire Hospital policy and procedures dealing with patient valuables/personal belongs, records of the patient's property are supposed to be sufficiently precise to identify the items being stored and they are to be held in a safe and secure place at all times.
9. The New Hampshire Hospital policy and procedures dealing with contraband requires that all weapons are to be noted on the police Contraband Form or Possessed Property Report and are to be managed in accordance with the policy dealing with patient valuables/personal belongs.
10. The jurisdiction of the New Hampshire Hospital Campus Police is limited to the campus of the New Hampshire Hospital.
11. The standard operating procedure for the Campus Police Department states that items retrieved that are believed to be of evidentiary value are to be recorded on a Chain of Evidence Form, the State Police Crime Lab Form shall be completed, and the evidence shall be properly secured with the form in the evidence locker.
12. The standard operating procedure for the daily communications log for the Campus Police requires that information shall be noted on the log as an official document of the Campus Police.
13. The standard operating procedure of the New Hampshire Hospital Campus Police dealing with patient valuables and contraband requires that weapons/contraband be listed on a valuables slip with the notation to Campus Police and signed off by a Campus Police Officer, documented with a control number, and secured in the weapons/contraband area for safekeeping.
14. All personnel of the New Hampshire Hospital are responsible to know and follow all hospital and departmental policies and procedures.
15. The Contraband Report, control number 02-3880, dated November 20,2002 by Mr. Gage indicated that the pistol was "secured as evidence."

16. The Possessed Property Report for the same case dated November 20,2002, and signed by Mr. Gage, indicates that the weapon was held as "evidence for investigation placed in locked desk pending disposition."
17. The Possessed Property Report completed by Deputy Harris dated November 22,2002 identifies the pistol and the box of ammunition. This property report indicates that the items were stored by Officer Gage in a drawer on November 20, and then on November 22 were put into the locker-safe for "storage."
18. On November 22,2002, the weapon was at some point during the day in the Chief's desk and was observed there by Sandra Glover as well as Officer Gage.
19. The weapon was placed by Officer Gage in a drawer in the desk used by Officer Gage and other police officers.
20. Officer Gage did not place the pistol in a plastic bag, but put it beneath a clipboard and some papers.
21. The pistol was found in a cocked position with the ammunition clip, although empty, in the pistol, by Officer Carl Lombard on the evening of November 21,2002, or in the early morning of Thursday, November 22,2002.
22. Lieutenant Rockburn, upon being advised of the presence of the weapon in the desk drawer, retrieved the weapon, "field stripped" it, placed it in plastic bags, and put an identification form with the pistol.
23. Lieutenant Rockburn advised Deputy Chief Harris of the existence of the pistol.
24. Deputy Harris spoke to Mr. Gage on the morning of November 22, 2002 and asked if ammunition was recovered with the pistol. Upon being told that there was, he instructed Mr. Gage to retrieve the ammunition which had been locked in Mr. Gage's mailbox.
25. Deputy Chief Harris then put the pistol and the ammunition in the Chief's desk and locked it. Subsequently that day, he advised the Chief of the situation.
26. The weapon was then stored in the safe along with the ammunition,
27. Mr. Gage had previously received a letter of counseling concerning his handling of a weapon at the New Hampshire Hospital Campus Police office.

28. On November 26, 2002, the Chief held an investigatory meeting with Officer Gage and advised Officer Gage that they were investigating the incident along with Human Resources.
- 29.. Mr. Gage was not instructed to obtain the weapon as evidence in a criminal investigation.
30. It is very unusual for weapons of any sort to be at the New Hampshire Campus Police office.
31. Neither the Contraband Report, Union Exhibit 3, nor the Possessed Property Report, Union Exhibit 4, completed by Mr. Gage contained any reference to ammunition nor the location of that ammunition.
32. The log entries for the New Hampshire Hospital Campus Police contain no notification of the location of the weapon after the return of Mr. Gage from Manchester.
33. The logs contain no notification of the presence of any ammunition recovered with the weapon nor the location of the ammunition.

Decision

Based upon the above facts and the information presented, the Board has determined that Officer Gage was aware of the policies and procedures of New Hampshire Hospital and the Campus Police concerning the handling of weapons and their safekeeping and the information concerning those weapons that is to be noted on logs and on paperwork necessary to establish the Chain of Custody of those items. It is unclear whether Mr. Gage was instructed to deliver the weapon to the Manchester Police Department or whether he was instructed to retrieve the weapon and bring it back to the Campus Police,

However, it is abundantly clear from all of the testimony and information received that it is highly unusual for weapons of any sort to be brought into the Campus Police office. For this reason it is imperative that the record of the retrieval of such weapons and ammunition be clearly noted on the logs so that all officers and persons in the Campus Police office are aware of the presence of the weapons and their location. It is clear from the information presented that Officer Gage did not identify the fact that there was ammunition retrieved with the weapon and did not identify the location of either the weapon or the ammunition in any detail. It is also clear that the weapon was not put into a safe by Mr. Gage.

The Board also has not found any information that would indicate that the weapon was to be held as "evidence" in any specific criminal investigation. The Board also believes that Mr. Gage clearly understood the limitations on the jurisdiction of the Campus Police and does not understand why Mr. Gage felt it was his obligation to investigate the ownership of this pistol rather than turning that matter over to the New Hampshire State Police or the Manchester Police Department.

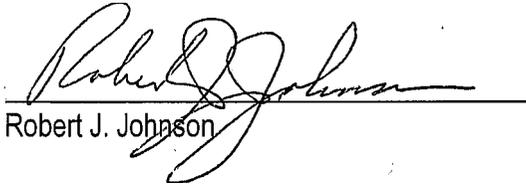
The Board feels that based upon the evidence presented and the testimony, Mr. Gage violated the policies and procedures of the New Hampshire Hospital and the standard operating procedures of the New Hampshire Hospital Campus Police with regard to the safe handling of the weapon and its ammunition. Accordingly, the Board feels that the suspension without pay as described in the December 11, 2002 letter of warning was warranted under the circumstances.

Accordingly, the appeal of Mr. Gage is DENIED.

THE PERSONNEL APPEALS BOARD



Patrick H. Wood, Chair



Robert J. Johnson

Anthony Urban

cc: Director of Personnel, 25 Capitol St., Concord, NH 03301
Cynthia Ickes, Legal Counsel, NH Hospital, 36 Clinton St., Concord, NH 03301
Marie Lang, Human Resources Administrator, NH Hospital, 36 Clinton St., Concord, NH 03301
Jean Chellis, SEA Field Representative, State Employees' Association, 105 N. State St., Concord,
NH 03301