

# State of New Hampshire



## **PERSONNEL APPEALS BOARD**

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

Appeal of Dana Johnson – Docket #2012-D\_013

NH Department of Corrections

Personnel Appeals Board Decision on:

Department's Motion to Dismiss,

Dana Johnson's Objection to the Department's Motion to Dismiss, and  
Respondent's Reply to Appellant's Objection to Respondent's Motion to Dismiss

March 13, 2013

On Wednesday, February 6, 2013, the New Hampshire Personnel Appeals Board (Bonafide, Johnson and Casey) met in public session, under the authority of RSA 541-A:31, RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to conduct a prehearing conference with the parties to the above-titled appeal. Attorneys Buonamano and Richard Fogal appeared on behalf of the Department of Corrections. Attorney William Cahill, Jr. appeared on behalf of the Appellant.

As a preliminary matter, the State's attorneys argued that the appeal should be dismissed as untimely, reiterating the arguments raised in the Department's August 23, 2012 Motion to Dismiss. Specifically, the State argued that although the Board's rules permit electronic submission of an appeal when such appeal is received by the Board within the time fixed by rule, the rules also require copies to be forwarded electronically at the same time to all other parties to the appeal. In this instance, the Board received Mr. Johnson's notice of appeal by email on Friday, July 20, 2012, and by first class mail on Monday, July 23, 2012. The Department of Corrections did not receive notice of the appeal until it received a paper copy on Monday, July 23, 2012.

RSA 21-I:58, I provides, in pertinent part, "Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the

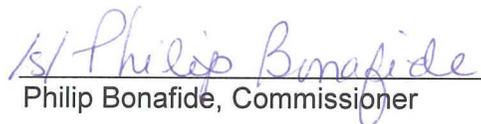
application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal..." Mr. Johnson's appeal was emailed to the Board within 15 days of the action giving rise to the appeal and therefore was timely filed in accordance with Per-A 204.02(c)(2) of the Board's rules.

While there is no dispute that the Department of Corrections did not receive a copy of the Appellant's notice of appeal via email on the same date as the Board, Attorney Kevin Buck, the Appellant's representative at that time, certified that a paper copy was mailed via first class mail to the Board and to the Department of Corrections on July 19, 2012, one day before the fifteen-day deadline. The Board and the Department of Corrections received those notices on Monday, July 23, 2012. Therefore, the Board found that the appeal was timely filed in accordance with the provisions of Per-A 204.02 (h)(2).

Having considered the State's Motion to Dismiss, the Appellant's Objection and the State's Response, the Board further found that the Appellant's failure to provide an electronic copy of the appeal to the Department of Corrections on July 20, 2012 was not intentional or prejudicial to the Department's rights, and therefore would not warrant dismissal or refusal to hear the appeal under the provisions of .Per-A 203.03(a).

For the reasons set forth above, the Board voted to DENY the State's Motion to Dismiss.

FOR THE PERSONNEL APPEALS BOARD

  
Philip Bonafide, Commissioner

cc: Karen Hutchins, Director, Division of Personnel  
Attorney William Cahill, Dumont, Morris & Burke, PC  
Attorney Brian Buonamano, Department of Justice  
Attorney Richard Fogal, Department of Justice