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THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 90-219 . Appeal of Roslyn Beaudet .....  
the court upon ..... September 13, 1991 ..... made the following order:

Having considered the briefs and oral arguments, the court believes that a formal opinion is not necessary for the disposition of this matter. The decision below is affirmed.

Distribution:

- Personnel Appeals Board
- Robert L. Thompson, Esquire
- Stephen J. Judge, Esquire
- Michael K. Brown, Esquire
- Donna R. Craig, Supreme Court
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Please fax to  
 Mary Ann Steele  
 (Thought we did  
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 4 1422

Ralph A. Wood,

Clerk

# State of New Hampshire

WPPID523



## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

### RESPONSE TO REQUEST FOR RECONSIDERATION AND REHEARING Appeal of Roslyn Beaudet Docket #89-T-8

April 23, 1990

By letter dated April 3, 1990, SEA General Counsel Michael Reynolds filed on behalf of Roslyn Beaudet a Motion for Reconsideration and Rehearing. The New Hampshire Department of Corrections, through its attorney Michael K. Brown, filed its objection to said motion by letter dated April 10, 1990.

The Board, upon review of the arguments presented by both parties, voted to affirm its decision of March 15, 1990, denying Appellant's Motion for Reconsideration and Rehearing.

The Board is not inclined, in its response to Appellant's Motion for Reconsideration, to reconstruct its entire decision in this matter. There are, however, several issues raised in said Motion which the Board believes should be addressed.

Throughout her Motion, Appellant argues that the Board's decision is unsupported by the record. Appellant fails, however, to recognize the Board's authority to weigh both the evidence and the credibility of witnesses in disputed cases. Inasmuch as the facts surrounding the termination of Ms. Beaudet's employment with the Department of Corrections are very much in dispute, the Board had to consider conflicting testimony presented by the parties. The weight of the evidence supported the State's position that Ms. Beaudet resigned.

Appellant states she "in fact, did not refer to 'resigning', but simply confronted Dr. Powell with the fact, that he wanted her 'resignation'". Whether the Board were to consider as undisputed fact that Ms. Beaudet referred to "resigning" or that she referred to "resignation" does not alter the Board's conclusion that Ms. Beaudet resigned.

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Appellant argues that for whatever relevance the Board attributed to its finding, Ms. Beaudet was not "followed" by members of the news media, but that they were "waiting for her" when she arrived at the Department of Corrections on March 9th. Reference to the presence of the media was included in the Board's findings only as descriptive of the events which followed Ms. Beaudet's resignation. Whether members of the media "followed" or "waited for" Ms. Beaudet has no relevance to the Board's ultimate conclusion.

Appellant's arguments concerning the alleged hostility between Beaudet and Powell, Appellant's subjective intent, and Dr. Powell's state of mind attempt to divert attention from the plain language of the Board's decision. The Board's March 15th decision, states "The Board is not persuaded that the State must prove subjective intent or state of mind", and "...the Board does not believe the Department of Corrections bears any burden to prove what Commissioner Powell's state of mind might have been at any time prior to or during the meetings with Ms. Beaudet on March 8th." Attorney Brown, in his objection filed on behalf of the Department of Corrections, is correct in noting that the decision addresses burden of proof, finds that the appellant and not the Department of Corrections bears the burden of proof in this appeal, and concludes that the Appellant has failed to meet her burden.

In her Motion, Appellant quotes Black's Law Dictionary, defining resignation as "Formal renouncement or relinquishment of an office. It must be made with intention of relinquishing the office accompanied by act of relinquishment." Again, the reasonableness of the Board's decision goes to the weight of the evidence. Having determined that Mr. Panarello's testimony more accurately described the conclusion of the meeting between Beaudet, Panarello and Powell, the Board found that Appellant did relinquish her office when responding to the Commissioner's order to sit down by saying, "You can't order me because I resign".

Appellant continues to argue that she said "When you get my resignation it'll be from my attorneys when I'm ready". Even in the absence of corroborative testimony the Board can accept that such remark was made. However, the Board continues to believe that when ordered to sit down and finish discussion with the Commissioner, Ms. Beaudet said "You can't order me because I resign". Whether or not Ms. Beaudet later remarked, "When you get my resignation it'll be from my attorneys when I'm ready," does not negate the verbal resignation already made. Ms. Beaudet's continuing refusal to return to the Commissioner's office was deemed sufficient proof of her intent.

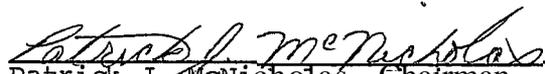
Finally, Appellant questions why the Board "appears to have completely ignored the affidavit of Dr. Reinhard..." with whom Appellant "...actually had a discussion, not just a 'passing' exchange". Dr. Reinhard's Affidavit was considered, as was the record in its entirety, prior to a decision being

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rendered. The affidavit simply states Reinhard had a "short" discussion with Ms. Beudet, that the "gist of this discussion was that the Department of Corrections had just taken the position that she had resigned, and her position was that she had not resigned". In the absence of any opportunity to further question Dr. Reinhard, the Board found the affidavit to be of limited value, apart from succinctly stating the position of the parties to this appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Lisa A. Rule

cc: Michael C. Reynolds, SEA General Counsel  
Michael K. Brown, Staff Attorney, Department of Corrections  
Virginia A. Vogel, Director of Personnel  
David S. Peck, Assistant Attorney General

# State of New Hampshire

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## PERSONNEL APPEALS BOARD

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APPEAL OF ROSLYN BEAUDET  
Docket #89-T-8  
Department of Corrections,

March 15, 1990

By letter dated March 21, 1989, Roslyn Beaudet, through her representative SEA General Counsel Michael Reynolds, requested a hearing to appeal her alleged termination from employment with the New Hampshire Department of Corrections. In her appeal, Ms. Beaudet contends:

- 1) that she had met twice with Commissioner Ronald Powell on March 8, 1989 to discuss her concerns with "dangerous staffing levels; potential for patient abuse; ... allegations of actual abuse that Ms. Beaudet had become aware of; and certain personal matters";
- 2) that the second discussion became somewhat heated, that it became clear to Ms. Beaudet that the Commissioner wanted her to resign;
- 3) that "[s]he neither actually resigned or intended to resign;
- 4) that she was barred from entering her workplace on March 9, 1989; and
- 5) that she subsequently received a letter dated March 9, 1989 purporting to "accept her resignation".

In light of the foregoing, Appellant argues that "Commissioner Powell has effected Ms. Beaudet's discharge for a number of personal, inappropriate reasons."

On March 29, 1989, the Department of Corrections, through its representative Staff Attorney Michael K. Brown, filed a Motion to Dismiss, arguing that the Department of Corrections had not dismissed, demoted, suspended, or otherwise disciplined the appellant, and that the Board therefore had no jurisdiction to hear Ms. Beaudet's appeal. The Department contends that Ms. Beaudet resigned from her position at the Department of Corrections, and that the Commissioner had accepted such resignation.

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By letter dated May 12, 1989, Appellant filed her Answer, again requesting a hearing before the Board to address facts remaining in dispute, specifically "whether Ms. Beaudet resigned, was fired, or suffered de facto termination".

By order dated June 26, 1989, the Board notified the parties that it had scheduled a hearing on this matter on Wednesday, August 30, 1989. The Board's order limited the scope of its review to the issue of whether or not Ms. Beaudet resigned or was discharged.

On July 6, 1989, the Department of Corrections filed a Motion to Continue, as the Commissioner of Corrections would be unavailable for the scheduled hearing. That motion was granted, and the hearing rescheduled for November 15, 1989.

The Board met Wednesday, November 15, 1989, to hear Ms. Beaudet's appeal. Appellant was represented by SEA General Counsel Michael C. Reynolds. Staff Attorney Michael K. Brown represented the Department of Corrections. Chairman McNicholas noted for the record that a quorum of the Board was present for the hearing, and introduced the members (McNicholas, Johnson and Bennett).

As a preliminary matter, Commissioner Bennett acknowledged his acquaintance with most of the witnesses for the Department of Corrections, noting that during his former employment with New Hampshire Hospital he had occasion to work with and to supervise several of the witnesses. The Chair offered both parties the opportunity to object to Mr. Bennett hearing the appeal. Neither party objected.

Commissioner Johnson then noted for the record that he lived in the same town as one of the witnesses and had had some social contact with him, but was unaware of what the witness' job was with the Department of Corrections, or what his part in the hearing would be. The Chair offered both parties the opportunity to object to Mr. Johnson hearing the appeal. Attorney Reynolds, after consultation with his client, did object to Mr. Johnson serving on the Board.

With notice of that objection, Mr. Bennett stated that he was obviously far better acquainted with the witnesses for the Department of Corrections, and that if Mr. Johnson were to be asked to recuse himself, it would seem the Appellant had more substantial grounds to request that he recuse himself instead of, or in addition to Mr. Johnson.

The Chair noted that the Board did not want either party to find grounds for a later objection to the proceedings. He then named the other two members of the Board, Lisa Rule and George Cushman, asking if either party objected to their hearing the instant appeal should both Johnson and Bennett recuse themselves. Attorney Reynolds admitted that he had been in the private practice of law in the same firm for which Ms. Rule is employed, but stated he

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would have no objection to her serving on the Board. Attorney Brown also indicated that he had worked with Ms. Rule, but had no objection to her serving on the Board. Neither party objected to Mr. Cushman serving on the Board.

Attorney Reynolds suggested that the hearing be continued until a new Board could be convened. Attorney Brown stated that the Department of Corrections was ready to move forward with the case, but would have no objection to continuing the hearing.

Chairman McNicholas declared the hearing continued and instructed the parties to consult with one another and select an acceptable date between December 11, 1989 and December 15, 1989, and notify the Board's secretary of their decision by the end of the day.

After discussion with representatives of both parties, the Board scheduled a hearing on the merits on Thursday, December 14, 1989 at 1:00 p.m. in Room 401 of the State House Annex, School Street, Concord, New Hampshire.

The Board (McNicholas, Cushman and Rule) again convened to hear Ms. Beudet's appeal on December 14, 1989. The Chairman reminded the parties that the hearing, as noted in the Board's order of October 31, 1989, would be limited to the single issue of whether Ms. Beudet resigned from her position with the New Hampshire Department of Corrections, or was discharged from her employment.

The Board had only allotted two hours for the hearing. The presentation of witnesses and evidence lasted nearly six and one-half hours. By 7:30 p.m., the parties had concluded examination of witnesses, but had not made closing statements. The Board allowed both parties ten days in which to submit brief closing arguments.

REVIEW OF CLOSING ARGUMENTS

Appellant argues that "Ms. Beudet's subjective intent, her state of mind at that time, not whether Commissioner Powell's interpretation of what she was saying was or was not reasonable, is the determinative issue. The fact is as more than a preponderance of the evidence has established, that Ms. Beudet did not intend to resign that day and there could not have been a resignation. Commissioner Powell's acceptances of her 'resignation' therefore amounts to a de facto termination. "

The State, on the other hand, argues that the appeal "turns solely on the credibility of the witnesses presented. For the reasons specified... it is the Department's contention that despite Ms. Beudet's testimony to the

contrary, she did resign, that she stated she resigned several times, and that her resignation was accepted. It is the Appellant's burden to prove her case; a burden she has failed to meet."

The matter at hand is not as simple or straightforward as either of the parties to this appeal would lead the Board to believe.

The Department of Corrections makes a credible, but premature argument for dismissal of Ms. Beaudet's appeal on a purely jurisdictional basis. RSA 21-I:58 provides for appeal to the Board, within fifteen days of the action giving rise to the appeal, by "any permanent employee who is affected by any application of the personnel rules..." The Rules do not provide employees with any implicit or explicit right to unilaterally withdraw a resignation once given; nor do the Rules provide for appeal of an appointing authority's acceptance of such resignation if given. Once an employee has tendered his resignation, unless he can support an allegation that such resignation was given under duress, any rights to appeal within the meaning of RSA 21-I:58 have been forfeited. In light of Appellant's continuing assertion that she did not resign, however, the Board believes its jurisdiction extends to a review of the facts, and a determination of whether or not Ms. Beaudet did, in fact, resign.

Appellant argues that "she brought up the subject and used the word 'resignation'..." and "while there may be ~~some~~ question as to the words used, Ms. Beaudet's behavior was inconsistent with someone who believed she had tendered a final, binding separation from employment." She also asserts that any statements she made regarding resignation "must also be accompanied by an intent on the part of the individual to actually resign". Insofar as she claims she had no intention of resigning, Appellant contends that the appointing authority's action in refusing her entry to the Department of Corrections facility and in issuing a letter "accepting her resignation" resulted in a de facto termination from which her appeal now arises.

#### UNDISPUTED FACTS

Several facts are not in dispute. Ms. Beaudet met with Commissioner Powell twice on March 8, 1989. The first meeting was held at Ms. Beaudet's request. The second meeting, ostensibly to follow-up on those issues raised in the earlier meeting, was also attended by Joseph Panarello. Ms. Beaudet walked out of the second meeting, which had become quite heated, refusing to talk any further with the Commissioner or with Mr. Panarello, and further refusing to return to the office at the Commissioner's request. During that meeting, Ms. Beaudet referred to "resigning", but tendered no written resignation. At the conclusion of that meeting, Ms. Beaudet told Commissioner Powell that she'd

see him in the Governor's Office and in the Attorney General's Office. When Ms. Beaudet attempted to enter the Secure Psychiatric Unit the following morning, she was followed by members of the news media filming her attempted entry into the workplace. She was refused entrance. She received a letter from Commissioner Powell dated March 9, 1989, "reaffirm[ing Commissioner Powell's] acceptance of [her] resignation".

#### ANALYSIS OF TESTIMONY AND EVIDENCE

During Ms. Beaudet's tenure with the Department of Corrections, she received several employee performance evaluations which rated her over-all job performance as good to excellent. Several of those evaluations also stated that she took criticism too personally, allowed her defensiveness to get in the way of open communication, and was apt to "shoot from the hip".

It is apparent from the testimony of Commissioner Powell and Ms. Beaudet that both are extremely strong-willed individuals between whom some degree of friction would be unremarkable. Both James Hamilton and Edwin Bieniek characterized the Commissioner's relationship with Ms. Beaudet as increasingly hostile, particularly in the wake of Ms. Beaudet's continuing allegations of poor staffing, patient abuse, or potential patient abuse. While this alleged hostility could surely set the scene for a confrontation between Ms. Beaudet and Commissioner Powell on March 8, 1989, it does not bear heavily on whether or not Ms. Beaudet resigned on that date, and whether or not the Commissioner could choose to accept such resignation if given.

The testimony of Edwin Bienek and James Hamilton did little more than confirm what the appellant and the Department of Corrections had already admitted, that Ms. Beaudet is a highly intelligent woman with an excellent educational background, who performed competently in her capacity as a Social Worker in the Secure Psychiatric Unit.

Appellant argues that Commissioner Powell had hoped for such a confrontation as that which occurred in the second meeting on March 8th, and that "although she definitely brought up the subject and used the word 'resignation', which Commissioner Powell pounced upon to try to effect her termination", her lack of intent to actually resign on that date should be the Board's preminent consideration.

The Board is not persuaded that the State must prove subjective intent or state of mind, particularly over a period of hours or days, on the part of Appellant in order to support its position that Ms. Beaudet resigned, and that such resignation was accepted. The threshold issue lies in whether or not Ms. Beaudet, by her words and/or by her actions, resigned. If the facts support a conclusion that Ms. Beaudet offered her resignation by word or deed, any second thoughts she might have had or desire to retract such resignation have limited bearing upon the issue at hand.

Similarly, the Board does not believe the Department of Corrections bears any burden to prove what Commissioner Powell's state of mind might have been at any time prior to or during the meetings with Ms. Beaudet on March 8th.

Appellant made much of the exact words used by Ms. Beaudet during the second meeting on March 8th, and whether she said "I resign", or "I'm resigning". Appellant relied heavily upon the testimony of Joseph Panarello as proof that Ms. Beaudet did not say "I resign", but rather, "I'm resigning", arguing that the latter phrase did not necessarily convey an immediate intent. Appellant further argued that by calling Ms. Beaudet back into the Commissioner's Office, and by not calling the police to have her removed from the premises, both Joseph Panarello and Commissioner Powell gave further proof that neither believed her to have actually resigned at that point. This line of reasoning is substantially weakened by the events which followed immediately thereafter.

Near the conclusion of the afternoon meeting, Commissioner Powell told Ms. Beaudet her allegations of patient abuse were groundless, and insisted that she apologize to both Commissioner Powell and Mr. Panarello. Mr. Panarello testified that Appellant said she wasn't "going to take this anymore". She was asked to sit down, and refused. She was then ordered to sit down. According to Panarello, she replied, "You can't order me because I resign".

Appellant's own testimony and that of her witnesses characterized Commissioner Powell as someone who didn't like her being an "aggressive woman", who saw her as a "troublemaker" and an "agitator, who disapproved of her "union activities", and who would gladly "pounce" upon any vague reference to resignation as a means of discharging her. Even with that conception of her relationship with Commissioner Powell, Ms. Beaudet did not return to the office when so requested, having just said "I'm resigning", or words to that effect.

Ms. Beaudet attempts to discredit the State's position that she resigned by citing the testimony of Marilee Brown and Lynda Harriman. Appellant states, "Both Ms. Brown and Ms. Harriman agreed that if Ms. Beaudet had been yelling ... they would have heard something", and that "Ms. Harriman clearly noticed that Ms. Beaudet became extremely agitated only after Commissioner Powell 'accepted' her 'resignation'".

On the contrary, the Board believes that the testimony of these two witnesses supports the State's position. Ms. Beaudet testified that the meeting with the Commissioner had soured, and that she decided it was pointless to continue the discussion. When the Commissioner told her to sit down, she refused. He ordered her to, "Sit". She stated, "That's when things really went down the tubes". She contends that after leaving the office, and hearing the

Commissioner tell the secretaries that he was accepting her resignation, she turned and said to the Commissioner, "When you get my resignation it'll be from my attorneys when I'm ready. I'll see you in the Governor and the AG's office." Neither Ms. Brown nor Ms. Harriman could confirm or deny that Ms. Beaudet had made such statement.

Although neither witness testified to having heard Ms. Beaudet say she was resigning, neither witness provided testimony which would lead the Board to believe that Ms. Beaudet had not resigned, or ever denied having just resigned. Given the record before it, the Board can only believe that Ms. Beaudet said she was resigning, refused to entertain further discussion with her supervisor or her commissioner, and walked out. The Commissioner, who had ordered her to return to the meeting more than once, accepted her resignation, and did so in front of witnesses. Ms. Beaudet did not return to the Commissioner's Office to set the record straight. She left, stating she would see Powell in the Governor's Office and the Attorney General's Office. When Panarello followed her and the Commissioner into the hallway, asking if they could go back into the office and talk, she responded, "You'll be hearing from my attorney".

The State's position that Ms. Beaudet resigned is further supported by the testimony of Jesus Morea. Immediately upon leaving the Commissioner's Office, Ms. Beaudet told Morea that she had just resigned. Ms. Beaudet argues that her actual words at that time were, "I guess I've just 'resigned'". Again, the Board attaches little significance to the precise wording used by Ms. Beaudet in her conversation with Morea. It was clear from Morea's testimony that he understood Appellant had just resigned, and that she understood the significance and the gravity of what had just occurred.

Finally, the Board gives little weight to Appellant's contention that her "behavior [in returning to her office and working on her files to the end of the day] was inconsistent with someone who believed she had tendered a final, binding separation from employment". The Board does not find this behavior dispositive of the issue, since Appellant had already volunteered the information to Morea that she "had just resigned" or "guessed she had just resigned".

This testimony is further supported by the exchange between Panarello and Beaudet when he went to her office to ask her to leave the unit. When he arrived, she was talking to someone on the telephone, and he heard her saying something to the effect that she "had really screwed up this time" and she'd "really blown it". He told her he would like her to leave the unit. She refused. When he ordered her to leave the unit, she held up the phone, repeatedly saying, "what did you say to me?" When he again told her to leave the unit, she refused stating, "I have my personal stuff here and I'm not leaving the unit".

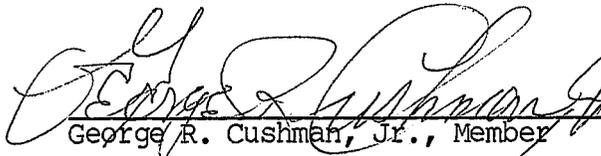
APPEAL OF ROSLYN BEAUDET  
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Based upon the foregoing, and in consideration of all the testimony and evidence received, the Board found that Ms. Beudet did, in fact, resign from her position of Social Worker III, Secure Psychiatric Unit, Department of Corrections. The Board further found that the Department of Corrections was under no obligation to question Ms. Beudet's "subjective intent" when her resignation was given, to provide Ms. Beudet the opportunity to withdraw her resignation, or to consider her resignation invalid because it was given at a time when she may have been angry or frustrated.

Ms. Beudet's appeal is denied accordingly.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Esq., Chairman

  
George R. Cushman, Jr., Member

  
Lisa A. Rule, Alternate

cc: Michael C. Reynolds, SEA General Counsel  
Michael K. Brown, Dept. of Corrections Staff Attorney  
Ronald L. Powell, Commissioner of Corrections  
Virginia A. Vogel, Director of Personnel  
David S. Peck, Assistant Attorney General

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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APPEAL OF ROSLYN BEAUDET  
Docket #89-T-8

Department of Corrections

March 6, 1990

The New Hampshire Personnel Appeals Board, pursuant to the provisions of New Hampshire RSA 21-I:46 IX, hereby provides notice to the parties to the above-captioned matter, heard by the Board on December 14, 1990, that a decision in this appeal can not be rendered within 45 days of the close of evidence.

Inasmuch as the hearing significantly exceeded the amount of time allotted for receiving testimony and evidence, the Board had allowed the parties ten days in which to file brief closing statements. The tenth day falling on December 24th, a Sunday, and the following day being a holiday, the close of evidence occurred on Tuesday, December 26, 1989.

The Board has been unable to render a final decision within 45 days of the hearing, requiring additional time to meet, review the testimony, and complete its deliberations.

The Board anticipates rendering its final decision in the above-noted appeal within thirty (30) days of the date of this notice.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE  
Executive Secretary  
N.H. Personnel Appeals Board

cc: Michael C. Reynolds, SEA General Counsel  
Michael K. Brown, Staff Attorney, Department of Corrections  
Virginia A. Vogel, Director of Personnel  
David S. Peck, Assistant Attorney General