

State of New Hampshire



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

APPEAL OF GAMIL AZMY

DOCKET #99-T-12

New Hampshire Hospital

December 16, 1999

By letter dated December 9, 1999, SEA General Counsel Michael Reynolds filed on behalf of the above-named Gamil Azmy a Motion for Reconsideration of the Board's November 10, 1999 decision denying Mr. Azmy's termination appeal.

A Motion for Rehearing must set forth fully every ground upon which it is claimed that, on the facts in evidence, the decision or order complained of is unlawful or unreasonable; or it must provide additional evidence that was not available at the time of hearing.

Having considered the parties' arguments, the Board voted unanimously to deny the Motion and responds to the appellant's grounds for reconsideration as follows:

1. *"The appellant hereby realleges and reaffirms his entire pleadings in the prior letter of warning matters; and by way of reference for incorporation herein encloses the August 20, 1999 appeal by petition on the letters of warning filed with the New Hampshire Supreme Court." (Motion for Reconsideration, page 1, paragraph 2)*

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RSA 541-A:35 Decisions and Orders states:

"A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed promptly to each party and to his recognized representative."

The Board heard Mr. Azmy's prior written warning appeals. The Board reviewed the evidence, considered the appellant's arguments and allegations, and issued decisions denying those appeals. In accordance with RSA 541-A: 35, the Board's decisions included separately stated findings of fact and rulings of law, and a concise statement of the underlying facts supporting the findings. The Board received and denied the appellant's subsequent motion for reconsideration of those decisions. The Supreme Court later declined to accept an appeal of those decisions. The appellant failed to offer evidence or argument to persuade the Board that he was entitled to a further review of the evidence once final decisions had been issued by the Board.

2. *The Board's findings of fact (pages 6-10) are in some instances incomplete and inaccurate; but just as important, there are many more facts that should have been found and addressed by the Board. The Board's failure to do so is erroneous. (Motion, page 3)*

An assertion that there were more "facts" that the Board should have found is insufficient to justify a rehearing in this matter, or to demonstrate that the Board's decision is illegal or erroneous. The material facts are reflected in the Board's decision.

3. *Even if one is to assume that some of the allegations against Mr. Azmy were correct or partially correct, the Board nevertheless had an obligation to address the voluminous but very specific allegations Mr. Azmy made as to why the appointing authority had in fact targeted him for harassment and ultimately termination. If the appointing authority is allowed to go back years before even any of the letters of*

warning (that was illegal and also addressed herein), Mr. Azmy certainly should be allowed to have his allegations as to prejudice and bias seriously considered."
(Motion, page 4)

The appellant made allegations of bias and prejudice but failed to offer evidence supporting those allegations. The evidence did not support the appellant's allegation that he had been "targeted [for] harassment and ultimately termination." The appellant has failed to demonstrate why the Board would be required to make a formal ruling on every one of the appellant's allegations in the absence of evidence to support them.

4. *"...[M]uch of the other evidence submitted by Mr. Azmy has been completely and aggressively ignored by the Board. By way of example only, Mr. Haley testified that he had engaged in some of the behavior Mr. Azmy was alleged to have engaged in, and not only did not receive the letter of warning Mr. Azmy received but essentially received no counseling or even attention at all on this matter."*

The Board held hearings on appellant's appeals of his letters of warning. In addition, the Board held a multi-day hearing on appellant's appeal of his termination and reviewed hundreds of pages of written evidence. The appellant's evidence and allegations were well presented and were given due consideration by the Board.

5. *The Board may not create its own disciplinary scenario. The appointing authority is bound by the assertions that it has relied upon in the termination. If any of the assertions in the letter of termination form a substantial portion of the disciplinary action and turn out to be inaccurate, the disciplinary action must fail. Mr. Azmy did not engage in "insubordination" as alleged by the appointing authority, and no amount of parsing of the evidence can support this allegation, which clearly was part of the foundation of the termination. (Motion, page 5)*

Mr. Azmy was terminated for a continuing course of conduct that was reflected in his receipt of multiple warnings for the same offense, specifically "...continued failure to meet the work standard

related to communication and problem solving..." and not on a single charge of willful insubordination. The appellant failed to persuade the Board that its decision upholding the termination for continued failure to meet the work standard was unlawful or unreasonable.

6. *It is illegal... for the employer to have factored in all of what it did into this termination." (Motion, page 5)*

According to the letter of termination, Mr. Azmy was dismissed for failure to meet the work standard related to communication and problem solving. New Hampshire Hospital provided sufficient evidence to support the charge, and the appellant failed to offer evidence or argument sufficient to persuade the Board that the termination was improper under the Rules of the Division of Personnel.

7. *Despite the fact that there are twenty-six numbered "findings of fact," the Board's findings and rulings are inadequate as a matter of law under RSA 541-A. (Motion, page 7)*

Please see the Board's response to Allegation #1 above.

8. *The appointing authority's violations of Per 1001.08(c) were extensive. (Motion, page 7-11))*

The evidence does not support the appellant's claim that the appointing authority violated Per 1001.08 (c). (See: PAB Decision, Findings of Fact #25)

9. *The Board finds that "there is virtually no evidence" to support an actual or a generic whistleblowing claim by Mr. Azmy. The Board, however, as demonstrated above, simply ignores the very large amount of testimonial and documentary evidence on that issue. If there were absolutely no retaliatory or malicious motive on the part of any of the management involved in effecting this termination, it is incumbent upon the Board to detail each and every allegation and piece of evidence*

that Mr. Azmy presented and tell why it is rejecting it all. It is simply not enough for the Board to say that it does not believe Mr. Azmy "takes ownership" of work problems. (Motion, page 11)

Contrary to the appellant's assertion, there was not a "large amount of testimonial and documentary evidence" to suggest that the termination was malicious or in retaliation for some form of "whistleblowing" as described by RSA 275-E:2. The agency offered evidence of the appellant's failure to meet the work standard, which the appellant countered with allegations of retaliation that were unsupported by credible evidence, and that were not, therefore, recited in the Board's findings of fact or rulings of law.

10. Mr. Azmy disagrees that prior letters, inadequately presented as they were, constitute the same "offense" under the rules; and alleges that they were not properly utilized in any event under the requirements of progressive discipline. (Motion, page 11)

Please see Board's Response #1.

11. This termination has violated the personnel rules and the statutory scheme for classified employees, Mr. Azmy's rights under the due process requirements of the State and Federal Constitutions, and the specific rules and requirement mentioned herein. (Motion, page 11)

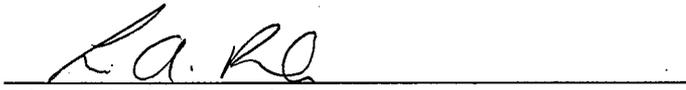
The facts in evidence support the Board's conclusion that Mr. Azmy failed to meet the work standard related to communication and problem solving, and that the termination was lawful and reasonable under the Rules of the Division of Personnel. It conducted a hearing, received documentary and testimonial evidence, heard argument by the parties, and issued a decision based on the material facts in evidence. The Board did not find that the termination violated the personnel rules.

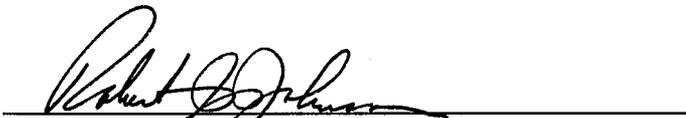
12. The Board [should] reverse its November 10, 1999 denial of his appeal and order Mr. Azmy reinstated with full retroactive pay and benefits and/or grant a new hearing.

After considering the Motion in conjunction with the Board's decision and the evidence upon which that decision was based, the Board voted unanimously to deny the appellant's request for rehearing/motion for reconsideration. The Board believes that its decision is lawful, reasonable and well supported by the evidence. The appellant failed to show good cause why the Board should reverse its order or schedule a new hearing. Therefore, the Motion is DENIED.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD


Patrick H. Wood, Chairman


Lisa A. Rule, Commissioner


Robert J. Johnson, Commissioner

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APPEAL OF GAMIL AZMY

DOCKET #99-T-12

New Hampshire Hospital

November 10, 1999

The New Hampshire Personnel Appeals Board (Wood, Rule and Johnson) met on June 9, July 21 and July 22, 1999, under the authority of RSA 21-I:58, to hear the termination appeal of Gamil Azmy, a former employee of the New Hampshire Hospital. Mr. Azmy, who was represented at the hearing by Michael Reynolds, SEA General Counsel, was appealing his February 4, 1999, termination from employment as a Recreational Therapist, for continued failure to meet the work standard. Attorney John Martin appeared on behalf of New Hampshire Hospital.

The record in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, the audio-tape recording of the hearing on the merits, and documents admitted into evidence as follows:

State's Exhibits

1. Handwritten notes for a meeting between Ellen Griffin and Gamil Azmy dated 12/28/98
2. Learner's/Educator's/Supervisor's Rights and Responsibilities form
3. Assignment for Training re: Brad's and Gamil's Discussion about Woodworking Supplies
4. Typed notes dated January 5, 1999, prepared by Ellen Griffin
5. Typed notes dated January 19, 1999, prepared by Ellen Griffin
6. Interoffice Communication dated January 18, 1999 from Ellen Griffin to Brad Geltz
7. Interoffice Memo dated January 22, 1999 from Ellen Griffin to Brad Geltz

8. Interoffice Communication from Gamil Azmy to Ellen Griffin dated January 21, 1999
9. Interoffice Communication dated January 30, 1999 from Ellen Griffin to Gamil Azmy
10. Inter-Department Communication dated December 11, 1998 from Brad Geltz to Gamil Azmy
11. Inter-Department Communication dated December 29, 1998 fi-om Brad Geltz to Gamil Azmy titled "Letter of Counsel"
12. February 4, 1999 letter of termination from Brad Geltz and Nancy Clark to Gamil Azmy
13. Performance evaluation for Gamil Azmy dated 2/24/97
14. Performance evaluation for Gamil Azmy dated 9/23/97
15. June 29, 1998 revised letter of warning from Brad Geltz to Gamil Azmy
16. February 12, 1999, decision of the New Hampshire Personnel Appeals Board, Docket #99-D-12
17. August 28, 1998 letter of warning from Brad Geltz to Gamil Azmy
18. November 20, 1998 Inter-Department Communication from Brad Geltz to Gamil Azmy titled "Letter of Counsel"
19. Performance Summary for Gamil Azmy dated 11/23/98
20. July 30, 1998 Inter-Department Communication fi-om Nancy Clark to Gamil Azmy titled "Letter of Supervision"
21. November 30, 1998 letter of warning fi-om Nancy Clark to Gamil Azmy
22. January 11, 1999 letter of counsel from Nancy Clark to Gamil Azmy
23. January 18, 1999 letter of warning fi-om Nancy Clark to Gamil Azmy
24. not admitted
25. not admitted
26. not admitted
27. not admitted
28. May 3, 1999 decision of the New Hampshire Personnel Appeals Board, Docket #99-D-17, #99-D-18 and #99-D-19

Appellant's Exhibits

- A. A-1, Transcript of the Hearing before the Department of Labor on March 18, 1999; A-2, Transcript of the continuation of the hearing before the Department of Labor on March 19, 1999
- B. Report by Brad Geltz written 11130198 about a conversation with Gamil Azmy occurring on 11/24/98
- C. 1/27/99 memo from Nancy Clark to Gamil Azmy
- D. 1-8-99 memo from Diane J. Lapp to Brad Geltz
- E. Deposition of Kathy Fullford taken July 5, 1999
- F. 3120198 letter from R. Joffree Barnett, M.D., re: Gamil Azmy
- G. September 25, 1998 letter from William F. Haley to Linda Chadbourne
- H. Note from "Kathy" to "Gamil" dated 1/17/97
- I. Back Safety Competency report dated 6/3/97
- J. Back Safety Competency report dated 6120197
- K. December 1998, Issue 11 of "Quality Matters"
- L. 7123198 handwritten instructions from Donna Clinton to Gamil Azmy
- M. Handwritten notes dated 1018198 titled "Per conversation with Nancy Carlisle on 10/8/98"
- N. NHH Horticulture Policy statement effective 1111/98 (last revised 2/97)
- O. Handwritten list of duties
- P. Policy for "Efficient and timely upkeep and cleanliness..." for maintenance and upkeep of the Tea Garden, Café Patio and F-Unit enclosure
- Q. Fax from Ralph Winslow of NH Cooperative Extension to Gamil Azmy dated 23 November 1998
- R. November 25, 1998 memo from David Seavey, UNH Cooperative Extension to Gamil Azmy
- S. July 28, 1998 anonymous letter to Patricia Cutting complaining of management practices at NHH regarding Mr. Azmy
- T. July 31, 1998 letter from Marie Lang to Gamil Azmy
- U. Supplemental job description for T&D Therapist signed by Gamil Azmy, dated 7124197

V. Handwritten note to "Gamil" from "Brad" concerning crafts and woodworking equipment with attached price quote from Steenbelte & Sons

W. December 11, 1998 Inter-Department Communication from Brad Geltz to Gamil Azmy

At the hearing, the following persons gave sworn testimony:

Ellen Griffin

Tammy Swancott

Brad Geltz

David Wyatt

Nancy Lee Clark

William Haley

Helen Carleton

Linda Chadbourne

Martha Salminen

Gamil Azmy

Standard of Review

Per 1001.08 (b) of the Rules of the Division of Personnel provides as follows:

"An appointing authority shall be authorized to dismiss an employee who has received multiple warnings for the offenses described in this part as stated below:

"(1) An appointing authority shall be authorized to dismiss an employee pursuant to Per 1001.03 by issuance of a third written warning for the same offense within a period of 5 years."

The instant appeal involves the termination of a permanent employee upon issuance of a final written warning for continued failure to meet the work standard. Specifically, the notice of termination charges the appellant with, "...continued failure to meet the work standard related to communication and problem solving, continued disruptive behavior; and for willful insubordination as evidenced by your recent failure to follow and complete the recommended and/or corrective actions established in previous letters of warning, letters of concern, and supervision."

On May 3, 1999, the Board denied Mr. Azmy's appeal of a November 30, 1998, written warning issued to him for failing to meet the work standard in categories identified as quantity of work, quality of work, communication, dependability and cooperation. On May 3, 1999, the Board also denied Mr. Azmy's appeal of a January 18, 1999 written warning issued to him for failing to meet the work standard with respect to communications and problem solving, and insubordination for failing to follow the recommendations and/or corrective action plans outlined in prior counseling and warnings.

All prior written warnings issued to the appellant have been appealed, heard by this Board and decided, and the parties have exhausted all other administrative and judicial remedies available under the provisions of RSA 21-I:58. Those decisions are now final and binding, and the Board has relied on those findings, in part, in deciding the appeal of the final warning issued on February 4, 1999 to Mr. Azmy that resulted in the appellant's termination from employment. Therefore, the questions remaining for the Board to decide are as follows:

1. Did the appellant's conduct warrant a written warning for "failure to meet the work standard?"
2. If the evidence shows the appellant's conduct warranted discipline, is the offense similar to the offenses for which the appellant was previously disciplined? (PAB Docket #99-D-18 and #99-D-19)
3. If the first two questions above are answered in the affirmative, did the agency comply with the requirements of Per 1001.08 (c) and (d) in effecting appellant's termination from employment?
4. If the preceding three questions are answered in the affirmative, is there evidence or argument to persuade the Board it should amend or modify the decision of the appointing authority under the authority granted to the Board by RSA 21-I:58?

In its decision dated May 3, '1999 on the written warning issued to Mr. Azmy on November 30, 1998 (Docket #99-D-18), the Board found that, "The evidence reveals a pattern of conduct on the

appellant's part consistent with New Hampshire Hospital's representations that the appellant is not responsive to feedback and constructive criticism." The Board also found that, "Mr. Azmy's conduct during the course of the hearings themselves provided further evidence of the appellant's unwillingness to communicate cooperatively with staff."

Similarly, in its May 3, 1999 decision on the written warning issued to Mr. Azmy on January 18, 1999, the Board wrote, "Despite the appellant's characterization of the Hospital's counseling and supervision as a reaction to his refusal to be complacent, or his insistence on exercising his right to free speech, the Board found that Mr. Azmy's conduct represented a simple refusal to accept supervision, direction, feedback and constructive criticism. Moreover, the evidence reflects that the appellant would not accept responsibility for his own part in the disintegration of relations with supervisory and treatment staff..."

The final warning dated February 4, 1999, alleges that, "The most recent behavior identified in the areas of insubordination, problem solving and communication involved an interaction between you and a staff person in Training and Development. The specific behavior was your refusal to sign the Learner Rights and Responsibilities Agreement required for the educational intervention."

Findings of Fact

1. By memo dated December 11, 1998, Mr. Azmy's supervisor, Brad Geltz, directed the appellant, "To attend an effective Communication Training session with Ellen Griffin of New Hampshire Hospital Staff Development Department." Mr. Geltz informed the appellant that the sessions would be one-on-one and geared to Mr. Azmy's needs. The appellant was instructed to contact Ms. Griffin to set up the appointment.
2. Prior to her first meeting with Mr. Azmy, Ms. Griffin elicited from Brad Geltz the "target behaviors" the educational intervention was intended to address. They included: "1) Problem solving in a constructive manner, 2) Effective listening skills, 3) Respecting

authority or at least working cooperatively with them, even when they do not agree with your opinion, 4) Recognizing that blaming others is not an effective way to settle differences of opinion. Talk directly to people/splitting staff, 5) Follow the chain of command when attempting to problem solve situations, 6) Disagreeing in an agreeable manner, 7) Keeping work issues confidential or at least having a healthy boundary around them a) Not talking to patient about issues, b) Not attempting to gain support from multiple other staff." (State's Exhibit 1)

3. Ms. Griffin met with Mr. Azmy on Tuesday, January 5, 1999 to begin structuring his individualized educational sessions. Her expectation for that meeting was that they would discuss the intervention process, address issues of confidentiality, and complete the Learner's Rights and Responsibilities Form. (State's Exhibit 2)
4. At the January 5, 1999 meeting, Mr. Azmy seemed more interested in rehashing the details of incidents that had resulted in prior discipline and his ultimate transfer from the Philbrook Center to APS. (Testimony of Ellen Griffin)
5. At the January 5, 1999 meeting, Ms. Griffin provided the appellant with a "Learner's Rights and Responsibilities" form that she insisted he would need to sign before they could begin the actual educational sessions.
6. Mr. Azmy asked to take the form with him and consult first with the union and his attorney before he would agree to sign it. He also raised concerns about doing the homework assignments that would be expected of him during the process, the first of which was to "examine a recent discussion he had had with his supervisor in terms of wants, needs, and expectations on both sides." (State's Exhibit 4)
7. Ms. Griffin met with Mr. Azmy on January 19, 1999, at which time he informed her that he was willing to continue meeting with her, but that he was unwilling to complete the homework assignments because he didn't want to put his answers in writing, as he was concerned that his responses might somehow end up in his personnel record. (Testimony of Ellen Griffin and State's Exhibit 5)
8. Mr. Azmy informed Ms. Griffin that his attorney and his SEA representative had advised him not to sign the Learner's Rights form. (State's Exhibit 5)

9. Based on his refusal to sign the form or complete the written assignments, Ms. Griffin informed the appellant that she could not continue with the educational intervention. She explained that she would transmit that information in a memorandum to his supervisor, Mr. Geltz. (State's Exhibit 5)
10. By memo dated January 19, 1999, Ms. Griffin advised Mr. Geltz that the appellant had declined to sign the "Learner's Rights and Responsibilities Agreement" that she would require for an educational intervention, and that he had also declined to complete any written work assigned to him as part of an education plan. She advised him that she was terminating the educational plan as a result. (State's Exhibit 6)
11. On or about January 22, 1999, Ms. Griffin spoke to Mr. Geltz about a call she had received from SEA Field Representative Linda Chadbourne in which Ms. Chadbourne insisted that she had not advised Mr. Azmy not to participate fully in the educational plan, but had recommended modification of the agreement to allow Mr. Azmy to discuss the sessions with his representatives. She reported that Ms. Chadbourne had suggested inserting a clause outlining Mr. Azmy's right to engage in such discussions with his representatives. (Testimony of Ellen Griffin, Testimony of Linda Chadbourne, State's Exhibit 7)
12. Mr. Geltz held weekly supervision meetings with Mr. Azmy and discussed the status of the appellant's educational intervention. Mr. Geltz discussed the homework assignments and told the appellant that time could be made available during work time in order for him to complete the assignments. (Testimony of Brad Geltz).
13. In her January 22, 1999 memo to Mr. Geltz, Ms. Griffin wrote, "After two sessions with Gamil, I believe that any attempt at education (at least by me) would be futile. I feel that Gamil has not accepted his responsibility for the problems at hand. This causes him to be resistant to cooperating with an educational plan." She advised Mr. Geltz that she would wait to hear his decision and would advise Ms. Chadbourne accordingly. (State's Exhibit 7)
14. After her discussion with Ms. Chadbourne on January 22, 1999, and her memorandum to Mr. Geltz, Ms. Griffin received a memo from the appellant saying that he had never discussed with Ms. Griffin any advice from his attorney about whether or not to sign the form or complete the assignments. (State's Exhibit 8)

15. The memo angered Ms. Griffin, and she felt there could be no trust between them. She characterized the appellant's memo to her as a misrepresentation and said, "I was fairly adamant that I didn't want to work with him any more." (Testimony of Ellen Griffin)
16. In a follow-up memo to Mr. Azmy, Ms. Griffin wrote, "I believe you have violated my trust by purposefully misrepresenting the content of our last meeting." (State's Exhibit 9)
17. The January 21, 1998 memo from Mr. Azmy to Ms. Griffin was actually authored by SEA Field Representative Linda Chadbourne, although there is no indication of that fact in the memo itself. (Testimony of Linda Chadbourne) Ms. Chadbourne was not present at the January 19, 1999 meeting between Ms. Griffin and Mr. Azmy when he refused to sign the form or complete the written homework assignments associated with the educational intervention.
18. Mr. Geltz and his own supervisor, Nancy Clark, had become frustrated with the increasingly adversarial relationship developing between the appellant and his supervisors. They agreed that until the appellant took some "ownership" of his own role in the communications process and learned to respond to constructive feedback, the relationship could not improve and the appellant's ability to perform his assigned duties and responsibilities would suffer. (Testimony of Nancy Clark)
19. Nancy Clark and Brad Geltz were dissatisfied with the appellant's performance in dealing with patient and treatment issues. Ms. Clark believed that the appellant's efforts were focused more on the tasks associated with the greenhouse and the gardens than they were on establishing therapeutic supervisory relationships with patients assigned to work in the greenhouse and in the group activities he was responsible for organizing and supervising. (Testimony of Nancy Clark)
20. The appellant believed that he had been "targeted" by Rehabilitation Staff after he made a series of complaints, including a report that another staff person at the Philbrook Center inappropriately had allowed children at the center to play together in their underwear, and that equipment and supplies were being mishandled or inappropriately used by supervisors. He believed his reports of possible improprieties were what precipitated his transfer to the APS building. (Testimony of Gamil Azmy)

21. Mr. Azmy persisted in accusing Mr. Geltz of deliberately attempting to undermine his efforts to manage the greenhouse, run woodworking and craft groups, and keep up with his treatment team duties. (Testimony of Gamil Azmy)
22. Nancy Clark and Brad Geltz had met with the appellant repeatedly in an effort to get the appellant to admit that his performance needed improvement, and to accept some responsibility for the continuing conflict between himself and supervisors. (Testimony of Nancy Clark and Brad Geltz)
23. Mr. Geltz and Ms. Clark agreed that educational intervention by the Hospital's Training Coordinator would provide an opportunity for the appellant to work with a neutral third party in understanding why he needed to work cooperatively and collaboratively with staff in his department, and how he could express his concerns and his opinions in a constructive, non-confrontational way. (Testimony of Nancy Clark and Brad Geltz)
24. When the educational intervention failed, Ms. Clark and Mr. Geltz agreed that termination of the appellant's employment was the only remaining alternative.
25. Mr. Geltz, Ms. Clark, Mr. Azmy and Ms. Chadbourne met on February 4, 1998 and reviewed the content of a letter of termination that had been prepared for the meeting. They asked the appellant if he would admit responsibility at least for contributing to the problems that had developed. Mr. Azmy said that he had heard enough during their previous twelve meetings, had nothing to offer in response, and would respond in writing. At the meeting he was provided with a packet of information that included the prior written warnings and counseling letters. The letter also included a list of documents that had already been supplied to him, including supervisory notes and performance evaluations.
26. Mr. Azmy was terminated from employment effective February 4, 1999.

Mr. Reynolds argued that termination was almost a foregone conclusion when the appellant was involuntarily transferred from the Anna Philbrook Center to the APS Building. He argued that the appellant had made himself unpopular with upper management by bringing to light his concerns about patient safety and treatment issues, and for continuing to point out problems at the Hospital. He argued that the appellant refused to comply when supervisors wanted him to

cover up missing inventory. He argued that the State was very upset that Mr. Azmy might have made a report "to the outside" about what he witnessed at the Philbrook Center.

Mr. Reynolds argued that if an agency is planning to terminate someone, it does exactly what New Hampshire Hospital did, giving the employee more and more work to do, hoping that the employee's performance ultimately will fail. He argued that in a generic sense, the appellant was a Whistleblower. Mr. Reynolds argued that the Hospital admitted that they had never given Mr. Azmy a direct order to sign the Learner's Contract, so there was no credible argument to support the claim of insubordination. He argued that while New Hampshire Hospital asserted that the appellant's therapeutic relationships were harmed by his conduct, there was no evidence of it.

Mr. Reynolds argued that all of the appellant's witnesses testified to good relationships between the appellant, patients and co-workers. He argued that if the appellant had concentrated more of his efforts on being a gardener than he did on being part of the treatment team, it was simply because his supervisors wanted to "shut him up, swamp him with work, keep him in the greenhouse," creating an environment in which he was doomed to fail.

Mr. Martin argued that the appellant would like to believe that all his troubles started when he reported seeing children playing together in their underwear. He argued that the incident was significant in the appellant's mind alone. He argued that the termination had nothing to do with children in their underwear, the use of Pine-Sol in the greenhouse, or inventories of gym equipment or gardening supplies. He argued that the termination was a result of Mr. Azmy's refusal to follow Hospital procedures and protocols. Mr. Martin argued that all of us have bosses and all of us have procedures. He argued that while we may sometimes disagree with them, we still have to work with them. He argued that the reality is when you and your boss disagree, you finally bite your tongue, do what you're told to do, and go on.

Mr. Martin argued that the appellant always had an excuse or tried to shift responsibility to someone else when he violated Hospital policies or refused to operate under Hospital procedures.

He argued that although the appellant believes he was singled out, targeted, and terminated, the record shows that his supervisors really attempted to work with him. He argued that the appellant's refusal to cooperate in the educational intervention represented the last straw, and the Hospital had no alternative but to terminate the appellant's employment for continued failure to meet the work standard.

Rulings of Law

1. "An appointing authority shall be authorized to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance or misconduct for offenses including, but not limited to: (1) Failure to meet any work standard." [Per 1001.03 (a)(1)]
2. "If an employee fails to take corrective action as outlined in a written warning, the employee shall be subject to additional disciplinary action up to, and including, discharge from employment pursuant to Per 1000." [Per 1001.03 (c)]
3. "An appointing authority shall be authorized to dismiss an employee who has received multiple warnings for the offenses described in this part as stated below: (1) An appointing authority shall be authorized to dismiss an employee pursuant to Per 1001.03 by issuance of a third written warning for the same offense within a period of 5 years." [Per 1001.08 (b)]
4. "No appointing authority shall dismiss a classified employee under this rule until the appointing authority: (1) Offers to meet with the employee to discuss whatever evidence the appointing authority believes supports the decision to dismiss the employee; (2) Offers to provide the employee with an opportunity to refute the evidence presented by the appointing authority..." [Per 1001.08 (c)]
5. "If an appointing authority, having complied with the provisions of Per 1001.08(c), finds that there are sufficient grounds to dismiss an employee, the appointing authority shall: (1) Provide a written notice of dismissal, specifying the nature and extent of the offense; (2) Notify the employee in writing that the dismissal may be appealed under the provisions of RSA 21-I:58, within 15 calendar days of the notice of dismissal..." [Per 1001.08 (d)]

Decision and Order

The Board heard three days of testimony and reviewed numerous documents admitted into evidence, including the evidence presented at a two day hearing before the Department of Labor in its hearing on the appellant's eligibility for unemployment compensation benefits.

Throughout the entire proceeding and in all the evidence, there is a dominant theme. Mr. Azmy refuses to acknowledge his own mistakes and takes no responsibility for whatever part he may have played in any conflicts arising in the course of his employment.

It is clear to the Board that Mr. Azmy is passionate about his work and has, throughout the years, received well-earned praise for his contributions. However, it appears that whenever Mr. Azmy disagreed with his employer, whether it involved the manner in which his employer expected certain tasks to be carried out or the policies and procedures under which those tasks were to be performed, the appellant refused to accept any constructive criticism or acknowledge any responsibility for his own actions.

Earlier in this decision, the Board indicated that there were four questions to be answered in deciding the appeal:

1. Did the appellant's conduct warrant a written warning for "failure to meet the work standard?"

The appellant's refusal to participate in any meaningful fashion with the educational intervention ordered by his supervisors, his misrepresentation of discussions that he had with Ms. Griffin, and his continued lack of cooperation in complying with the corrective action ordered by his supervisors in warnings and counseling letters constituted a failure to meet the work standard subject to discipline under the provisions of Per 1001.03 and Per 1001.08 of the Rules of the Division of Personnel.

2. If the evidence shows that the appellant's conduct warranted discipline, is the offense similar to the offenses for which the appellant was previously disciplined? (PAB Docket #99-D-18 and #99-D-19)

Mr. Azmy's prior written warnings involve the appellant's unwillingness to engage in constructive communication, cooperation and problem solving. The offense outlined in the February 4, 1999 written warning is sufficiently similar to the offenses for which he was previously warned to constitute multiple warnings for the same offense.

3. If the first two questions above are answered in the affirmative, did the agency comply with the requirements of Per 1001.08 (c) and (d) in effecting his termination from employment?

The agency met with Mr. Azmy on February 4, 1999, presented him with evidence of his failure to meet the work standard, and offered him an opportunity to refute or rebut that evidence as the rules require. The appellant declined to respond, indicating that his response would be submitted later in writing. His appeal followed.

4. If the preceding three questions are answered in the affirmative, is there evidence or argument to persuade the Board it should amend or modify the decision of the appointing authority under the authority granted to the Board by RSA 21-I:58?

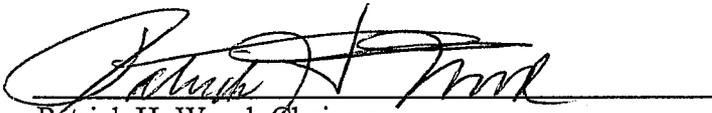
The Board found neither evidence nor argument to persuade it that the Hospital's decision to terminate Mr. Azmy's employment as a Training and Development Therapist should be amended or modified. The appellant chose a course of action that he was warned repeatedly would result in his termination from employment. Despite those warnings, the appellant persisted in his refusal to cooperate or communicate effectively with his supervisors.

Although the appellant has characterized his conduct as "Whistleblowing," there is virtually no evidence to support that claim. On the contrary, the evidence throughout the proceedings

reflects that the appellant took a one-sided view of his relationship with New Hampshire Hospital. Either things were to be done his way or they were not to be done at all.

On all the evidence and argument offered by the parties, the Board voted unanimously to deny Mr. Azmy's appeal, finding that New Hampshire Hospital acted within its authority in dismissing him from his employment for continued failure to meet the work standard.

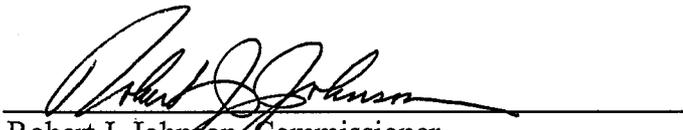
THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



Patrick H. Wood, Chairman



Lisa A. Rule, Commissioner



Robert J. Johnson, Commissioner

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State of New Hampshire



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APPEAL OF GAMIL AZMY
Docket #99-D-12
Response to Appellant's Request for Rehearing/Reconsideration

April 28, 1999

The Board has considered the Motion for Reconsideration filed by Mr. Azmy and the response from the State of New Hampshire to that Motion for Reconsideration.

The Motion for Reconsideration presents no new evidence nor any new legal argument that was not presented to and considered by the Board. The Board does not find persuasive Mr. Azmy's parsing of the words of the regulations concerning loaning or giving of money or making change.

Accordingly, the Board voted to deny the Motion for Reconsideration.

THE PERSONNEL APPEALS BOARD

Handwritten signature of Mark J. Bennett in cursive script.

Mark J. Bennett, Chairman

Handwritten signature of Patrick H. Wood in cursive script.

Patrick H. Wood, Commissioner

Handwritten signature of James J. Barry in cursive script.

James J. Barry, Commissioner

cc:

Michael C. Reynolds, Esq.
John B. Martin, Esq.
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APPEAL OF GAMIL AZMY

DOCKET #99-D-12

NEW HAMPSHIRE HOSPITAL

February 12, 1999

The New Hampshire Personnel Appeals Board (Bennett, Wood and Barry) met on Wednesday, January 13, 1999, under the authority of RSA 21-I:58, to hear the appeal of Gamil Azmy, an employee of New Hampshire Hospital. Mr. Azmy, who was represented at the hearing by SEA Field Representative Linda Chadbourne, was appealing a June 29, 1998 (revised July 30, 1998) written warning for alleged failure to meet the work standard by violating the Hospital's "Boundary Policy." Human Resources Administrator Marie Lang and Attorney John Martin appeared on behalf of the State.

The appeal was heard on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of the audio tape recording of the hearing, notices and orders issued by the Board, pleadings submitted by the parties, and documents entered into evidence as follows:

Appellant's Exhibits

- A. Written warning to Gamil Azmy dated June 29, 1998 (revised July 30, 1998)
- B. New Hampshire Hospital Boundary Policy, effective March 10, 1998
- C. Letter to Gamil Azmy from Investigator Thomas Flynn dated July 9, 1998

Mr. Martin argued that the State Hospital's Boundary Policy, effective March 10, 1998, was developed as a means of ensuring that communications between staff and patients promote the patients' health and dignity. He asserted that the "boundaries" between patients and staff include

emotional, physical, spiritual and financial matters. He stated that policy infractions can be intentional or accidental, and that potential infractions include such interactions as giving and receiving gifts, or developing a close relationship with a patient. Mr. Martin argued that because patients and staff interact continuously, it is not unusual for patients to ask for money or other things of value, and because of the frequency of those requests, the Hospital stresses throughout staff training that employees can not give money to patients.

Mr. Martin stated that the appellant was hired as a Training and Development Therapist and was assigned to the Anna Philbrook Center, where in-service treatment is provided to minors and adolescents. Mr. Azmy received training on the Hospital's policies, and completed Mental Health Worker Training where the policies were reviewed again. During his assignment at the Philbrook Center, there were complaints that Mr. Azmy's communication with patients was inappropriate. During the investigation that followed, the complaints were ruled to be unfounded. However, he was ordered to complete remedial training. Subsequently, there was another complaint of "leering" and inappropriate touching. Again, although the investigation resulted in a finding that the complaint was unfounded, there were sufficient concerns about the number and nature of the complaints being received, the decision was made to reassign him to the Adult Acute Psychiatric Facility. He was reassigned to D Unit and to the Hospital greenhouse.

Mr. Azmy met with his supervisors on April 7, 1998, to review the concerns raised about the appellant's conduct at the Philbrook Center, and the importance of his adhering closely to the facility's boundaries policy upon his transfer to APS. The appellant also received a counseling letter stressing the need for him to interact with patients in a therapeutic manner, particularly where his conduct could lead to further complaints of inappropriate touching or invading a patient's personal space.

On May 20, 1998, a patient at the Acute Psychiatric Facility reported that Mr. Azmy had offered \$5.00 to another patient to purchase his watch. The patient about whom the report was made refused to cooperate with the Hospital's investigation of that complaint, and as a result, the complaint was determined to be unfounded. The complaint raised sufficient concerns, however,

that the appellant's supervisor, Brad Geltz, met with him to reinforce the requirements that he adhere to the boundary policy. He advised the appellant that he was not to engage in any financial conversations or transactions with patients unless it was necessary and relevant to his work. For instance, Mr. Azmy was not prohibited from discussing payment for work performed by patients in the greenhouse.

On June 15, 1998, another worker reported seeing Mr. Azmy giving a patient money for coffee. Mr. Geltz met with the appellant on June 19, 1998, to reinforce the prohibition against loaning or giving money to a patient. The State asserted that Mr. Azmy admitted to giving money to the patient, but excused his conduct saying that the patient only had a five dollar bill, and Mr. Azmy did not have sufficient funds to make change. On June 29, 1998, Mr. Geltz issued a warning to the appellant for violation of the "Boundary Policy.:" That warning was revised on July 30, 1998. The written warning indicated that by loaning money to a patient, in violation of the policy, the appellant chose to disregard his supervisor's instructions and the instructions he had received in counseling sessions since the date of his transfer.

Ms. Chadbourne argued that the Board should disregard the complaints filed against the appellant during his assignment at the Philbrook Center, as all of those allegations were determined to be unfounded. She asked the Board to consider the fact that patients do talk to one another, and that it is not unusual for a complaint, whether founded or unfounded, to spark complaints from other patients. She argued that Mr. Azmy was improperly, involuntarily transferred to the APS Unit as a result of those complaints. Ms. Chadbourne argued that subsequent complaints about Mr. Azmy at the APS Unit, including the allegation that he had offered to buy a watch from a patient or gave a patient money to buy coffee also could not be corroborated.

Ms. Chadbourne asserted that the appellant had never admitted to having given or having loaned money to a patient. She suggested that because of his foreign accent, Mr. Azmy's statements to his supervisor may have been misunderstood. She argued that the only admission the appellant made was to making change for the patient, something claimed to be a routine practice by New Hampshire Hospital Staff. Ms. Chadbourne argued that even if the Hospital's allegations were

true, that Mr. Azmy either gave or loaned money to a patient for coffee, neither constituted a violation sufficient to warrant the issuance of a written warning.

The State asked the Board to remember that the patients with whom the appellant is dealing on a day to day basis are suffering from a variety of mental illnesses, and staff are expected to avoid any transactions with patients that might be misunderstood or misconstrued by them. The State argued that Mr. Azmy's conduct at least gave the appearance of a violation, and warnings from his supervisors about his conduct were intended to protect both him and the patients.

Standard of Review

Per 1001.03, Rules of the Division of Personnel:

"(a) An appointing authority shall be authorized to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance or misconduct for offenses including, but not limited to:

(1) Failure to meet any work standard."

Findings of Fact

In consideration of the evidence, argument and offers of proof, the Board made the following findings of fact:

1. Prior to issuance of the warning, the appellant had received sufficient training and supervision with respect to his supervisors' expectations to understand that having financial transactions of any kind with patients would constitute a violation of the Hospital's boundaries policy.
2. By making change for a patient, after having received specific instructions from his supervisor not to have any financial discussions or transactions with patients on matters other

than their compensation from working in the greenhouse, Mr. Azmy violated the Hospital's boundaries policy.

3. Violation of the boundaries policy constitutes a failure to meet the work standard, and as such, is subject to disciplinary action under the provisions of Per 1001.03 of the Rules of the Division of Personnel.

Therefore, on the evidence, argument and offers of proof, the Board voted unanimously to DENY Mr. Azmy's appeal, and to sustain the Hospital's issuance of the June 29, 1998, warning (revised July 30, 1998) for failure to meet the work standard.

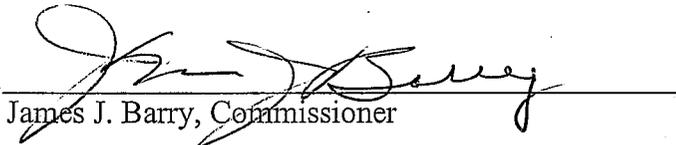
THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman



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James J. Barry, Commissioner

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