

State of New Hampshire



PERSONNEL APPEALS BOARD

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

Appeal of James Conrad
Docket #2008-T-008
Department of Safety, Division of State Police

Personnel Appeals Board Decision on:

State's September 30, 2009 *Partial Motion for Rehearing*
or to Correct the Order to Conform to the Evidence
and
Appellant's October 5, 2009 Objection Thereto

October 6, 2009

On August 31, 2009, the NH Personnel Appeals Board (Wood, Bonafide and Johnson) issued its decision in the above-titled appeal, ordering the Department of Safety/Division of State Police to treat the appellant's separation from service as a resignation, effective November 28, 2007, and to remove all references to an investigation, unpaid investigative suspension, a disciplinary hearing, or involuntary termination from his personnel file. On September 30, 2009, Attorney Marta Modigliani filed with the Board the Department of Safety's *Partial Motion* for Rehearing or to Correct the Order to Conform to the Evidence. The appellant's Objection to that Motion was received by the Board on October 5, 2009.

Having carefully reviewed the Motion and Objection, the Board finds that the State has failed to set forth sufficient grounds for a finding that the order is unlawful or unreasonable and the Motion is therefore Denied.

FOR THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD

A handwritten signature in black ink, appearing to read "Patrick Wood".

Patrick Wood, Chair

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301
Attorney Marta Modigliani, Department of Safety, 33 Hazen Drive, Concord, NH 03305
Attorney John Krupski, 100 Hall St., Concord, NH 03301

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Appeal of James Conrad

Docket #2008-T-008

Department of Safety, Division of State Police

August 31, 2009

The New Hampshire Personnel Appeals Board (Wood, Johnson and Bonafide) met in public session under the authority of RSA 21-1:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules on Wednesday, August 20, 2008, October 1, 2008, April 22, 2009, May 20, 2009 and June 10, 2009, to hear the appeal of James Conrad, a former employee of the Department of Safety, Division of State Police. Mr. Conrad, who was represented by the NH State Troopers Association, was appealing his March 18, 2008 termination from employment for allegedly violating the Division of State Police Professional Standards of Conduct as well as the Rules of the Division of Personnel as a result of the appellant's on-duty conduct and his conduct during the course of an internal investigation. Specifically, the State alleged in its notice of termination that the appellant violated the following provisions:

- Chapter 1 of the Division's Rules and Regulations, Section 1.3.0, Obedience, including Obedience of Laws, Obedience of Rules and Regulations, Obedience to Orders, and Willful Insubordination
- Section 1.11.0 Personal Conduct including Comportment and Personal Behavior
- Per 1002.08 (b) of the Rules of the Division of Personnel, including (7) Violation of a posted or published agency policy or procedure, the text of which warns that violation of same may result in dismissal; (8) Threatening another employee or individual served by the agency; (9) Endangering the life, health or safety of another employee or individual served by the agency; (13) Persistent refusal to follow the legitimate directives of a supervisor; and (23) Violation of a law related to an employee's job duties or conviction of any criminal offense relating to the employee's job duties.

Attorney Marta Modigliani appeared on behalf of the Division of State Police. Attorney James Donchess appeared on the appellant's behalf at the August 20, 2008 and October 1, 2008 sessions of the hearing. Attorney John Krupski appeared on the appellant's behalf on April 22, 2009, May 20, 2009 and June 10, 2009.

The record of the hearing in this matter consists of pleadings submitted by the parties prior to the appeal, notices and orders issued by the Board, the audio tape recording of the hearing on the merits of the appeal, motions and objections filed by the parties during the course of the hearing and documents admitted into evidence as follows:

Appellant's Exhibits

- A. Handwritten letter of resignation
- B. State Police Professional Standards
- C. Involuntary Emergency Admissions policy
- D. Portions of the appellants personnel file

State's Exhibits

1. February 1, 2008 Internal Investigation
2. November 29, 2007 Suspension Without Pay for Purpose of Investigation
3. December 28, 2007 Suspension Without Pay for Purpose of Investigation
4. January 23, 2008 Suspension Without Pay for Purposes of Investigation
5. February 22, 2008 Suspension Without Pay for Purposes of Investigation
6. March 17, 2008 Notice of Intent to Dismiss
7. March 18, 2008 Dismissal Letter
8. Supplemental Job Description
9. Receipt of Division Directives, May 23, 2002
10. Receipt of Division Directives, January 21, 2001
11. Receipt of Division Directives, June 12, 1999
12. Receipt of Division Directives, June 13, 2008
13. Chapter 16-H, Professional Standards of Conduct
14. Chapter 1, Rules and Regulations, Professional Standards of Conduct
15. Chapter Per 1000, Administrative Rules
16. Continuation of Investigative Report

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

Capt. Russell Conte

Pamela Jean Dawson

Capt. Mark Myrdek

Lt. Mark Liebl

Capt. Allen Welch

Capt. Stephen W. Barrett

Maj. Susan Forey

Capt. Michael Hambrook (retired)

Col. Frederick Booth

James Conrad

TFC William Graham

TFC Christopher LaPorte (retired)

Dr. Alexander deNesnera

Position of the Parties

The appellant disputes the facts as they are set forth in the letter of termination. Although the appellant admits that he was involved in an altercation at State Police headquarters on November 28, 2007, he argues that he should not be held responsible for those events and should not have been dismissed. The appellant argues that the Division knew that his wife had filed for divorce, that he was experiencing significant personal difficulties, and that the Division knew that he was in the midst of an emotional breakdown when the altercation occurred. He argues that other troopers who have suffered temporary periods of disability or who have been accused of similar violations have been given temporary light duty assignments by NHSP and allowed to continue their service until they could return to duty or retire with honor. As a veteran officer with more than nineteen years of service, he argues that the Department should not have dismissed him, but should have allowed him to finish out his twenty years and achieve "full retirement."

The State argues that Trooper Conrad was dismissed for his conduct, not his mental state. While the State admits it knew about difficulties in Trooper Conrad's personal life, the agency engaged in what Col. Booth described as "early intervention to make sure he stayed on the right course." As a law enforcement employee with nineteen years in the field, the State argues, the appellant was cognizant of the law and the way the courts and employers must deal with domestic issues. The State argued that law enforcement personnel are held to a higher standard, and when an officer engages in a violent altercation in the work place, that officer must be held accountable, regardless of the personal stressors that might be involved in the officer's personal life.

After carefully considering the testimony of the witnesses, the arguments offered by the parties, and documents admitted into evidence, the Board made the following findings of fact. In doing so, the Board noted that although events leading up to the altercation at State Police headquarters were not used as the basis for the appellants dismissal, they had substantial bearing on what transpired at State Police Headquarters on November 28, 2007.

1. Col. Booth knew of Trooper Conrad's possible marital difficulties as early as August 2007. At that time, Capt. Michael Hambrook informed the Colonel that he had received a telephone call "someone who was a friend" who reported that Trooper Conrad's wife was having an affair with someone. The caller said that he was letting Capt. Hambrook know because "Jim would not take it well if he found out." Col. Booth treated the information as "second or third party information" and determined that "it was nothing actionable, just something to be aware of." (Testimony of Col. Booth)
2. Some time between one o'clock and two o'clock on the morning of Sunday, September 23, 2007, Col. Booth received a phone call from Maj. Hambrook, who informed the Colonel that Trooper Conrad had reported his wife was missing. He indicated that Mrs. Conrad's car had been found at Interlakes Regional High School, and that Trooper Conrad had called out for personnel and a canine unit to assist in searching for her. Several units responded, and after searching the area, the dog handler concluded that the woman had not been abducted, but had gotten into another vehicle and had left the area. Col. Booth followed up on the incident the following Monday and learned that Trooper Conrad had had his wife's car towed, then later went back to the high school on his personal motor cycle and waited there until a car came back to drop her off. Col. Booth was informed that Trooper Conrad approached the person who was with Mrs. Conrad and that there was an exchange of words. (Testimony of Col. Booth)
3. After the events of September 2007, , Col. Booth determined that Trooper Conrad's situation had now "spilled into the workplace because it required State Police to respond with a number of resources to what [Trooper Conrad] portrayed as a possible abduction." Col. Booth arranged to speak with Trooper Conrad for ten or fifteen minutes on the Monday following the incident in Meredith. He acknowledged how difficult it could be dealing with marital problems, but advised Trooper Conrad to be "scrupulously careful" about his conduct

and told him not to "cross the line between his personal life and law enforcement."

(Testimony of Col. Booth)

4. In the weeks that followed, Trooper Conrad's personal situation deteriorated. Throughout the fall, Mrs. Conrad "reached out" four or five times to Capt. Conte, telling him that Trooper Conrad was having a difficult time coping with the break-up of their marriage and she was concerned for his well-being. At one point, Mrs. Conrad called to say that Trooper Conrad had locked himself in a room with his duty weapon and was refusing to come out. When State Police responded and asked him to come out, Trooper Conrad complied, but as Col. Booth testified, it "raised their level of concern. Jim didn't seem to be acting totally rational." Trooper Conrad was relieved of his cruiser and his weapons and was instructed to seek help dealing with his personal issues. After consulting with the Employee Assistance Program and a service provider to whom he was referred, and after providing an assessment indicating that he was not a danger to himself or others, Trooper Conrad was restored to full duty. (Testimony of Capt. Conte and Col. Booth)

5. On Monday morning, November 26, 2007, Capt. Conte received a phone call from Laconia Police Sergeant Rich Simmons. According to Capt. Conte, Sgt. Simmons knew that Capt. Conte was the appellant's supervisor and he wanted Capt. Conte to be informed about the call that Mrs. Conrad had made to the Laconia Police Department the previous evening requesting additional patrols around her house following an argument she had with Trooper Conrad. (Testimony of Capt. Conte)

6. On Monday morning, November 26, 2007, Trooper Conrad came unannounced to Capt. Conte's office to tell him that he was planning to resign because of the problems he was having in his marriage. Trooper Conrad described how he intended to leave, give his wife half the money, then return to service at some later date, finish out his career and have his retirement. Capt. Conte advised Trooper Conrad to first consult an attorney and a representative from the Retirement System to see how it would affect his retirement if he were to resign his position. Capt. Conte said he did not want to accept Trooper Conrad's resignation at that time because of Trooper Conrad's "lack of a plan." (Testimony of Capt. Conte)

7. In his written statement dated December 8, 2007, describing Trooper Conrad's unannounced visit to Capt. Conte's office on November 26, 2007, Capt. Conte wrote, "TFC Conrad appeared disheveled and emotional as he shut the door to my office and began to speak. TFC Conrad advised me that he would like to resign his position with the State Police" as a way of protecting a portion of his retirement earnings. "I advised TFC Conrad that I would not accept a resignation letter on behalf of the division because I did not feel he had weighed all of his options in the matter." (State's Exhibit 1, p. 32)
8. During their meeting on November 26, 2009, Capt. Conte also informed Trooper Conrad that he had received a telephone call earlier that morning from a Sergeant at the Laconia Police Department about Mrs. Conrad looking for additional police patrols around her home. He repeated the statement that Trooper Conrad allegedly had made to Mrs. Conrad about "going to hell for what he was about to do." Trooper Conrad explained to Capt. Conte that the remark was in relation to his plans to take his money out of the Retirement System. Capt. Conte ended the meeting by giving Trooper Conrad a hug and asking Trooper Conrad to promise that he would "consider all the facts" before taking any other action. He then promised to see Trooper Conrad through the next couple of months. (Testimony of Capt. Conte)
9. On Tuesday, November 27, 2007, Capt. Conte received a request to call Mrs. Conrad. When he returned her call, she reiterated that on Sunday November 25th, she and Trooper Conrad had a heated argument, that he had used profanity and had made the statement that he was going to hell. Mrs. Conrad asked where Trooper Conrad was at that time, and Capt. Conte said he believed that Trooper Conrad was there at headquarters in training. Mrs. Conrad reportedly told Capt. Conte that during the argument, Trooper Conrad also had remarked that he knew where Mrs. Conrad's attorney lived. (Testimony of Capt. Conte)
10. In her conversation with Capt. Conte, Mrs. Conrad indicated that there had been no direct threats made to her by Trooper Conrad. (State's Exhibit 1, p. 34)
11. After speaking with Mrs. Conrad on November 27, 2007, Capt. Conte called Mrs. Conrad's attorney. He informed the attorney that he was Trooper Conrad's supervisor and knew that there was a "domestic situation." The attorney reportedly said that she thought the problems and stress in the situation stemmed from Trooper Conrad not having his own

attorney. She told Capt. Conte that although she and her client would not be seeking a permanent order for domestic violence, there was a temporary order in place at the time, and that Mrs. Conrad believed that Trooper Conrad had violated the order by coming into the house over the weekend and clearing messages from the phone. The attorney also confirmed that Mrs. Conrad had told her about Trooper Conrad's alleged remark about knowing where the attorney lived. (Testimony of Capt. Conte)

12. Capt. Conte relayed all of the information that he had obtained from the Laconia Police Department, Trooper Conrad, Mrs. Conrad, and Mrs. Conrad's attorney to Lieutenant (now Captain) Mark Myrdek, head of the Professional Standards Unit (Internal Affairs) and to Maj. Forey, the Division's Executive Major. He told them that there might be a violation of law if Trooper Conrad had violated the restraining order, and it was probably time to look closer into that incident. At Maj. Forey's direction, Lt. Myrdek arranged to speak with Trooper Conrad the following day, November 28, 2007. (Testimony of Capt. Conte)
13. At approximately 1:50 p.m., Trooper Conrad arrived in Capt. Conte's office at State Police Headquarters. He said that he had been asked to see Lt. Myrdek and wanted to know if Capt. Conte knew what the meeting was about. When Capt. Conte said that Lt. Myrdek wanted to talk to him about the calls from Mrs. Conrad and the allegations she had made, Trooper Conrad became "noticeably angry" at Mrs. Conrad. Capt. Conte then left his own office and went to Lt. Myrdek's office to tell him that he would send Trooper Conrad in to see him. (Testimony of Capt. Conte)
14. Around 2:00 p.m., Trooper Conrad went to see Secretary Pamela Dawson and asked if she had taken any phone calls for him while he was out. He had been at training for two days and had told Ms. Dawson beforehand not to say where he was if he received calls from any females during that time. When Ms. Dawson said that Mrs. Conrad had called, asking first for Capt. Conte and then for some other officer before asking for Trooper Conrad, the appellant became very agitated, calling his wife a "f---ing b----." He asked Ms. Dawson to write or type up his letter of resignation. She said she was not comfortable doing that and he would need to write it himself. He became more upset and left the area. Ms. Dawson went to Trooper Conrad's desk to tell him that she knew what he was going through. She advised him to "let the lawyers handle everything; that's what you pay them for." Trooper Conrad responded angrily, tossing his phone toward her, saying "Tell her that!" Ms. Dawson

saw that Trooper Conrad had scribbled out a note of some kind. (Testimony of Ms. Dawson)

15. Trooper Conrad arrived at Lt. Myrdek's office at approximately 2:05 p.m. Lt. Myrdek knew that Trooper Conrad had visited Capt. Conte on November 26, 2007 to talk about resigning. Lt. Myrdek told Trooper Conrad that they needed to discuss the issues raised by Mrs. Conrad. He presented a Garrity Warning form (State's Exhibit 1, bates stamped page 36) indicating that his inquiry would pertain to Trooper Conrad's "...possible violation of a temporary court order regarding your pending divorce and comments you may have made to your wife regarding your actions and her attorney." Lt. Myrdek saw that Trooper Conrad was "agitated and angry." After reviewing the Garrity Warning, Trooper Conrad said, "She can't prove that I was in the house." (Testimony of Capt. Myrdek)
16. Trooper Conrad accused Lt. Myrdek of "taking her side" and not letting him defend himself. Lt. Myrdek said that he had heard Mrs. Conrad's side of the story and now needed to hear Trooper Conrad's side, telling him the best thing he could do was get a union representative. He let Trooper Conrad leave the office to call the union. (Testimony of Capt. Myrdek)
17. Over the course of roughly the next half hour, Trooper Conrad attempted to get a union representative to State Police Headquarters to assist him. Ultimately, he informed Lt. Myrdek that he wanted the union attorney present for the interview, but that the attorney was not available that afternoon, and their meeting would have to be postponed. He told Lt. Myrdek that he did not intend to be interviewed without the presence of counsel. Lt. Myrdek responded, "No, Jim, I am going to talk to you today. You need to talk to somebody today. I'll wait but we're going to talk about this today." Lt. Myrdek testified that the interview had to take place that day because, in his opinion, Trooper Conrad was too upset to be allowed to leave. Trooper Conrad became more agitated, saying, "Well I'm leaving, because I wrote out my resignation and I no longer work for you." Trooper Conrad was holding up a yellow piece of paper with some red writing on it. Lt. Myrdek told Trooper Conrad to calm down, and told him that Attorney Donchess, the union attorney, needed to contact Lt. Myrdek, but whatever happened, they were going to do the interview that day. Trooper Conrad replied, "I'm leaving and you can't stop me." When Trooper Conrad started for the door, Lt. Myrdek stepped in front of him. Trooper Conrad, who was yelling at the time that his wife was ruining his career, reached around Lt. Myrdek to open the door, and Lt. Myrdek said, "I'm

ordering you to calm down and talk to me." Lt. Myrdek was "concerned about [Trooper Conrad's] mental state. (Testimony of Capt. Myrdek)

18. Under typical circumstances, Lt. Myrdek would allow a trooper to be interviewed at some other time when the trooper's attorney or union representative could be available, but in this case, he decided that circumstances would not allow him to wait until the next day. (Testimony of Capt. Myrdek)

19. At approximately 3:00 p.m. on November 28, 2007, Lt. Mark Liebl was in his own office, which abuts what was then Lt. Myrdek's office. He heard a loud angry voice through the wall and recognized the voice as Trooper Conrad's. Although he heard only bits and pieces of the dialogue, he did hear Trooper Conrad say, "I'm not talking to you, you're taking her f---ing side" and "I quit." He also heard Lt. Myrdek say "Jimmy, calm down," but Trooper Conrad insisted he would not talk to Lt. Myrdek without his attorney. Because of the level of anger in Trooper Conrad's voice, Lt. Liebl was concerned it might turn into a physical confrontation, so he went to his own doorway to wait in case he was needed. He saw Trooper Conrad step out of Lt. Myrdek's office, put his back to the wall, and say "I'm quitting." Lt. Myrdek ordered Trooper Conrad to calm down and go back to the office. Lt. Liebl heard Trooper Conrad tell Lt. Myrdek he was "f---ing quitting" and that Lt. Myrdek could not tell him what to do any longer. Trooper Conrad was holding a legal size yellow lined piece of paper that was tattered and appeared to have been torn, with handwriting on it. Trooper Conrad held the paper out to Lt. Myrdek and said, "I'm quitting." Lt. Myrdek replied, "I'm not accepting that, I want you to go back into the office and sit down." Trooper Conrad moved to the doorway and Lt. Myrdek followed him saying, "You're not free to leave; you need to stay here, Jimmy you need to calm down." (Testimony of Lt. Mark Liebl)

20. Capt. Allen Welch, who was present in the same suite of offices on November 28, 2007, heard the commotion in Lt. Myrdek's office. Initially he assumed it was an upset "civilian" with a complaint, but later learned that it was Trooper Conrad. He found Trooper Conrad to be "out of control," "highly emotional," "on a roller coaster," and "visibly shaken." He stepped in to assist Lt. Liebl and Lt. Myrdek, believing there was a strong likelihood that Trooper Conrad might hurt himself or others. (Testimony of Capt. Welch)

21. Capt. Stephen Barrett was also present on November 28, 2007 in the vicinity of Lt. Myrdek's office. Capt. Barrett was in the storage room shared by investigative services and support services finishing some paperwork, when Trooper Conrad entered through the investigative services door. When Capt. Barrett asked Trooper Conrad how he was doing, Trooper Conrad responded, "It's the worse day of my life." The appellant then turned and left the room. Knowing that something was wrong, Capt. Barrett went to Trooper Conrad's cubicle to look for him, but he did not find him there. Capt. Barrett then returned to his own office. (Testimony of Capt. Barrett)
22. Support personnel Jeanette Patton and Rosemary Goodman were in Capt. Barrett's office telling him what they had observed when Maj. Forey entered the office and asked Capt. Barrett to respond, telling him that it had taken four people to restrain Trooper Conrad. (Testimony of Capt. Barrett)
23. When Capt. Barrett arrived at Lt. Myrdek's office, he saw Lt. Liebl standing just outside his own door, which was perpendicular to Myrdek's door. From approximately ten feet away, he could hear and recognize Trooper Conrad's and Lt. Myrdek's voices. He heard Lt. Myrdek telling Trooper Conrad sternly he wasn't going to leave. Trooper Conrad said he wished he'd never come back from Iraq, and that they were going to have to shoot him. (Testimony of Capt. Barrett)
24. Based on Trooper Conrad's behavior, including his weeping, shouting and threatening to jump out the window, Capt. Barrett concluded that he could have been a candidate for involuntary emergency admission for assessment by a mental health professional. He did not recommend an IEA, however, but was simply present to assist in keeping the scene secure and preventing Trooper Conrad from leaving the area. (Testimony of Capt Barrett)
25. Maj. Forey was in her office on November 28, 2007 when she heard raised voices coming from the area near Lt. Myrdek's office. She heard Trooper Conrad saying, "You people don't get it. My life is over. The c--- did it to me." She heard Lt. Myrdek saying, "Jim, just calm down and come into my office and talk about it." By the time Maj. Forey had rounded the corner, Lt. Myrdek and Trooper Conrad had "spun up against the wall." She saw that Capt. Welch and Lt. Liebl were also holding Trooper Conrad, and decided that the best she could do was pull her taser, rather than join into the physical confrontation. When Trooper

Conrad saw the taser, "It enraged him further." She heard him say his life was over, "Just go ahead and taser me." Once Trooper Conrad was back in Lt. Myrdek's office, she got Capt. Barrett and asked him to assist. (Testimony of Maj. Forey)

26. According to Maj. Forey, State Police make every effort to allow troopers to have union representation at an investigative interview. She believed there were plenty of union, representatives available to Trooper Conrad on November 28, 2007, and the State is not required to delay an investigation just because the person being investigated is waiting for a particular person to represent them. (Testimony of Maj. Forey)

27. Maj. Forey heard Trooper Conrad say, "I quit, I quit," but his resignation was not accepted that day, nor would she allow him to leave the premises "because of his mental state." (Testimony of Maj. Forey)

28. When Trooper First Class William Graham arrived at headquarters on the afternoon of November 28, 2007, to assist as a representative of the Trooper's Association, Trooper Conrad communicated that all he wanted to do was quit his job and leave, but the senior officers present would not let him leave. Trooper Graham believed that Trooper Conrad's behavior clearly indicated that he was a danger to himself. Trooper Graham believed that Trooper Conrad "would take his own life if they did not do something."

29. Ultimately, Trooper Conrad was admitted to New Hampshire Hospital under the provisions of a voluntary commitment for treatment by medical and mental health professionals.

30. Under normal circumstances, troopers can resign if they want to.

Discussion

Even before the incident at State Police headquarters, the appellant had approached his supervisor, Capt. Conte, about resigning. Capt. Conte did not say that the Professional Standards prohibited him from accepting Trooper Conrad's resignation on behalf of the division, but that he did not want to accept Trooper Conrad's resignation based on his belief that Trooper Conrad had not planned appropriately for such a step.

After presenting himself at State Police Headquarters on November 28, 2007, as directed, and after learning the nature of the investigation about to be undertaken by State Police into allegations made by his estranged wife, Trooper Conrad attempted to have staff member Pamela Dawson prepare a letter of resignation for him before his meeting with Lt. Myrdek. After Ms. Dawson refused, he hand wrote his resignation, which Lt. Myrdek refused to accept.

Although several of the State's witnesses portrayed the situation as one that became violent and dangerous almost immediately after the appellant's arrival at State Police Headquarters, the timeline of events suggests otherwise, as the appellant's interaction with Lt. Myrdek and others took place over the course of two or more hours. The evidence reflects that the appellant was angry and agitated when he learned the nature and source of the allegations against him. However, the evidence does not suggest that his behavior caused any particular safety concerns, at least initially, as Lt. Myrdek allowed Trooper Conrad to leave the office in possession of his service weapon at least twice before the altercation erupted, and he declined to take Trooper Conrad's weapon and badge when the appellant first offered to surrender them. What caused the situation to escalate was Lt. Myrdek's insistence that Trooper Conrad submit to questioning before he would be allowed to leave the building. At that point, Trooper Conrad told Lt. Myrdek in no uncertain terms that he quit. Throughout the course of the afternoon, no fewer than seven witnesses, including Ms. Dawson, Capt. Myrdek, Lt. Liebl, Maj. Forey, Capt. Welch, Capt. Barrett, Trooper Graham and Trooper LaPorte all heard Trooper Conrad say that he quit, that he wanted to leave, and that they had no authority to keep him there.

The Division's own policies and procedures provided options the agency might have employed once Trooper Conrad said that he was quitting. If Lt. Myrdek believed that he was not authorized to accept Trooper Conrad's resignation, he could have said so and could have referred Trooper Conrad to Maj. Forey or Col. Booth, both of whom were at headquarters at the time. He also might have advised Trooper Conrad that if he were to resign, Lt. Myrdek would have no choice but to immediately relieve him of his weapons and his badge and take whatever steps they deemed necessary to address the possible violation of the temporary court order and any perceived threats against Trooper Conrad's estranged wife or her attorney. In the alternative, if Lt. Myrdek believed that Trooper Conrad was not acting rationally, despite his decision to allow Trooper Conrad to remain armed, he could have invoked the provisions of Section 1.8.0 of the Professional Standards of Conduct and could have relieved Trooper Conrad from duty. Instead, Lt. Myrdek told the appellant that neither he nor the Colonel would accept

the resignation and demanded that Trooper Conrad submit to questioning before he would be allowed to leave the building.

The witnesses testified that as the events of the afternoon unfolded, the appellant was clearly exhibiting increasingly extreme emotional distress, culminating in Trooper Conrad's threats to take his own life. At the point that Trooper Conrad made a credible threat to commit suicide, the Division could have initiated action under the Involuntary Emergency Admission procedures outlined in Chapter 41-F of the Professional Standards of Conduct. Instead, they physically restrained him and called in another police agency for assistance.

Per-A 207.12 (b) of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board) provides that, "In disciplinary appeals, including termination... the board shall determine if the appellant proves by a preponderance of the evidence that: (1) The disciplinary action was unlawful; (2) The appointing authority violated the rules of the division of personnel by imposing the disciplinary action under appeal; (3) The disciplinary action was unwarranted by the alleged conduct or failure to meet the work standard in light of the facts in evidence; or (4) The disciplinary action was unjust in light of the facts in evidence."

On its face, the decision to dismiss the employee for his conduct was lawful, and the agency complied with the various requirements of the Director's rules in carrying out the dismissal. However, the Board found that there were too many significant mitigating factors for it to conclude that dismissal was appropriate or just in light of the facts in evidence.

On the date of the incident giving rise to the appellant's termination, he was completely distraught. He was losing what he described as a once-perfect marriage. As all of the witnesses testified, the appellant believed that his career was ruined, and he was angry that his estranged wife might not only ruin his career, but would take half of his retirement savings. When he tried to resign, his own supervisor talked him out of quitting, and when he tried to quit rather than subject himself to questioning without his union attorney present, his resignation was refused.

Nothing in the Rules of the Division of Personnel prohibits an employee from resigning, with or without notice. On all the evidence, the Board believes that the altercation that occurred at State Police Headquarters on the afternoon of November 28, 2007, and nearly all the events

that transpired thereafter, would not have occurred if Trooper Conrad's resignation had simply been accepted when he first offered it.

Decision and Order

RSA 21-I:58, I states, in pertinent part, "In all cases, the personnel appeals board may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just." For all the reasons set forth above, the Board voted unanimously to direct the Department of Safety and the Division of State Police to treat Trooper Conrad's separation from service as a resignation, effective at the close of business on November 28, 2007. All references to an investigation surrounding the events of November 28, 2007, unpaid investigative suspensions, a predisciplinary hearing, or involuntary termination of service shall be removed from Trooper Conrad's file at the Department of Safety and the Division of Personnel, and his separation from service shall be characterized for the record as a resignation for personal and medical reasons.

Having made that decision, the Board considers the appellant's Dispositive Motion to be moot.

THE NH PERSONNEL APPEALS BOARD

/s/

Patrick H. Wood, Chair

/s/

Robert J. Johnson, Commissioner

/s/

Philip P. Bonafide, Commissioner

cc: Karen Hutchins, Director of Personnel
Attorney John Krupski
Attorney Marta Modigliani

State of New Hampshire



PERSONNEL APPEALS BOARD

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James Conrad - Docket #2008-T-008
Department of Safety, Division of State Police

June 9, 2009

1. On June 3, 2009, the NH Personnel Appeals Board received the Appellant's May 29, 2009 Motion to Continue Hearing/Allow Alternative Testimony in the above-titled case. That same day, the Board received the Appellee's Objection.

Having considered the Motion and Objection, the Board has decided to deny the Motion to Continue, As noted in the State's Objection, TFC Graham's testimony may not be necessary as another of the Appellant's witnesses also was present with TFC Graham on November 28, 2007. At the conclusion of the hearing on June 10, 2009, if the Board believes that it needs additional evidence to fairly decide the appeal, the Board will hold open the record of the hearing to allow TFC Graham's testimony to be submitted by deposition.

2. On April 3, 2009, the NH Supreme Court issued its Opinion¹ in the matter of MacKenzie v. Linehan & a. (NH Supreme Court Case No 2008-302) ¹

Before resuming testimony in Mr. Conrad's termination appeal at the June 10, 2009 session of the Personnel Appeals Board, the Board will inquire as to what, if any effect the decision may have on the Conrad case.

For the Personnel Appeals Board

A handwritten signature in black ink, appearing to read "Patrick Wood", written over a horizontal line.

Patrick Wood, Chair

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301
Attorney Marta Modigliani, Department of Safety, 33 Hazen Drive, Concord, NH 03305
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¹ <http://www.courts.state.nh.us/supreme/opinions/2009/macke035.pdf>

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301
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Appeal of James Conrad

Docket #2008-T-008

Department of Safety, Division of State Police

April 16, 2009

The New Hampshire Personnel Appeals Board (Wood, Bonafide and Johnson) met on Wednesday, April 15, 2009, to consider motions filed by the parties in the above-titled appeal including the State's April 2, 2009 Motion to Continue or Reschedule Adjudicative Hearing, the Appellant's April 9, 2009 Objection to Motion to Continue or Reschedule, the Appellant's April 9, 2009 Motion for Discovery, and the State's April 14, 2009 Objection to Motion for Discovery.

Having considered the Motions and Objections, the Board voted unanimously as follows:

The State's Motion to Continue or Reschedule is denied. Although the parties did not receive written notice of the scheduled hearing until March 20, 2009, scheduling was based upon a series of discussions with the parties and their agreement well in advance of the formal notice to schedule the matter for hearing on April 22, 2009. The Board is willing to accept Colonel Booth's testimony in the form of jointly-filed affidavit, by deposition, or if necessary, as a live witness at a later date.

With respect to Appellant's Motion for Discovery, to the extent that the Appellant is entitled to a copy of his personnel file under the provisions of RSA 275:56,1, and is entitled to receive same at the Employer's expense under the provisions of Article XVI, Section 16.1.1 of the Collective Bargaining Agreement Between the State of NH and the NH Troopers Association, the Board directs the Division of State Police to provide the records that have been requested. The Board further found that the State is neither prejudiced nor unduly burdened by the request to provide a copy of recording from the Appellant's pre-termination hearing, and shall provide a copy of that to the Appellant as well.

Finally, the Board found that the scope of the hearing has been clearly established and agreed-to by the parties. Should the Appellant attempt to offer a new defense, the State certainly will have an opportunity to object, and the Board will give those arguments and defenses the weight they deserve in deciding the appeal.

FOR THE PERSONNEL APPEALS BOARD



Patrick Wood, Chair

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