

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

**In Case No. 2011-0315, Appeal of Lawrence Holdsworth,
the court on June 9, 2011, issued the following order:**

Appeal from administrative agency is declined. See Rule 10(1).

Under Supreme Court Rule 10, the supreme court has discretion to decline an appeal from an administrative agency. No appeal, however, is declined except by unanimous vote of the court with at least three justices participating.

This matter was considered by each justice whose name appears below. If any justice who reviewed this case believed the appeal should have been accepted, this case would have been accepted and scheduled for briefing.

Declined.

Dalianis, C.J., and Duggan, Hicks, Conboy and Lynn, JJ., concurred.

**Eileen Fox,
Clerk**

Distribution:

JNH Personnel Appeals Board, 2011-D-006
John S. Krupski, Esquire
Attorney General
File

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State of New Hampshire



PERSONNEL APPEALS BOARD

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Concord, New Hampshire 03301
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Appeal of Lawrence Holdsworth – Docket #2011-D-006

Department of Safety, Division of State Police

Personnel Appeals Board Decision on Appellant's Motion for Rehearing and State's Objection Thereto

April 5, 2011

By letter dated February 1, 2010, Attorney John Krupski filed a motion on behalf of Lawrence Holdsworth, a former employee of the Department of Safety, Division of State Police, requesting a rehearing in the above-titled appeal that was dismissed as untimely by order of the Board on January 5, 2011. Attorney Marta Modigliani filed the State's Objection to Appellant's Motion for Rehearing on February 7, 2011.

In his Motion for Rehearing, the Appellant argued that the Board "...failed to articulate the 'triggering' date in the decision for purposes of a non-disciplinary unpaid suspension for purposes of investigation." The Appellant asserts that he "...remained on this status until his voluntary retirement on June 1, 2010. No disciplinary action has been issued by the Division based upon the factual allegations surrounding the criminal investigation." The Appellant further argued that, "The Board is taking an unprecedented position that an employee must file an 'anticipatory appeal' to preserve their rights under the Personnel Appeals Board. That is, if the Appellant had been convicted he would not have any right to reimbursement for lost compensation. This was unknown until November 15, 2010."

In accordance with the provisions of Per-A 208.03 (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." Having carefully considered the arguments offered by the Appellant in support of his motion, and the State's objection, the Board voted unanimously to DENY the motion for rehearing. To the extent that the Appellant seeks clarification of the Board's original order dismissing his appeal, that request is granted, and the Board's decision is clarified as follows:

In order to preserve the right to appeal, an employee must file an appeal within 15 calendar days of the date of the action under appeal. In this case, the action giving rise to the appeal was the Division of State Police decision to suspend the employee without pay pending the outcome of an investigation of criminal charges. By the Appellant's own account, that decision was made by the Division of State Police on April 1, 2010. In order to be timely, an appeal of that suspension must have been received by the Board on or before April 16, 2010. The Appellant did not file an appeal.

The Appellant asserts that his suspension without pay was later "...extended by Colonel Quinn and approved by the Director of Personnel." Although the Appellant did not provide specific information with respect to the date or length of any extension of his unpaid suspension, the Appellant did not appeal the extension of his suspension.

The Appellant retired from State service effective June 1, 2010, voluntarily terminating his status as an employee of the Division of State Police. On that date, Colonel Quinn ceased to be the Appellant's "appointing authority" as described by the Personnel Rules, and the Colonel no longer had authority to take any disciplinary action against the Appellant under the provisions of the Personnel Rules. As Attorney Modigliani stated in the Department's Objection to the Appellant's Motion for Rehearing, the Appellant, "...overlooks the fact that on November 15, 2010 [when Concord District court issued its finding of 'not guilty' on the criminal charges which had given rise to the Appellant's original suspension without pay] he was no longer an 'employee,' a necessary element for the purposes of Per 1002.01(d), as well as RSA 21-I:58." Attorney Modigliani further argued that, "...the Appellant overlooks the fact that Per 1001.02 (d) doesn't stand for the proposition that a criminal not guilty finding means that he is entitled to reimbursement for lost compensation.. On the contrary, Per 1001.02(d) entitles an employee to be returned to paid status and entitled to any loss of compensation ... if the appointing authority determines that no disciplinary action is warranted..."

Since the Appellant voluntarily left State service, effective June 1, 2010, he was no longer an employee subject to the Personnel Rules and was no longer eligible for a return to paid status when the District Court decision was rendered. The "not guilty" finding by Concord District Court on November 15, 2010, was not an application of the Personnel Rules, and was not binding on any decision the Division of State Police might have made as the result of an internal, administrative process authorized by the Personnel Rules.

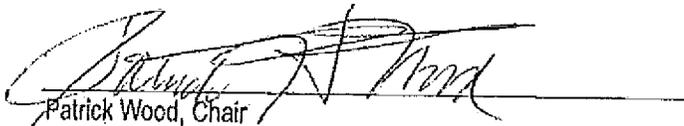
Had the Appellant chosen to appeal his unpaid, investigative suspension, his appeal must have been received by the Board no later than April 16, 2010. Had the Appellant chosen to appeal any extension of his unpaid, investigative suspension, his appeal must have been received within 15 calendar days of the notice of extension. As noted above, no such appeals were filed. As a result, the Board dismissed the appeal as untimely.

Finally, as the State argued in its December 9, 2010, Motion to Dismiss:

"Even assuming *arguendo* that the Division improperly applied any of the Personnel Rules while the Appellant was a classified State employee and suspended without pay, the time period for filing an appeal would have been, at the very latest, 15 calendar days from the last day of employment, June 15, 2010. Having failed to do so, this appeal must be dismissed."

For all the reasons set forth above, the Board voted unanimously to affirm its decision as clarified above dismissing the appeal as untimely, and to DENY the Appellant's Motion for Rehearing.

FOR THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD


Patrick Wood, Chair

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301
Attorney John Krupski, Molan Milner & Krupski, PLLC, 100 Hall St., Suite 101, Concord, NH 03301
Attorney Marta Modigliani, Department of Safety, 33 Hazen Drive, Concord, NH 03305

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Appeal of Lawrence Holdsworth – Docket #2011-D-006

Department of Safety, Division of State Police

January 5, 2011

By letter dated November 24, 2010, Attorney John Krupski, filed an appeal on behalf of Lawrence Holdsworth, a former employee of the Department of Safety, Division of State Police. In his notice of Appeal, the Appellant indicated that he was placed on an unpaid suspension on April 1, 2010, pending the outcome of a criminal investigation and remained in that status until his voluntary retirement June 1, 2010. He argued that because no disciplinary action had been administered, and because on November 15, 2010, Concord District Court found that he was not guilty of two Class A Misdemeanor charges, he should be entitled to reimbursement for lost compensation suffered during the period of suspension (April 1 – May 31, 2010).

On December 9, 2010, Attorney Marta Modigliani filed a response to the appeal, asking the Board to dismiss the appeal as untimely. Attorney Modigliani argued that as a result of criminal charges against the Appellant, he was suspended on or about April 1, 2010, in accordance with the provision of Per 1001.02. Ultimately his suspension was extended through June 29, 2010.¹ Attorney Modigliani stated that the Department also initiated an internal investigation during that same period, and on May 26, 2010, the date that the internal investigation report was filed, the Appellant contacted the Division of State Police to say that he intended to retire effective June 1, 2010. The Appellant left State service voluntarily before the appointing authority had decided whether or not any administrative action was warranted.

Attorney Modigliani argued that the Appellant left State service voluntarily, that he was not a State employee on November 15, 2010, the date of the decision from the Concord District Court. As such, she argued, his appeal must be denied as untimely. She wrote:

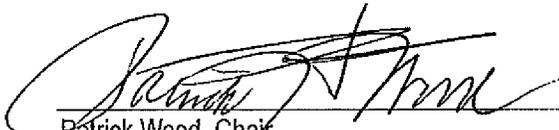
"Even assuming *arguendo* that the Division improperly applied any of the Personnel Rules while the Appellant was a classified State employee and suspended without pay, the time period for filing

¹ Trooper Holdsworth did not appeal his original suspension, or any of the extensions of that suspension.

an appeal would have been, at the very latest, 15 calendar days from the last day of employment, June 15, 2010. Having failed to do so, this appeal must be dismissed."

Having carefully considered the information provided in both the notice of appeal, the response from the Department of Safety and in the State's request for dismissal of the appeal, the Board voted unanimously to DISMISS the appeal as untimely.

THE PERSONNEL APPEALS BOARD



Patrick Wood, Chair

Phil Bonafide, Vice Chair



Robert Johnson, Commissioner

Joseph Casey, Commissioner

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301
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Attorney Marta Modigliani, Department of Safety, 33 Hazen Drive, Concord, NH 03305