

State of New Hampshire

WPPID872



PERSONNEL APPEALS BOARD

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

APPEAL OF RALPH GEORGE

Docket #91-T-15

Response to Appellant's Motion for Reconsideration

January 16, 1992

By letter dated December 16, 1991, SEA General Counsel Michael C. Reynolds submitted a Motion for Reconsideration of the Board's November 25, 1991 decision in the above-captioned appeal, arguing the following:

1. The Board should have given more consideration to the fact that physical limitations suffered by the appellant were caused by his service to the State.
2. Mr. George was forced by his supervisor to return to work prematurely following knee surgery, and was told to return unrestricted or be fired.
3. Craig Richards is not the appointing authority.
4. Mr. George's work history was better than that described by New Hampshire Hospital.
5. Lateness was a contributing factor in Mr. George's termination, and since this charge was not listed in the letter of termination, the termination must be deemed invalid.
6. Mr. George had "passed" a "probationary period" and had a reasonable expectation of continued employment.

Attorney Maloney filed New Hampshire Hospital's Objection to the appellant's Motion by letter dated December 20, 1991. Having considered both the Motion and Objection in conjunction with the Board's November 25, 1991 decision in this matter, the Board voted unanimously to deny the Motion for Reconsideration.

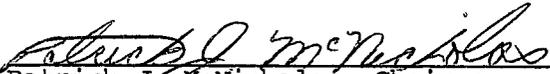
The Board had not found that the appellant was unable to perform his duties because of any physical limitations. Therefore, any argument concerning how the appellant may have developed such limitations has no bearing on the instant appeal.

As noted in New Hampshire Hospital's objection to the appellant's Motion for Reconsideration, Mr. George's claim that his work performance was "not nearly as bad" as described by New Hampshire Hospital is unsupported by the record. On all the evidence, the Board found that the appellant's performance, which was initially satisfactory, deteriorated. The Board further found that the appellant was counselled and warned repeatedly that failure to improve his performance would result in his discharge from employment. Accordingly, his claim to having had a "reasonable expectation of continued employment" is without merit.

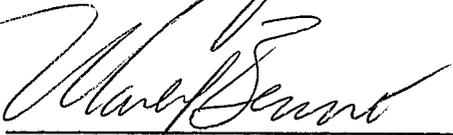
Per 308.03(4)e provides the following: "Employees who receive 2 written warnings for the same offense may be discharged by receipt of a final written notice of subsequent violation for that offense. Employees who receive 4 written warnings for various offenses may be discharged upon receipt of a 5th written warning for any type of offense." Inasmuch as Mr. George was discharged by receipt of a final written warning for unsatisfactory work, the appointing authority was under no obligation to refer to lateness in effecting his discharge.

As noted in New Hampshire Hospital's Objection, the issue of Craig Richard's authority to act on behalf of the appointing authority was raised by the appellant in his hearing on the merits and answered by the Board in its order of November 25, 1991. , and In consideration of the foregoing, the Board voted unanimously to deny the appellant's Motion for Reconsideration, and to affirm its decision of November 25, 1991, denying Mr. George's appeal.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson


Mark J. Bennett

cc: Virginia A. Vogel, Director of Personnel
Barbara Maloney, Director of Legal Services, New Hampshire Hospital
Michael Reynolds, SEA General Counsel

State of New Hampshire

WPPID855



PERSONNEL APPEALS BOARD

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

APPEAL OF RALPH GEORGE
Docket #91-T-15
New Hampshire Hospital

November 25, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Johnson) met Wednesday, November 6, 1991, to hear the termination appeal of Ralph George, a former employee of New Hampshire Hospital. Mr. George was represented by SEA General Counsel Michael C. Reynolds. Attorney Barbara Maloney appeared on behalf of New Hampshire Hospital.

At the time of his discharge by receipt of a fourth letter of warning for unsatisfactory work, the appellant was employed as a Health Facilities Cleaner in the Hospital's Environmental Services department. The appellant had requested and been granted a transfer to New Hampshire Hospital on February 2, 1990, after a brief period of employment at the Glencliff Home for the Elderly following a transfer in lieu of lay-off from Laconia Developmental Services. He was discharged effective March 8, 1991.

Mr. George, through his representative the State Employees' Association, requested a hearing before the Board by letter dated March 22, 1991. In that letter, the appellant argued that although he had not appealed previous warnings for unsatisfactory work, he believed that those warnings and the letter of termination were all inaccurate and that he had "done at least an adequate job under the circumstances". The appellant argued it had been unrealistic and unreasonable for the Hospital to have expected him to do the work "as perfectly as demanded in the time allotted under the conditions". He also argued that during the course of his employment at New Hampshire Hospital, the appellant had been suffering pain in both knees from prior work-related injuries, and alleged that those injuries constituted a handicapping condition under section 504 of the Rehabilitation Act of 1973 for which his employer must make reasonable accommodation.

During the hearing on the merits, the appellant argued that because he was unable to read, and because he was in pain, he was unable to adhere to the work schedule established by the Hospital. He testified that he did not inform his employer that he was in pain because he was certain he'd be fired. He testified that if the Hospital had allowed him to do the work his own way and at his own pace, he would have completed all his assignments by the end of each week.

The Board found none of these arguments to be persuasive. The appellant's inability to read did not develop at New Hampshire Hospital. He testified at some length about his work assignments at New Hampshire Hospital, Glencliff and Laconia Developmental Services, demonstrating what the Board found to be a remarkably clear, detailed recollection of his work assignments. Donald Gagne testified that he personally had reminded the appellant day after day of what work he should be doing, and eventually advised him that he'd better start paying attention and doing his work without being constantly prompted. Mr. Gagne testified that the work was essentially the same from week to week. Additionally, the appellant had almost constant access to supervisory personnel. The Board was not persuaded that the appellant's inability to read had any measurable impact on his ability to complete his assignments.

With regard to the appellant's claim of protection under the provisions of the Rehabilitation Act of 1973, the Board found that even if the appellant were to be considered a handicapped person, on which the Board offers no opinion, New Hampshire Hospital's actions offered more than a reasonable accommodation. The appellant suggested that he could have used a hand-held tape-recorder to repeat his assignments to him. Supervisor Bonnie McKenzie testified that she devoted 75% - 80% of her time working directly with the appellant. The Board was not persuaded that instructions on audio tape would be more effective than hands-on supervision. If the appellant could not properly complete his assignment under direct supervision, he would not be any more likely to complete those assignments properly if afforded audio-taped instructions.

The appellant also suggested that he could have performed his duties if New Hampshire Hospital had restructured his job, including eliminating his need to climb stairs and changing the various cleaning processes, agents and equipment utilized by the Environmental Services Department. The suggested "accommodations" would not allow the appellant to meet all the bona fide occupational qualifications of a Health Facilities Cleaner; rather, those changes would be so extreme as to change the very nature of the position itself. Such accommodation, therefore, would not be considered reasonable even if a reasonable accommodation were required.

The appellant, through his representative Attorney Reynolds, argued that Craig Richards, Director of the Environmental Services Department at New Hampshire Hospital, is not a classified State employee and can not function as the appointing authority. Mr. Richards testified that he is employed by New Hampshire Hospital to manage those employees assigned to the Environmental Services Department. Managing that workforce includes disciplining and sometimes removing a classified employee from State service. This issue has arisen in other hearings before this Board, and the Board's position in the matter remains unchanged.

At the conclusion of the hearing on the merits, Attorney Maloney submitted for the Board's review New Hampshire Hospital's Requests for Findings of Fact and Rulings of Law which the Board responds to as follows:

REQUESTS FOR FINDINGS OF FACT:

1 is granted to the extent that it is consistent with the Board's summary above.

2, 3, 4, 5, 6, 7, 8, 9, 11, 13 and 14 are granted.

10 and 12 are granted, but are irrelevant to this appeal.

15 is granted to the extent that he only appealed the final letter which effected his discharge.

REQUESTS FOR RULINGS OF LAW:

1, 2, 3, 4, 5, and 7 are granted.

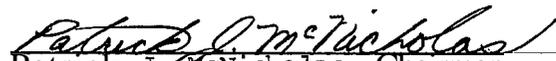
6 is granted, except that oral and written warnings for tardiness are irrelevant to this appeal.

In consideration of the foregoing, the Board voted unanimously to deny Mr. George's appeal, and to affirm New Hampshire Hospital's decision to discharge him from his employment effective March 8, 1991.

The appellant's employment history at New Hampshire Hospital, including his training, counselling and discipline, are all well-documented. The witnesses who testified on behalf of New Hampshire Hospital offered clear and persuasive evidence that the appellant was afforded every opportunity to learn what his position responsibilities included, and to be trained and re-trained to perform those tasks. New Hampshire Hospital's witnesses also offered credible evidence that the work standard was reasonable and well-articulated.

Each of the warnings received by the appellant were issued in compliance with the Rules of the Division of Personnel, and clearly warned the appellant that failure to correct the deficiencies in his performance would lead to his termination from employment. The Board found that New Hampshire Hospital made every effort to address the appellant's continuous failure to meet the work standard, offered ample opportunity for the appellant to correct the deficiencies in his work, and ultimately had no option but to discharge him from his employment.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett


Robert J. Johnson

cc: Virginia A. Vogel, Director of Personnel
Barbara Maloney, Director of Legal Services, New Hampshire Hospital
Michael C. Reynolds, SEA General Counsel