

# State of New Hampshire



## PERSONNELAPPEALSBOARD

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

### *APPEAL OF TINA GUEST*

*DOCKET #00-T-7*

*Department of Health and Hunzan Services*

*February 16, 2000*

The New Hampshire Personnel Appeals Board (Wood, Rule and Johnson) met on Wednesday, February 2, 2000, under the authority of RSA 21-I:58, I, to hear the appeal of Tina Guest, a former probationary employee of the Department of Health and Human Services. Ms. Guest, who appeared pro se, was appealing her November 8, 1999 termination from employment as a Data Entry Operator III prior to completion of her initial probationary period for allegedly failing to meet the work standard for failing to call in and inform her supervisor that she would not be reporting for work. Sandra Platt, Human Resources Administrator for the Department of Health and Human Services, appeared on behalf of the State.

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

#### Appellant's Exhibits

- A. November 18, 1999 letter of appeal from Ms. Guest to Mary Ann Steele
- B. Workers' Compensation form WCA-1

State's Exhibits

1. Administrative Rules of the Division of Personnel, 1001.02, Dismissal During Initial Probationary Period
2. Personnel Action Form for Tina Guest showing initial date of hire, November 30, 1998
3. Policy for Bureau of Data Management given to Tina Guest during her first week of work
4. Performance Evaluation given to Tina Guest on April 28, 1999
5. Memorandum of Counseling given to Tina Guest on June 10, 1999
6. Notes maintained by Patricia Lambert pertaining to Ms. Guest's hours of work and problems with her attendance following a medical leave of absence
7. Notes maintained by Elizabeth Hughes related to conversations with Tina Guest related to her Workers' Compensation Claim
8. Note dated 1014199 from Dr. Andrew Forrest releasing Tina Guest to light duty
9. Note dated 1015199 from Dr. Spencer stating Tina Guest is restricted from returning to work until released by Dr. Forrest
10. Note dated 10126199 from Dr. Devaney restricting Tina Guest's work per Dr. Forrest
11. Independent Medical Evaluation conducted by William Boucher, MD on 10/19/99 (page 10, Work Capacity), stating that Ms. Guest can work without restrictions
12. Note dated 10126199 from Dr. Devaney that states he agrees with Dr. Boucher's recommendation that Tina Guest can return to work without restrictions
13. Note from Brenda Marcoux regarding Tina Guest's absence from work commencing 10127199
14. Notes from Patricia Lambert regarding Tina Guest's attendance from 1018199 to 11/8/99
15. Letter of termination dated November 8, 1999

The following persons gave sworn testimony:

Patricia Lambert, Supervisor VI, Bureau of Data Management

Phyllis Binning, Data Processing Supervisor III

Brenda Marcoux, Data Processing Supervisor I

Elizabeth Hughes, Human Resources Technician

Tina Guest, appellant

The appellant objected to the admission of State's Exhibits 4, 5, 11, and 12, arguing that they were not relevant to the charge of termination for failure to call in to report her absence. Ms. Platt argued that Exhibits 4 and 5 were relevant because they offered proof of the appellant's absenteeism and the employer's efforts to address those issues with her. She also argued that Exhibits 11 and 12 were relevant because they offered proof that the appellant was considered physically able to be at work on a full-time basis. The Chair ruled that Exhibits 4 and 5 related to absences from work, and that 11 and 12 provided a medical determination that the appellant could return to work. They were admitted into the record for those purposes.

Having carefully considered the testimony, evidence and argument offered by the parties, the Board made the following findings of fact and rulings of law:

#### Findings of Fact

1. Ms. Guest was hired on November 30, 1998 by the Department of Health and Human Services in the Bureau of Data Management as a Data Entry Operator III.
2. Ms. Guest worked under the supervision of Phyllis Binning, Data Processing Supervisor III who, in turn, worked under the supervision of Patricia Lambert, Supervisor VI.
3. During new employee orientation and training, Ms. Binning reviewed performance standards for the appellant's position with Ms. Guest. She also reviewed with the appellant workplace policies and procedures for employees in the Bureau of Data Management, including call-in procedures for times when employees were ill or unable to work.
4. During her first four months of employment, between November 30, 1998 and March 31, 1999, the appellant used 69 hours of sick leave.
5. During that period of time, the appellant complied with the Department's requirements for notification of absence.
6. Ms. Guest's supervisors completed an evaluation of the appellant's performance that they reviewed with the appellant on April 28, 1999.

7. That evaluation described Ms. Guest's performance as below expectations in six specific work areas within the following general categories: Quantity of Work, Communications, Dependability and Cooperation.
8. Overall, a high rate of absenteeism was cited as an underlying basis for the appellant's failure to meet the work standard in Quality of Work and Dependability.
9. In the General Comments section of Ms. Guest's performance evaluation, the appellant's supervisors wrote that the appellant had been absent approximately 2.5 days each month, that her level of absenteeism was unacceptable, and that there would be monthly follow-up evaluations to, "...monitor the progress in the areas that are rated below expectations as improvement must be seen for [Ms. Guest] to successfully pass [her] probation period." [State's #4]
10. On June 3, 1999, Lynn Beckwith, Office Administrator and Patricia Lambert, Office Supervisor met with Ms. Guest to discuss the appellant's work performance and workplace conduct. They informed Ms. Guest that they intended to issue a Memorandum of Counseling.
11. On June 10, 1999, Ms. Lambert issued the Memorandum of Counseling to the appellant, informing Ms. Guest that unless she improved her attendance, increased her quantity of work to acceptable bureau standards, observed departmental policies and procedures, and improved her communication with supervisors and co-workers, she would be terminated from employment on June 30, 1999 for failure to meet the work standard. [State's #5]
12. The following day, June 11, 1999, Ms. Guest fell on the stairs at work. She was treated and released from Concord Hospital, and a Workers' Compensation claim was initiated.
13. Ms. Guest was absent from work between June 11, 1999 and August 16, 1999 when she was released to return to work on a part-time basis.
14. Ms. Lambert met with the appellant on the morning of August 17, 1999 and explained to the appellant her expectation that Ms. Guest's part-time work would be scheduled in 4-hour blocks each day in order to allow the appellant to improve her performance by increasing the quantity of work produced to acceptable bureau standards.
15. Brenda Marcoux was assigned to provide direct supervision to Ms. Guest.

16. Ms. Marcoux told the appellant that if she was not going to be able to work her assigned schedule because of medical appointments, she needed to inform the office in advance. She also advised the appellant that if she was unable to return to work, she was to call in and notify her supervisor.
17. Between August 17, 1999 and October 27, 1999, Ms. Guest adhered to the call-in procedures and her supervisors' instructions about notifying them when she had medical appointments or was otherwise unable to work.
18. On the morning of October 27, 1999, Ms. Guest reported to Ms. Marcoux that she was not well and needed to leave work. She told Ms. Marcoux that she had been unable to schedule an appointment with her regular physician, but had been advised by his office to go to the emergency room for treatment.
19. Ms. Marcoux instructed the appellant to call in if she was unable to return to work.
20. Ms. Guest said that she normally would give that kind of information to Betty Hughes in the agency's personnel office, but she agreed to call and inform both Ms. Hughes and Ms. Marcoux of her status.
21. Ms. Marcoux received a voice-mail message from Ms. Guest on the afternoon of October 27, 1999 advising her that Ms. Guest would not be returning that day or the next, but that Ms. Guest would call in on October 28, 1999.
22. Ms. Marcoux did not hear from the appellant again between October 27, 1999 and November 8, 1999, the date of termination.
23. Ms. Guest did not provide notification of her absences after October 27, 1999 to Patricia Lambert, the Bureau Manager.
24. Prior to November 1, 1999, Ms. Guest had frequent contact, both in person and by telephone, with H. R. Technician Betty Hughes, who maintains Workers' Compensation records for Department of Health and Human Services employees, about Ms. Guest's work schedule, medical appointments and clearance for duty.
25. Ms. Hughes informed Ms. Guest on more than one occasion, that the appellant needed to convey information personally about her work schedule, medical appointments and anticipated leave directly to her immediate supervisors in the Bureau of Data Management.

26. One such conversation between Ms. Hughes and the appellant occurred on November 1, 1999 during a discussion of conflicting medical reports on Ms. Guest's clearance to return to duty. Ms. Hughes informed the appellant that she would gather additional information from the treating physician(s) and would transmit that information later in the day to Ms. Guest by phone. She reminded Ms. Guest that "in the future" she needed to speak directly with her supervisor whenever Ms. Guest was to be absent from work.
27. After November 1, 1999, Ms. Guest made no further contact with the Department of Health and Human Services, either through her supervisors in her own work unit or through Ms. Hughes.
28. Ms. Guest was listed as "no call/no show" by her supervisor between the dates of October 29 and November 8, 1999.
29. Ms. Guest was notified by letter dated November 8, 1999, signed by Patricia Lambert, Bureau Manager in the Office of Finance, that her employment had been terminated during her initial probationary period under the provisions of Per 1001.02 of the Rules of the Division of Personnel for failure to meet the work standard by failing to call in **AND** notify her supervisor that she was not going to report to work.

### Rulings of Law

- A. "Probationary period means a period of full-time work during which a full-time employee is required to demonstrate satisfactory performance of the duties and responsibilities of the employee's position as listed on the supplemental job description for the position." [Per 102.42, Rules of the Division of Personnel]
- B. The probationary period shall be considered an integral part of the process of appointment for full-time employees and shall provide the appointing authority with the opportunity to: (1) Observe the new employee's work; (2) Train and aid the new employee in adjustment to the position; and (3) Remove an employee if the employee's work performance fails to meet required work standards. " [Per 601.07 (a), Rules of the Division of Personnel]
- C. "At any time during the initial probationary period an appointing authority may dismiss an employee who fails to meet the work standard provided the dismissal is not: (1) Arbitrary;

(2) Illegal; (3) Capricious; or (4) Made in bad faith." [Per 1001.02 (a), Rules of the Division of Personnel]

D. "...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." [RSA 21-I:58, I]

### Decision and Order

Ms. Guest was at all relevant times a probationary employee serving her initial probationary period as a Data Entry Operator for the Department of Health and Human Services. At the time of hire, the Department of Health and Human Services provided Ms. Guest with a comprehensive listing of policies and procedures for the work area to which she was assigned that addressed issues including, but not limited to, work hours, sign-in/sign-out procedures, leave privileges, inclement weather events, area maintenance, and personal telephone calls. The evidence reflects that Ms. Guest was apprised of the agency's expectations and work standards, that she was aware of the policies and procedures for reporting her absences, and that, in a general sense, Ms. Guest had complied with those policies and procedures prior to October 27, 1999.

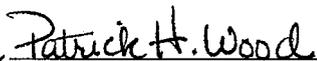
The evidence reflects that the agency was supportive of Ms. Guest during her absence and return to part-time duty after a medical leave. The evidence further reflects that the agency repeatedly counseled Ms. Guest about the need to keep her department informed of her availability for duty. The Board found the appellant's assertion that she had misunderstood Ms. Hughes' instructions about contacting her supervisor directly in the event of any future absences to be unpersuasive. It is inconsistent with Ms. Guest's practice of notifying her supervisors when she was unable to report for work. It is also inconsistent with the instructions she received from Ms. Marcoux and Ms. Hughes.

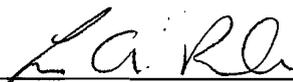
Particularly in light of conflicting medical reports about the appellant's availability for work and the appellant's prior record of absenteeism during her initial probationary period, Ms. Guest had an affirmative obligation to maintain contact with her department to ensure they were aware of

her availability for work. Ms. Guest failed in that obligation and, as such, was subject to termination under the provisions of Per 1001.02 of the Rules of the Division of Personnel for failure to meet the work standard prior to completion of her initial probationary period.

The Board found that Ms. Guest's termination was both lawful and reasonable under the provisions of Per 1001.02 in that the termination was neither arbitrary, illegal, capricious nor made in bad faith. The appellant offered insufficient evidence of any mitigating circumstances to warrant a finding that the termination was unfair. Therefore, under the authority of RSA 21-I:58, the Board voted unanimously to DENY Ms. Guest's appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick H. Wood, Chairman

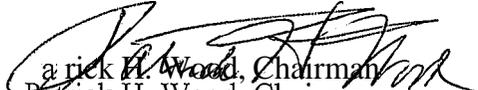
  
Lisa A. Rule, Commissioner

  
Robert J. Johnson, Commissioner

cc: Thomas Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Tina Guest, 5 Royal Gardens Apt. #8, Concord, NH 03301  
Sandra Platt, Human Resources Administrator, Department of Health and Human  
Services, 129 Pleasant Street, Concord, NH 03301

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NDHP FEB 15 2000

February 15, 2000

Mary Ann Steele, Executive Secretary  
Personnel Appeals Board  
25 Capitol Street  
Concord, NH 03301

Dear Mary Ann:

Enclosed is the last page of the Tina Guest decision.

very truly yours,



Patrick H. Wood

PHW/lsh

Enclosure