

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### *Appeal of Susan Czirtis*

*Docket #00-T-9*

### *New Hampshire Hospital*

September 15, 2000

The New Hampshire Personnel Appeals Board (Wood, Rule and Johnson) met on Wednesday, May 17, 2000, under the authority of RSA 21-I:58, to hear the appeal of Susan Curtis, a former employee of New Hampshire Hospital. Ms. Curtis, who was represented at the hearing by Attorney Raymond Kelly, was appealing her February 3, 2000 termination from employment for allegedly falsifying her application for employment. Attorney Mary McGuire appeared for the State.

New Hampshire Hospital asserted that Ms. Curtis willfully falsified her application for employment by failing to disclose a record of conviction on several misdemeanor and one felony count, and by certifying that she had never been convicted of a crime that had not been annulled by a court. The appellant argued that she did not understand the certification, and that she had disclosed her history of convictions to New Hampshire Hospital during her pre-employment interviews.

The record of the hearing in this matter consists of pleadings submitted by the parties prior to the hearing, the audio tape recording of the hearing on the merits of the appeal, and exhibits admitted into evidence as follows:

State's Exhibits

1. Class Specification for Clerk Interviewer
2. Ms. Curtis' January 18,2000 Application for Employment
3. Ms. Curtis' NHH College transcript
4. Susan Curtis' résumé
5. Criminal records release authorization signed by Ms. Curtis on January 18,2000
6. Notification of release of information dated January 18,2000
7. Criminal history record dated January 13,2000 for Susan Curtis
8. Letter of termination to Ms. Curtis dated February 4,2000

Appellant's Exhibits

- A. Ms. Curtis' Performance Summary dated April 11, 1997, from the Department of Transportation
- B. Ms. Curtis' Performance Summary dated March 27, 1998, from the Department of Transportation
- C. Ms. Curtis' Performance Summary dated April 8, 1999, from the Department of Transportation
- D. January 18,2000 notice of Personnel Change showing Ms. Curtis transferred from the Department of Transportation to New Hampshire Hospital

The following persons also gave sworn testimony:

Kimberly Freese

Douglas Burnham

Peter Reid

Susan Curtis

After considering the evidence and arguments offered by the parties, the Board made the following findings of fact and rulings of law:

### Findings of Fact

1. In November, 1999, New Hampshire Hospital received permission to fill two new positions of Clerk Interviewer to staff the reception area at the Main Building on the New Hampshire Hospital grounds.
2. Some of the Department of Corrections' offices, including Probation and Parole are housed in the Main Building at New Hampshire Hospital. As a result, probationers and parolees are frequent visitors to the building, and inmates are often assigned to perform maintenance or support functions in the building.
3. Clerk Interviewers assigned to the Main Building are responsible for receiving and screening visitors and employees as they enter the building. The Clerk Interviewers are responsible for maintaining a security log, accessing certain employee records, and calling for local and/or state police in the event of an emergency or the need for a facility lock-down.
4. Having received no applications for the Clerk Interviewer positions when they were posted "in-house" in November, 1999, the agency requested and received from the Division of Personnel a register of eligible candidates for Clerk Interviewer. Ms. Curtis was one of the eligible candidates whose name appeared on the list.
5. On her application for employment, Ms. Curtis had answered "no" to the question, "Have you ever been convicted of a crime that has not been annulled by a court?" That question is followed by the explanation, "Conviction is not an automatic bar to employment. Each case is considered on its individual merits. In the space below, give the date, location and nature of the crime. Indicate whether or not it was a misdemeanor or a felony. Lack of explanation or failure to complete this section will be a basis for rejection of your application."

6. Douglas Burnham, Maintenance Mechanic III, and Kimberly Freese, Business Administrator for the Division of Behavioral Health, interviewed Ms. Curtis for the first time in November, 1999.
7. During the first interview, Mr. Burnham and Ms. Freese discussed with Ms. Curtis the type of work to be performed.
8. During the first interview, Ms. Curtis indicated that she was interested in the position, but explained to Ms. Freese and Mr. Burnham that she was scheduled for surgery after the proposed start date. She indicated that if she were offered the position, she would need approximately two weeks of leave.
9. Mr. Burnham and Ms. Freese conducted a second interview with Ms. Curtis on January 18,2000 and formally offered her the position of Clerk Interviewer.
10. During the January 18,2000 interview, Mr. Burnham and Ms. Freese provided a further explanation of the duties of the position, including the security issues that necessitated the completion of a criminal records review of any person appointed to the position. Ms. Curtis was advised that if the records check were to reveal any conviction, she could be terminated from her employment.
11. Ms. Curtis did not ask any questions about the criminal records check or mention any prior convictions, and she signed the form authorizing the release of information.
12. Mr. Burnham and Ms. Freese believed that Ms. Curtis was being truthful when she certified that she that she had no record of criminal conviction. As a result, they arranged to have her start work on January 21,2000, before the criminal records check had been completed.
13. Ms Curtis never expressed any hesitancy about applying for the position because of a criminal record.
14. If Ms. Freese and Mr. Burnham had been aware of Ms. Curtis' record of convictions, they would not have offered her a position of Clerk Interviewer assigned to the security entrance of the Main Building.

15. On February 3, 2000, Mr. Burnham received notification from the Hospital's human resources office that the Division of State Police records check had revealed that Ms. Curtis had a history of convictions, including both misdemeanor and felony charges.
16. If Ms. Curtis had disclosed her record of convictions, Ms. Freese and Mr. Bwnham would not have scheduled the appellant to start working until after the criminal records check had been completed and any resulting report reviewed by the appointing authority.
17. When it was disclosed that Ms. Curtis had a record of criminal conviction, Mr. Bwnham contacted Kim Freese and Peter Reed, Mr. Burnham's supervisor, for advice. He also spoke with Susan Langle, attorney for the division, and Superintendent Paul Gorman to discuss the information.
18. They concurred with his assessment that if Ms. Curtis had willfully misrepresented her criminal history, the Hospital had no option but to terminate her employment.
19. Mr. Burnham and Mr. Reed went to speak with Ms. Curtis in the Control Room where she was worlung at the time.
20. Mr. Bwnham handed Ms. Curtis the application and asked her to read the sentence that asked, "Have you ever been convicted of a crime that has not been annulled by a court." He then read her the question and asked her if she understood the question." Her response was "Yes," she knew what that sentence meant.
21. Ms. Curtis indicated that she didn't think the convictions should have mattered since the majority of them were not recent.
22. New Hampshire Hospital personnel met with Ms. Curtis, as required by Per 1001.08 of the Rules of the Division of Personnel, in order to allow her to refute the evidence that she had willfully falsified her application for employment by certifying that she had no record of criminal conviction.

23. Ms. Curtis failed to persuade the appointing authority that she misunderstood the certification on the application, that she forgot about the convictions, or that she believed they had occurred long enough before the date of application to matter.

### Rulings of Law

- A. (a) "Dismissal shall be considered the most severe form of discipline. An appointing authority shall be authorized to take the most severe form of discipline by immediately dismissing an employee without warning for offenses such as, but not necessarily limited to... (8) Willful falsification of agency records including, but not limited to...e. Applications for employment" [Per 1001.08 (a)].
- B. "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" [Per 1001.08 (c)].
- C. "If an appointing authority, having complied with the provisions of Per 1001.08(c), finds that there are sufficient grounds to dismiss an employee, the appointing authority shall: (1) Provide a written notice of dismissal, specifying the nature and extent of the offense; (2) Notify the employee in writing that the dismissal may be appealed under the provisions of RSA 21-I:58, within 15 calendar days of the notice of dismissal; and a. An appeal filed under the provisions of RSA 21-I:58 shall not stay the dismissal decision. (3) Forward a copy of the notice of dismissal to the director" [Per 1001.08 (d)].

Decision and Order

On all the evidence and argument, the Board found that Ms. Curtis violated Per 1001.08 (a)(8) by falsely certifying on her application for employment that she had no record of criminal convictions that had not been annulled by a court. Although Ms. Curtis testified that she had discussed her criminal record with Mr. Burnham and Ms. Freese during her interviews for the position prior to accepting the offer of employment, the Board found that her testimony was not credible. Mr. Burnham and Ms. Freese both gave credible testimony that they had discussed the issue of criminal records and made it very clear to the appellant that she could be dismissed if a records check disclosed a history of conviction. Mr. Burnham and Ms. Freese both gave credible testimony that they would not have made an offer of employment had they been aware of the appellant's criminal record.

The Board found that Ms. Curtis willfully falsified her application for employment, and that the offense was sufficiently egregious to warrant her termination from employment for that single offense. Accordingly, the Board voted unanimously to DENY Ms. Curtis' appeal.

THE PERSONNEL APPEALS BOARD

  
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Patrick H. Wood, Chairman

  
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Lisa A. Rule, Commissioner

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Robert J. Johnson, Commissioner

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