

# State of New Hampshire

WPPID983



## PERSONNEL APPEALS BOARD

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

### APPEAL OF ELAINE FUGERE

Docket #92-T-13

Department of Postsecondary Technical Education  
Response to Appellant's Request to Postpone

August 20, 1992

By letter dated August 12, 1992, received by the Personnel Appeals Board on August 17, 1992, Elaine Fugere requested postponement of the hearing on the merits of her appeal of termination from employment scheduled for August 26, 1992, in Room 411, Stake House Annex, Concord, New Hampshire. That request is denied. The parties will be expected to appear at 9:00 a.m. in Room 411, Skate House Annex, Concord, New Hampshire, on Wednesday, August 26, 1992.

Ms. Fugere's current appeal was filed with the Board by letter dated December 23, 1991, from Attorney Jon Meyer. The case was assigned Docket #92-T-13 and, by order of notice dated April 27, 1992, the parties were directed to appear for a hearing on the merits of the appeal on July 15, 1992. The parties were also advised that any request for continuance must be made in writing and be received by the Board within seven (7) calendar days of its order to be considered.

Seventy-two (72) days after the date of the scheduling order, by letter dated July 7, 1992, Attorney Meyer requested a continuance on Ms. Fugere's behalf. In that letter he advised the Board he was withdrawing as Ms. Fugere's representative and asked that she be given additional time to secure alternate counsel.

The parties were notified verbally by Board staff the postponement request had been granted. Subsequently, by notice dated July 28, 1992, Ms. Fugere and all other parties to the appeal were notified the Board had rescheduled the matter for hearing on August 26, 1992. Again, the parties were notified that further requests to postpone would only be considered for exceptional circumstances. The parties were also advised any such requests must be made in writing and be received by the Board within seven (7) calendar days of its notice to be considered. Ms. Fugere's postponement request was received by the Board on August 17, 1992, thirteen days after the filing deadline.

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Ms. Fugere did not offer a reason why the Board should accept a late filed motion to postpone, nor did she describe exceptional circumstances which would warrant further postponement. Therefore, the parties will be expected to appear as scheduled on August 26, 1992, at 9:00 a.m. in Room 411, State House Annex, Concord, New Hampshire.

All persons involved in this matter should be present for the hearing. The Board assumes the appellant has supplied the discovery materials which Che Skate had been unable to obtain prior to July 8, 1992, and that the parties will comply with the Board's rules regarding exchange of lists of witnesses and exhibits at least 72 hours prior to the scheduled hearing.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE

Executive Secretary

cc: Virginia A. Vogel, Director of Personnel  
William McCallum, Esq., Department of Justice  
Dr. H. Jeffrey Rafn, Commissioner, Postsecondary Technical Education  
Elaine Fugere, 154 North Acres Road, Manchester, NH 03104  
Dr. David Larrabee, President, NHTI

# State of New Hampshire

WPPID987



## PERSONNEL APPEALS BOARD

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

### APPEAL OF ELAINE FUGERE Docket #92-T-13 New Hampshire Technical Institute (Department of Postsecondary Technical Education)

September 14, 1992

The New Hampshire Personnel Appeals Board (Bennett, Rule and Johnson) met Wednesday, August 26, 1992, to hear Elaine Fugere's appeal of her termination from employment with New Hampshire Technical Institute, effective December 23, 1991. Attorney William McCallum of the Civil Bureau, Department of Justice, appeared on behalf of the Technical Institute and the Department of Postsecondary Technical Education. Neither the appellant nor anyone representing the appellant appeared as scheduled for the 9:00 a.m. hearing.

Before moving to dispose of the matter on procedural grounds, Attorney McCallum asked the Board to note for the record that the State was prepared to present its case, having pre-submitted its list of witnesses and proposed exhibits as well as appearing for the scheduled hearing with five witnesses: Carolyn Hartnett, Cheryl Dorfman, Dr. David Larrabee, Dean Arthur Harris and Commissioner Jeffrey Rafn. Attorney McCallum also asked that the Board make note of the existence of a record in this matter as well as the fact that the appellant had failed to submit a list of witnesses or exhibits, and had had no contact with Attorney McCallum prior to the scheduled hearing regarding a possible postponement of the hearing.

At 9:50 a.m., the Board voted to dismiss the instant appeal. In so doing, the Board declined to review the proposed exhibits pre-submitted by the State, and declined to comment or rule on any factual matters related to the termination itself. Inasmuch as the appellant failed to appear for hearing, to send a representative to act on her behalf, or provide notice of any kind to the Board she would not be appearing as scheduled, the Board dismissed the appeal solely on the basis of the procedural issues as set forth below:

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Attorney Meyer filed an appeal on Ms. Fugere's behalf on December 23, 1991, alleging Ms. Fugere had been wrongfully accused of willful insubordination, absence without approved leave and falsification of requests for sick and annual leave. On April 27, 1992, the Board issued an order scheduling the matter for a hearing on the merits of the appeal on July 15, 1992. Per-A 202.09(a) of the Rules of the Personnel Appeals Board requires the Board to give the parties at least fourteen days notice of any scheduled hearing. The parties to the instant appeal were given seven and one-half weeks notice and were advised that motions to continue, postpone or request additional special scheduling must be filed in writing and be received by the Board within seven calendar days.

On July 7, 1992, seventy-two days after issuing its scheduling order, the Board received Attorney Meyer's late-filed request for postponement on Ms. Fugere's behalf. In his letter he advised the Board he had just withdrawn as Ms. Fugere's representative. He asked the Board to allow her additional time to secure alternate counsel, and advised the Board he had secured the State's assent to continue the matter. The parties were notified verbally by Board staff the postponement request had been granted and that a rescheduling order would follow.

On July 28, 1992, the Board notified Ms. Fugere and all other parties to the appeal the Board had set the matter for hearing on August 26, 1992 at 9:00 am. in Room 411, State House Annex, Concord, New Hampshire. Again, the parties were notified further requests to postpone would only be considered for exceptional circumstances and that any such requests must be made in writing and be received by the Board within seven calendar days of the date of the notice.

On August 17, 1992, thirteen days after the filing deadline, the Board received Ms. Fugere's letter dated August 12, 1992, requesting another postponement. She offered no reason why the Board should accept another late-filed motion to postpone, nor did she describe exceptional circumstances which would warrant further postponement. She made no reference to attempting to discuss a possible postponement with Attorney McCallum as the Board's rules require. Accordingly, the Board denied the request to postpone and advised the parties of that decision by telephone the following day. They were reminded the matter was scheduled for hearing on August 26, 1992, and that they would be expected to exchange lists of witnesses and exhibits prior to the hearing. A formal notice was issued to the parties by the Board on August 20, 1992.

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At approximately 9:30 a.m., the Board asked its executive secretary to check all the points of contact where mail or messages for the Board or its staff might be received to determine if Ms. Fugere had made any attempt to contact the Board about the hearing she had requested. No messages were received.

Having failed to appear for the scheduled hearing, the Board voted unanimously to dismiss the matter with prejudice.

THE PERSONNEL APPEALS BOARD

  
Mark J. Bennett, Acting Chairman

  
Lisa A. Rule

  
Robert J. Johnson

cc: Virginia A. Vogel, Director of Personnel  
Elaine Fugere, 154 North Acres Road, Manchester, NH 03104  
William McCallum, Esq., Civil Bureau, Department of Justice  
Dr. H. Jeffrey Rafn, Commissioner, Postsecondary Technical Education  
Dr. David Larrabee, President, New Hampshire Technical Institute