

State of New Hampshire



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

APPEAL OF SUSAN CHAPMAN (Formerly Susan Chapman Lozier)

Docket #2006-T-010

Department of Transportation

Decision on Appellant's Request for Rehearing or Reconsideration

and

State's Objection to Motion for Rehearing or Reconsideration

May 18, 2007

By letter dated February 10, 2007, received by the Board on February 12, 2007, the Ms. Chapman requested Rehearing and Reconsideration of the Board's January 11, 2007 decision denying her appeal. Assistant Attorney General Edith Pacillo filed the State's Objection to that Motion on February 23, 2007.

In accordance with Per-A 208.03 (b) and (e), a Motion for Reconsideration and Rehearing, "...shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." And, "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."

As a preliminary matter, the Board voted to DENY the State's request that the Appellant's Motion for Reconsideration and Rehearing be dismissed as untimely. Per-A 202.01 of the Board's rules provides that:

"(a) Unless otherwise specified, all time periods referenced in this chapter shall be in calendar days.

“(b) Computation of any period of time referenced in these rules shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.

“(c) If the last day of the period so computed falls on a Saturday, Sunday, or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday, or legal holiday.”

In order to be timely, the Board must have received the Motion for Reconsideration or Rehearing within 30 calendar days of the date of the Board's January 11, 2007 decision DENYING Ms. Chapman's appeal. Accordingly, the deadline for filing a Motion would have been February 10, 2007, which fell on a Saturday. As set forth in the Board's rules, Ms. Chapman's Motion was considered timely, as it was received by the end of the next business day, Monday, February 12, 2007. The Board also found that although the State did not receive a copy of the Appellant's Motion until one was provided by the Board's Executive Secretary, the Appellant's failure to comply with the Per-A 204.02 (c) did not prejudice the Department's rights and was not, therefore, sufficient reason to deny the Appellant's Motion.

Having reviewed those arguments, as well as the arguments raised by the State in its Objection, the Board found that the Appellant has not shown good cause why the Board should now reconsider its decision and reverse or modify its January 11, 2007 decision denying her appeal.

In order to prevail in a disciplinary appeal, an appellant must demonstrate by a preponderance of the evidence that the action of the appointing authority was unlawful, that it violated the Rules of the Division of Personnel, that it was unwarranted by the employee's conduct, or that it was unjust in light of the facts in evidence. At the hearing on the merits of the appeal, the Department provided ample evidence of the Appellant's failure to meet work standards, as well as justification for its decision to dismiss the Appellant. The Appellant failed to refute that evidence, or to persuade the Board that the decision to dismiss her was unlawful, unjust, or unreasonable. While it is clear that the Appellant disagrees with the Board's findings, as well as with the Board's analysis of the evidence and its interpretation of the Personnel Rules, her disagreement with those findings and rulings is insufficient to demonstrate that Board's decision was unlawful, unreasonable or unjust.

The Appellant also cites the lack of a tape recording of the hearing on the merits of her appeal as grounds for rehearing. She cites RSA 541-A:31 which provides the following:

"The record in a contested case shall include all of the following that are applicable in that case."

- (a) Any prehearing order.
- (b) All pleadings, motions, objections, and rulings.
- (c) Evidence received or considered.
- (d) A statement of matters officially noticed.
- (e) Proposed findings and exceptions.
- (f) Any decision, opinion, or report by the officer presiding at the hearing.
- (g) The tape recording or stenographic notes or symbols prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding.
- (h) Staff memoranda or data submitted to the presiding officer, except memoranda or data prepared and submitted by agency legal counsel or personal assistants and not inconsistent with RSA 541-A:36.
- (i) Matters placed on the record after an ex parte communication."

Following the hearing it was discovered that the attempt to record the hearing failed and the tapes were blank. Although it is unfortunate that there was an error in attempting to record the hearing in this instance, the absence of a tape recording did not affect the manner in which the decision was made. The Board members relied on their own recollection of the testimony and the documentary evidence received from the parties in reaching its decision and set forth their findings of fact based on the testimony received during the hearing. The fact that there is no tape recording of the hearing does not, in and of itself, entitle the Appellant to a new hearing. The Board agrees with the State's position that unavailability of a recording or transcript does not, per se, entitle a losing party to a rehearing and the Appellant has the full burden of establishing that she has been prejudiced by the absence of the tape recording. In this case, the Appellant has failed to establish that she was prejudiced.

After carefully considering the arguments in the Appellant's Motion for Reconsideration and Rehearing and the State's Objection thereto, the Board found that the Appellant failed to show good cause why the Board's order should be considered unlawful, unreasonable or unjust. Accordingly, for the reasons above, as well as those arguments set forth in the State's Objection, paragraphs 2 through 7, the Board voted unanimously to DENY the Appellant's Motion for Reconsideration and Rehearing.

paragraphs 2 through 7, the Board voted unanimously to DENY the Appellant's Motion for Reconsideration and Rehearing.

THE PERSONNEL APPEALS BOARD


Philip Bonafide, Chair


Robert Johnson, Commissioner


Joseph Casey, Commissioner

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301
Susan Chapman, PO Box 448, Concord, NH 03302-0448
Assistant Attorney General Edith Pacillo, Transportation and Construction Bureau,
Department of Justice, 33 Capitol St., Concord, NH 03301

State of New Hampshire



PERSONNEL APPEALS BOARD

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

APPEAL OF SUSAN CHAPMAN LOZIER

Docket #2006-T-010

Department of Transportation

January 11, 2007

The New Hampshire Personnel Appeals Board (Bonafide, Johnson and Casey) met on Wednesday, January 3, 2007, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board) to hear the appeal of Susan Chapman Lozier. Ms. Chapman Lozier, who appeared *pro se*, was appealing her termination from employment as an Accountant I following receipt of a third written warning for the same offense within a period of five years. Assistant Attorney General Edith Pacillo appeared on behalf of the Department of Transportation.

The Board's decision and order in that appeal is attached.

For the Personnel Appeals Board

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

Mary Ann Steele, SPHR

Executive Secretary to the NH Personnel Appeals Board

cc: Karen Levchuk, Director of Personnel, 25 Capitol St., Concord, NH 03301
Susan Chapman Lozier, 66A Appleton St., PO Box 448, Concord, NH 03302-0448
Assistant A. G. Edith Pacillo, Department of Justice, 33 Capitol St., Concord, NH 03301
Senior Assistant A. G. Michael Brown, Department of Justice, 33 Capitol St., Concord, NH
03301

STATE OF NEW HAMPSHIRE?
PERSONNEL APPEALS BOARD

Appeal of Susan Chapman-Lozier
Docket #2006-T-010

Appearances: For the Appellant-Susan Chapman Lozier: pro se

For Dept. of Transportation: Assistant A. G. Edith L. Pacillo

The New Hampshire Personnel Appeals Board (Bonafide, Johnson and Casey) met on January 3, 2007, to hear the appeal of Susan Chapman Lozier.

Ms. Chapman Lozier, a former employee of the NH Department of Transportation, is appealing her January 9, 2006, termination from employment as an Accountant I following receipt of her third written warning for the same offense within a period of five years.

The witnesses testifying were as follows:

For the State: William Watson, Jr., P. E.
Information Technology Manager
Dept. of Transportation
Bureau of Budget & Finance

For Appellant: Susan Chapman Lozier

The record of the hearing in this matter consisted of the audiotape recording of the hearing on the merits of the appeal, notices issued by the Board and the following exhibits presented at the hearing:

State's Exhibit S-1 with attachments comprised of the following documents:

Letter of warning and letter of dismissal dated January 9, 2006
Follow-up from pre-disciplinary meeting of June (sic) 6, 2006 dated January 6, 2006
Notice of pre-disciplinary meeting dated January 4, 2006

Attachments:

1. Inter-office Memorandum dated 9/26/05
2. Inter-office Memorandum dated 9/27/05
3. Liter-office Memorandum dated 11/21/05
4. Lozier e-mail dated 11/18/05
5. State of NH Payment Voucher with note
6. Log of time worked
7. E-mail from Mr. Watson dated 11/22/05

8. Lozier e-mail to Mr. Suther dated 12/2/05
9. Memorandum from 12/20/05
10. LOC dated 10/13/03
11. LOC dated 11/8/04
12. LOW dated 4/27/04 Amended 5/25/04
13. LOW dated 2/14/05
14. LOW dated 4/14/05

Appellant's Exhibit A:

Appellant's letter of January 6, 2006, to William Watson, Jr., P. E. responding to issues raised at Pre-Disciplinary meeting of January 6, 2006.

Findings of Fact

1. Appellant had been employed by the Department of Transportation since October 8, 1999.
2. Appellant had worked as an Accounting Technician in the Bureau of Public Works until June 10, 2005.
3. On October 13, 2003, Matthew E. Moore issued Appellant a letter of counsel addressing her office behavior; specifically her outbursts of loud, rude, and disrespectful behavior during a work-oriented conversation.
4. On November 8, 2004, Armand J. Nolin issued Appellant a letter of counsel for repeated instances of tardiness in arriving to work.
5. On April 27, 2004 (amended May 25, 2004), Matthew E. Moore issued Appellant a letter of warning for failure to meet any work standard. Specifically, it addressed her inappropriate workplace conduct, her failure to adhere to assigned work hours and her failure to produce work products within a reasonable time period.
6. On November 1, 2004, Appellant received a performance summary that rated her below standards.

7. On February 14, 2005, Matthew E. Moore issued Appellant a letter of warning for failure to meet any work standard. Specifically, he noted Appellant's repeated instances of tardiness in arriving to work.
8. On April 14, 2005, Matthew E. Moore issued Appellant a letter of warning for failure to meet any work standard. Specifically, he addressed Appellant's continued inappropriate workplace conduct, disrespectful and uncooperative behavior.
9. On April 15, 2005, Jim Marshall, Director of Administration, arranged Appellant's transfer from the Bureau of Public Works to the Bureau of Finance and Contracts.
10. This transfer was instituted at Appellant's request based upon her allegation that her co-workers and the work environment in the Bureau of Public Works was responsible for her work performance issues.
11. Appellant was transferred temporarily to the duties of Accounting Technician.
12. William Watson, Jr. Finance and Contracts Administrator testified that Appellant's work was "excellent" during her initial temporary period of employment after the transfer.
13. On June 10, 2005, Appellant was promoted to Accountant I in the Bureau of Finance.
14. Appellant had been offered flex time in the past while working for the Bureau of Public Works but that failed to solve her problems arriving and/or leaving the office at her scheduled times.
15. Appellant was not offered flex time at the Bureau of Finance due to the failure of her flex time arrangement in the past.
16. Appellant's work hours in her new position were 8:00 a.m. to 4:00 p.m.

On September 26, 2005, Mr. Paul Ancil, Administrator II and Ms. Elizabeth Yanco, met with Appellant regarding her staying late without being authorized. They stressed the importance of leaving on time.

18. Following the September 26, 2005, meeting Elizabeth (Lisa) Yanco was asked to keep a log of Appellant's arrival and departure from the office.
19. On November 18, 2005, Mr. Ancil and Ms. Yanco again met with Appellant regarding her working unauthorized overtime.
20. On November 21, 2005, Mr. Watson had to direct Appellant to leave the workplace. This made a total of 13 times since Appellant was counseled on September 26, 2005, that she had worked unauthorized overtime.
21. In the same meeting on September 26, 2005, Mr. Ancil and Ms. Yanco also discussed Appellant's job responsibilities with her. It was noted that she needed to concentrate on her job responsibilities and not delve into areas assigned to co-workers.
22. On November 18, 2005, Appellant was asked to open the mail and distribute it. Appellant took it upon herself to audit a payment voucher addressed to someone else and then submit it to Mr. Watson with her comments.
23. As it was not part of Mr. Watson's duties to audit payment vouchers, the vendor's payment was delayed in being processed.
24. On that same day, Appellant took it upon herself to bring up a box of binders from the hallway downstairs in her office building and label it as "Free" so people could take some if they wanted.

25. On December 2, 2005, Appellant requested information from Mr. Lennart Suther, Civil Engineer V, from Highway Design, regarding their distribution procedure. Further, she suggested changing procedures on the handling of invoices received in Finance. As a result of Appellant's suggestions, personnel in the Highway Design Bureau spent approximately three hours looking in to the issue. Appellant then offered a suggestion on a change to the procedures. None of these issues were a part of Appellant's job responsibilities.
26. None of the suggestions/issues raised by Appellant on December 2, 2005, had been addressed to Appellant's supervisor by Appellant.
27. On December 20, 2005, Appellant requested Mr. Ram Maddali, Civil Engineer VI, from Planning and Community Assistance, to change business procedures in that bureau. The current procedure is that Finance makes additional copies of documents that are needed. She requested Mr. Maddali to have his bureau make additional copies of certain documents to "make it easier on Finance."
28. Appellant did not work this issue through her supervisor before requesting procedure changes.
29. Changing Bureau procedures and directing other Bureaus to comply is not one of Appellant's job responsibilities.
30. On January 4, 2006, Appellant was placed on administrative leave with pay and was given a notice of pre-disciplinary meeting to be held on January 6, 2006.
31. On January 6, 2006, Appellant, accompanied by two co-employees of her choice, attended the pre-disciplinary meeting conducted by Mr. Watson, the appointing authority. Also at the meeting were Paul Anctil, Administrator II and Elizabeth Yanco, Accountant IV.

At that meeting Mr. Watson discussed all of the issues and presented all of the evidence

which the appointing authority believed would support a decision to dismiss.

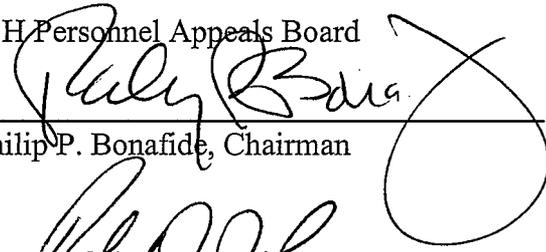
33. At that meeting, Mr. Watson offered Appellant the opportunity to refute the evidence which he felt would support a decision to dismiss.
34. Mr. Watson extended the time for Appellant to refute the evidence until 12:00 noon on January 9, 2006, and he provided Appellant with additional documents for her use as requested by her at the pre-disciplinary meeting.
35. On January 9, 2006, Appellant presented Mr. Watson with her written, three page, document (Appellant's Exhibit A) dated January 6, 2006, intended to refute the evidence presented at the pre-disciplinary meeting.
36. After reviewing Appellant's response, Mr. Watson issued the combined final letter of warning and letter of dismissal dated January 9, 2006.

Decision

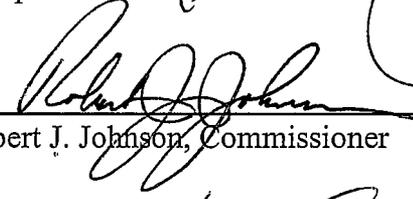
The Board finds that Appellant's failure to follow her superior's direction in adhering to work hours, failure to follow her superior's direction with regard to the scope of her job responsibilities and her disregard of proper procedures for suggesting changes in office procedures all constitute failure to meet any work standard.

While the Appellant has suggested that none of the issues raised in the final letter of warning dated January 9, 2006, would justify dismissal, the Board is of the opinion that the combined, cumulative effect of these infractions justified the disciplinary action taken in this case. Accordingly, the Board voted unanimously to DENY the appeal and uphold the Department of Transportation's letter of warning dated January 9, 2006, pursuant to Per 1001.03(a)(1) and its decision to dismiss Susan Chapman Lozier from her employment pursuant to Per 1001.08 (b)(1) dated January 9, 2006.

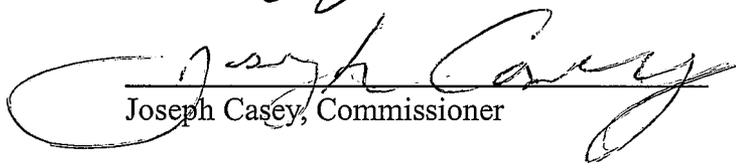
N H Personnel Appeals Board



Philip P. Bonafide, Chairman



Robert J. Johnson, Commissioner



Joseph Casey, Commissioner

Dated: January 5, 2007

- cc. Karen A. Levchuk, Director of Personnel
- cc. Susan Chapman Lozier
- cc. Attorney Edith Pacillo