

# State of New Hampshire



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

## *Appeal of Robenson Baguidy*

*Docket #2005-T-005*

*November 10, 2005*

By letter dated September 23, 2005, the Appellant filed an eleven-page Motion for Reconsideration of the Board's August 24, 2005 decision denying the above-titled appeal. The Appellant, Robenson Baguidy, was appealing his October 13, 2004 termination from employment as a Corrections Officer Trainee for falsifying his application for employment by failing to disclose why he left employment with the Hillsborough County Department of Corrections, and by omitting the fact that he had been investigated by the Manchester Police Department and the Hillsborough County Department of Corrections as a result of allegations of sexual misconduct brought against him by a female inmate while he was employed with the Hillsborough County Department of Corrections.

In his Motion for Reconsideration, the Attorney Reynolds raised several grounds in support of his request. Specifically, he argued that:

1. "The Board's analysis of Mr. Baguidy's employment status on the date of termination by NH Department of Corrections (NHDOC) is erroneous, or at least, inadequate to determine the standard that the Board actually applied to Mr. Baguidy."
2. "The Board's decision lacks sufficient factual findings to determine its reasoning or even what standards it is applying."

3. "There are no findings on Mr. Baguidy's state of mind at any time." "Mr. Baguidy provided extensive rebuttal and explanation. The Board's decision addresses none of that evidence presented by Mr. Baguidy. Even the findings of fact that the Board states are essentially too conclusory to determine just what supporting facts led to Board to those conclusions."
4. "The warden, the appointing authority, has admitted he did not provide to Mr. Baguidy or his representative all the evidence that at the time of termination the warden believed supported the decision to terminate."

The Appellant then restated most of the evidence and argument offered at the hearing on the merits of the appeal and in his closing arguments. He then argued that, "The appointing authority engaged in no progressive discipline whatsoever in this case. See Per. 1001-1008. Even if NHDOC would like applicants in Mr. Baguidy's position to spell out everything about their prior lives, this case was not willful falsification, and certainly does not rise to the level of an immediate termination offense."

With respect to the Appellant's employment status, the Board continues to find that the Appellant was serving his initial probationary period. That finding, however, is not dispositive of the appeal, as the appointing authority was authorized to dismiss the Appellant without warning regardless of his employment status. As stated in the Board's decision, and as evidenced by the Appellant's October 13, 2004 notice of termination, the rule upon which the agency relied in dismissing the appellant was Per 1001.08 (a). That rule applies to all full-time employee and provides for the immediate dismissal of any employee who willfully falsifies agency records, including applications for employment.

In terms of the Board's factual findings, in its August 24, 2005 decision, the Board found the following:

"On his State of New Hampshire Application for Employment and related pre-employment documents, the appellant indicated that he had left his employment with the Hillsborough County Department of Corrections for personal reasons and

to pursue more advantageous employment opportunities. He also indicated in his NH Department of Corrections self-reported background statement that he had never been the subject of an investigation by a law enforcement agency, and that there was no information about him that could later cause embarrassment to the Department." (Factual Finding #8.)

"The appellant's signed statement indicating that he had never been the subject of an investigation by a law enforcement agency, and that he left his employment with Hillsborough County for "personal reasons" or to pursue a "more advantageous position," constitutes a willful misrepresentation of relevant information on his application for employment, and a violation of Per 401.02 (o) of the NH Code of Administrative Rules." (Ruling of Law C.)

The Appellant's assertion that he did not think he had been the subject of an investigation by a law enforcement agency when he was questioned by the Manchester Police Department is simply not credible. As the Board's August 24, 2005 decision states in Findings #4 through #8:

4. The Manchester Police Department investigated the alleged assault, and provided their report to Hillsborough County Corrections Captain David Dionne of the Hillsborough County Department of Corrections. The appellant was aware of the seriousness of the allegations, as even consensual sex under the circumstances described in the allegation could be prosecuted as a felony.
5. The appellant denied the allegations and later, through his attorney, refused a request for a second interview.
6. The appellant was shown evidence of the alleged offenses, and was questioned by a polygraph examiner. He received written notice that the Hillsborough County Department of Corrections had scheduled him to appear for a disciplinary hearing on July 1, 2002.

7. The appellant had an opportunity to review the evidence and consult with his union representative before the hearing. After conferring, he tendered his immediate resignation.

The Board believes its decision concerning the Appellant's state of mind was sufficiently clear, having found that the Appellant had willfully misrepresented and omitted relevant information on his application for employment and self-reported background.

Attorney Reynolds argued that although some documents were given to the Appellant at the pre-disciplinary meeting, the Appellant "...raised some important questions and challenged the conclusions about his NHDOC application." Mr. Reynolds then argued that the warden and investigator "decided to obtain more evidence," but failed to apprise the appellant about information obtained from Manchester Police Detective Brennan during an interview that occurred after the suspension meeting. Mr. Reynolds points to the first two pages of State's Exhibit 4 as proof that the Appellant did not have access to all the evidence supporting his dismissal.

Investigator Wefers provided the Appellant access to the investigative documents in State's Exhibit 3. Prior to the termination, in compliance with Per 1001.08 (c), the appointing authority met with the Appellant and provided the evidence supporting the decision to dismiss him, and with the assistance of counsel, was allowed the opportunity to refute that evidence. The additional evidence to which Attorney Reynolds refers is contained in State's Exhibit 4, which was withdrawn as an exhibit at the hearing because Warden Cattell testified that he had not received the report or read it prior to the date of the Appellant's termination.

While the Board agrees that the Department of Corrections engaged in no progressive discipline before dismissing the Appellant, the Board notes that progressive discipline is not required in all cases. Per 1001.08 (a) specifically provides for immediate dismissal without prior warning for falsification of agency records, including applications for

employment. The Appellant signed the certification on the application which states, in pertinent part:

"I certify that the information provided in or attached to this application is complete, accurate and up-to-date on the date specified below... I further certify that there are no willful misrepresentations of the above statements and answers to questions herein and that I have made no omissions of material fact with respect to any of my answers to the questions presented. I understand that if an investigation should disclose such misrepresentations or omissions, my application may be rejected. Finally, I understand that if I should be employed at the time of such investigation and disclosure, my services may be immediately terminated."

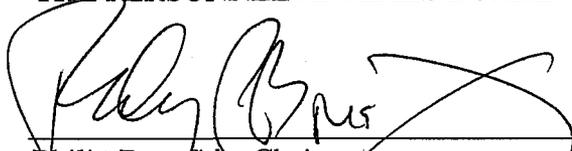
Having concluded that the Appellant misrepresented and omitted relevant information in his application for employment and self-reported background, the Department of Corrections exercised its authority to dismiss the Appellant for willful falsification of agency records.

According to Per-A 208.03 (e) of the NH Code of Administrative rules:

"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, unjust or unreasonable."

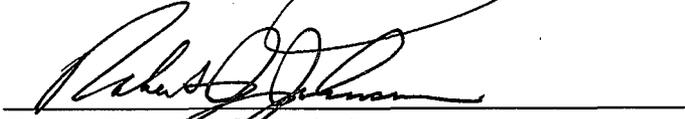
Having considered the Appellant's arguments in conjunction with the Board's August 24, 2005 decision, the pleadings, and the documentary evidence admitted into the record of the hearing, the Board was not persuaded that its decision was unlawful, unjust or unreasonable. Accordingly, the Board voted unanimously to DENY the Motion for Reconsideration and AFFIRM its decision denying Mr. Baguidy's appeal.

THE PERSONNEL APPEALS BOARD



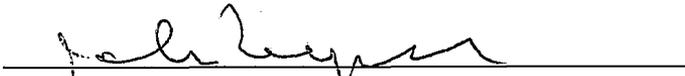
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Philip Bonafide, Chair



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Robert Johnson, Commissioner



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John Reagan, Commissioner

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# State of New Hampshire



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## *Appeal of Robenson Baguidy*

*Docket #2005-T-005*

*August 24, 2005*

The New Hampshire Personnel Appeals Board (Bonafide, Johnson and Reagan) met in public session on Wednesday, June 15, 2005, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeal of Robenson Baguidy, a former employee of the NH Department of Corrections. Mr. Baguidy was appealing his October 13, 2004, termination from employment as a Corrections Officer Trainee for allegedly falsifying an agency record. Specifically, the Department alleged that Mr. Baguidy failed to disclose why he left employment with the Hillsborough County Department of Corrections, and omitted the fact that he had been investigated by the Manchester Police Department as a result of allegations brought against him by a female inmate while he was employed with the Hillsborough County Department of Corrections. SEA General Counsel Michael Reynolds appeared on the appellant's behalf. Attorney John Vinson appeared on behalf of the Department of Corrections.

The record of the hearing in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, Joint Stipulations filed by the parties, and documents admitted into evidence as follows:

### Appellant's Exhibits:

- A. Employee Status Notification (Form "A") dated 3/19/94 for Baguidy, Robenson J., signed by Linda McFarland, HR Coordinator

- B. NH Department of Corrections "Release of Information Acknowledgment" form dated 3/19/04 for Robenson J. Baguidy, signed by Linda McFarland and Robenson Baguidy
- C. NH Department of Corrections "Authorization for Release of Personal Information" form dated 2/13/04 for Robenson J. Baguidy signed by Robenson Baguidy and Roderick Greenwood
- D. NH Department of Corrections Contingent Offer for Employment dated 2-26-04 for Robenson Baguidy signed by Robenson Baguidy and Rod Greenwood
- E. Hillsborough County Human Resources Department "Resignation Notice" dated 7/1/03 signed by Robenson Baguidy
- F. Professional/Technical Staff Performance Summary Form dated 11/3/04 for Robenson Baguidy signed by Corrections Corporal J. Jardine

State's Exhibits

- 1. October 13, 2004, letter from Warden Bruce Cattell to Robenson Baguidy informing him of his immediate termination from employment for willful falsification of agency records including but not limited to applications for employment
- 2. Application for Employment as a YC III, dated 2/2/04, signed by Robenson Baguidy
- 3. Confidential Report, Investigations Bureau Case #DOC 2004-108 (53 pages) concerning Robenson J. Baguidy for "Possible undue familiarity with female inmate at Goffstown Prison while you were employed with the Hillsborough County Corrections Department. Failing to fully disclose reason why you left Hillsborough County Corrections to the Department of Corrections and/or omitting facts on your application and other documents that were required to be disclosed"
- 5. State of New Hampshire Personnel Action Form (PAF) dated 8/6/03 approving appointment of Robenson Baguidy as temporary fill-in Youth Counselor I

The State offered into evidence a fourteen-page document dated October 11, 2004, marked Exhibit 4 for identification, titled "Supplemental Report" for Investigations Bureau Case #DOC-2004-108. The report was addressed to Warden Richard M. Gerry, Headquarters. Warden Bruce Cattell testified that he did not see the report prior to the Appellant's dismissal, and the State withdrew the exhibit. The Board agreed to mark it as Exhibit 4, but not to admit it as a full exhibit into the record of the hearing.

The parties offered into evidence fourteen "Joint Stipulations." The Appellant also submitted for the Board's consideration excerpts from the NH Code of Administrative Rules, Rules of the Division of Personnel, including pages 21-22 of expired rules Per 302.21 through Per 302.23; and pages 1, 5, 43 and 44 of the current NH Code of Administrative Rules, Per 101.01, Per 102.35 – Per 102.48, and Per 601.05 (d) – Per 602.01 (b)(2).

At the hearing on the merits of the appeal, the following persons gave sworn testimony:

Robenson Baguidy, Appellant

Detective Daniel Brennan, Manchester Police Department

Captain David Dionne, Hillsborough County Department of Corrections

Warden Bruce W. Cattell, NH Department of Corrections

Lieutenant Roderick Greenwood, NH Department of Corrections

Kenneth Lynch, Londonderry Police Department (retired)

Lieutenant Gerald Haney, NH Department of Corrections

Corporal Justin Jardine, NH Department of Corrections

#### Appellant's Employment Status at Time of Dismissal

At the request of the parties, the Board also held open the record of the hearing until Thursday, June 23, 2005, to allow the parties to file closing arguments in writing, and to submit briefs on the issue of the appellant's employment status at the time of dismissal as either an initial probationary appointee subject to the disciplinary provisions of Per

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1001.02, or a promotional probationary appointee subject to the disciplinary provisions of Per 1001.03 to Per 1001.08.

The personnel rules are clear that an employee remains an "initial probationary employee" until that employee completes one full year of service in a position. The appellant did not complete a year of service in any of the positions he held while employed by the State of New Hampshire. The evidence reflects that the appellant was hired as a temporary fill-in Youth Counselor I on July 25, 2003. On October 17, 2003, he was assigned to a permanent position of Youth Counselor I. On March 13, 2004, the appellant was appointed to a position of Corrections Officer Trainee. He was dismissed from his position on October 13, 2004. At no time did the appellant complete twelve months of service in any position in any agency.

The evidence also reflects that the appellant was not promoted within the Department of Corrections, and would be deemed a "promotional probationary employee" only in the sense that he transferred from a position in one State agency to a position in a different State agency having a higher salary grade. That promotion, however, occurred before the appellant had completed an initial probationary period.

After reviewing the documents admitted into evidence and considering the parties' briefs and closing arguments, the Board found that the appellant was still an initial probationary appointee at the time of termination. The Board also found that the notice of dismissal, issued to the appellant on October 13, 2004, cites Per 1001.08 (a)(8), which provides for dismissal without warning of any employee, permanent or probationary, for willful falsification of agency records. Regardless of the appellant's employment status, the agency would be authorized to dismiss him without prior warning if it determined that he intentionally misrepresented or omitted relevant information about his prior employment.

### Position of the Parties

Attorney Reynolds argued that although the information provided by the appellant in his application for employment with the State of New Hampshire may have contained "a technical inaccuracy," there was no intent on the part of the appellant to deceive or conceal relevant information. He argued that the appellant could honestly say that he was not asked to resign from his position with the Hillsborough County Department of Corrections, but resigned for a number of other reasons unrelated to the disciplinary hearing that he was about to undergo at the Hillsborough County Department of Corrections concerning his contact with an inmate. Attorney Reynolds argued that the appellant's resignation was entirely voluntary, and the NH Department of Corrections failed to give due consideration to the appellant's state of mind, concluding wrongly that he resigned to avoid being terminated for cause.

Attorney Vinson argued that the facts and circumstances leading up to the appellant's termination, and the conclusions to be drawn from them, were simple. He argued that the Department had evidence that while employed by the Hillsborough County Department of Corrections, the appellant was investigated for allegedly having inappropriate sexual contact with a female inmate at the Valley Street Jail. He argued that the appellant was questioned by the Manchester Police Department and later investigated by the Hillsborough County House of Corrections when they learned that he had accepted a collect call from the same inmate who was then incarcerated at the NH State Prison for Women.

Attorney Vinson argued that when the investigation was undertaken by the Manchester Police Department, the appellant refused to be interviewed a second time by detectives. He argued that the appellant, who holds a degree in criminal justice from Hesser College, clearly knew that he was then the subject of investigation by a law enforcement agency. He argued that the appellant also understood the scope of the County Corrections Department investigation into both the alleged sexual misconduct and contact outside the workplace with an inmate. Attorney Vinson argued that when the appellant understood

the scope of the investigation and the possibility for discipline, the appellant resigned, minutes before he was scheduled to appear at a disciplinary hearing.

Attorney Vinson argued that when the appellant applied for employment with the NH Department of Corrections, he certified that he had never been investigated by a law enforcement agency, despite his having been questioned by both Manchester Police Department personnel and Hillsborough County Corrections personnel about alleged illegal, sexual contact with an inmate. He argued that the appellant gave intentionally misleading information when he indicated on his application for employment as a NH State Correctional Officer that he had resigned from the Hillsborough County House of Corrections for personal reasons, rather than resigning in order to avoid disciplinary action. He argued that the appellant also answered untruthfully when he indicated in pre-employment inquires that there was no information he needed to disclose about himself that might later cause embarrassment to the department.

Having carefully reviewed the evidence and arguments offered by the parties, as well as the Joint Stipulations that the parties filed, the Board made the following findings of fact and rulings of law:

1. Prior to his employment with the NH Department of Corrections, the appellant was employed as a Corrections Officer at the Valley Street Jail, working as an employee of the Hillsborough County Department of Corrections.
2. In the spring of 2003, a female inmate at the NH State Prison for Women in Goffstown alleged that while she was incarcerated at the Valley Street Jail, Robenson Baguidy and two or three other County Corrections Officers had sexual relations with her.
3. The evidence reflects that while still employed as a Hillsborough County Corrections Officer, the appellant accepted a collect telephone call at his home from the inmate with whom he had allegedly had sexual relations. At the time, the inmate was incarcerated at the NH State Prison for Women in Goffstown.

The conversation between the inmate and appellant was recorded, consistent with

- the collect call warning that says, "This call may be recorded at any time. Thank you for using Public Communications Services. You may begin speaking now."
4. The Manchester Police Department investigated the alleged assault, and provided their report to Hillsborough County Corrections Captain David Dionne of the Hillsborough County Department of Corrections. The appellant was aware of the seriousness of the allegations, as even consensual sex under the circumstances described in the allegation could be prosecuted as a felony.
  5. The appellant denied the allegations and later, through his attorney, refused a request for a second interview.
  6. The appellant was shown evidence of the alleged offenses, and was questioned by a polygraph examiner. He received written notice that the Hillsborough County Department of Corrections had scheduled him to appear for a disciplinary hearing on July 1, 2003.
  7. The appellant had an opportunity to review the evidence and consult with his union representative before the hearing. After conferring, he tendered his immediate resignation.
  8. On his State of New Hampshire Application for Employment and related pre-employment documents, the appellant indicated that he had left his employment with the Hillsborough County Department of Corrections for personal reasons and to pursue more advantageous employment opportunities. He also indicated in his NH Department of Corrections self-reported background statement that he had never been the subject of an investigation by a law enforcement agency, and that there was no information about him that could later cause embarrassment to the Department.
  9. In the background report, the appellant indicated that he had been falsely accused of pushing someone but never reported that he had been accused of having sexual relations with an inmate, or that he had been investigated for having contact outside of his official duties as a Hillsborough County employee with that same inmate while she was incarcerated at the NH State Prison for Women.
  10. The Department of Corrections learned of the investigations into the appellant's activities at Hillsborough County when one of their officers informed Major

Cunningham, Chief of Security, that a former County Corrections Officer had seen the appellant working in R&D, and that the individual had left Hillsborough County after allegations of sexual misconduct.

11. The Department of Corrections initiated an investigation and determined that the appellant had been the subject of one or more investigations while he was employed by Hillsborough County.
12. When the investigation was completed, Warden Cattell confronted the appellant with the apparent discrepancies in his application and his self-reported background information. The appellant told him that he did not consider his questioning by Manchester Police to be an investigation because he was never read his Miranda Rights. He also told the Warden that although he knew he had been investigated by Hillsborough County, he did not consider their Corrections Department to be a "law enforcement agency."
13. Warden Cattell testified that, "Anyone in corrections for about 25 minutes knows that sexual allegations with female inmates is the hot subject around the industry." It bothered the Warden that the appellant would leave an agency with those allegations unresolved, and would then come to another Corrections agency and neglect to disclose that information. He testified that "Whether you're part of the issue or not, it hits the media that there were unresolved charges, and the department doesn't know about it, you 'get a black eye.'"
14. The appellant was given an opportunity, with his representative present, to review the information contained in the Department's investigation, and to refute the evidence supporting the Department's belief that he had willfully misrepresented relevant information about his prior employment and the reason for his resignation from the Hillsborough County Department of Corrections.

## Rulings of Law

- A. Per 1001.08 (a) (8) of the NH Code of Administrative Rules (Rules of the Division of Personnel) provides for the immediate dismissal of an employee without prior warning for “Willful falsification of agency records including, but not limited to.... E. Applications for employment.”
- B. Per 401.02 (o) of the NH Code of Administrative Rules (Rules of the Division of Personnel) requires an applicant to affirm that: “(1) There are no willful misrepresentations in any statements made in the application; (2) The applicant understands that the application will be rejected should any investigation disclose any misrepresentations in the application; and (3) If the applicant has attained employment and should an investigation disclose misrepresentation, employment may be terminated.”
- C. The appellant's signed statement indicating that he had never been the subject of an investigation by a law enforcement agency, and that he left his employment with Hillsborough County for "personal reasons" or to pursue a "more advantageous position," constitutes a willful misrepresentation of relevant information on his application for employment, and a violation of Per 401.02 (o) of the NH Code of Administrative Rules.
- D. The appointing authority met with the appellant in compliance with Per 1001.08 (c) which provides that, “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 provided, however:
    - a. An employee's failure to respond to a request for a meeting with the appointing authority shall not bar the appointing authority from dismissing an employee pursuant to this part.
    - b. An employee's refusal to meet with the appointing authority shall not

bar the appointing authority from dismissing an employee pursuant to this part; and

(3) Documents in writing the nature and extent of the offense."

- E. Having complied with the provisions of Per 1001.08 (c), the appointing authority determined that there were sufficient grounds to terminate the employee, and provided him with written notice of the dismissal, specifying the nature and extent of the offense; and notifying him in writing that his dismissal could be appealed under the provisions of RSA 21-I:58 within 15 calendar days of the notice of dismissal, as required by Per 1001.08 (d).

Decision and Order

In consideration of all the testimony, evidence and arguments offered by the parties, the Board voted unanimously to DENY the appeal, and to uphold the Department of Corrections' decision to dismiss Robensen Baguidy from his position as a Corrections Officer for willful falsification of his application for employment.

THE PERSONNEL APPEALS BOARD

  
Philip Bonafide, Chair

  
Robert Johnson, Commissioner

  
John Reagan, Commissioner

cc: Karen Levchuk, Director of Personnel  
Michael Reynolds, SEA General Counsel  
John Vinson, Corrections Counsel