

State of New Hampshire

WPPID948



PERSONNELAPPEALSBOARD

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APPEAL OF FREDERICK HECKER

Docket #91-T-19

Division for Children and Youth Services

June 11, 1992

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, November 20, 1992, to hear the appeal of Frederick Hecker, a former employee of the Division for Children and Youth Services (hereinafter "DCYS"). Mr. Hecker, who was represented at the hearing by SEA General Counsel Michael Reynolds, was notified of immediate discharge from his position in the Littleton District Office of DCYS by letter dated April 16, 1991. The appellant allegedly had failed to report an allegation of child abuse involving a 5 year old child in the custody of DCYS.

Paul Sanderson, DCYS Legal Coordinator, represented the State. Although the State's case in chief was concluded on November 20, 1991, there was insufficient time for the appellant to present his case. The Board scheduled a second day of hearing on April 29, 1992. Commissioner Johnson was unable to attend the hearing, but the parties agreed to have him review the record in order to participate in deliberations.

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

At the time of his discharge from employment, the appellant was the Foster Home Licensing Officer for the Littleton District Office of DCYS. In October or November, 1990, a social worker from the office informed him she had received a report from a foster parent that a child in her care had been abused by a foster parent in a previous placement. The foster parent making the report claimed her husband and the child were in the basement working on a project which involved using duct tape. She claimed the child "freaked out" and said, "Mummy put duct tape on my mouth". The foster parent told Ms. Hindley, a Child Protective Service Worker, she believed the child was referring to her prior foster mother when she used the word "mommy".

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The appellant did not report the alleged abuse because he did not consider the information credible. The information was coming to him third-hand. He had spent extensive amounts of time with the alleged abuser and didn't believe she would commit that sort of physical abuse. He had spent time alone with the child in question and had never heard anything about mistreatment. He knew the child had been placed in foster care because of physical abuse at home, which had included being bound.

Hecker discounted the credibility of the statements, knowing the foster mother to be an intensely competitive person who was jealous of the child's former foster parent. He also wanted to protect the reputation of the former foster parent who was in the process of applying for a teaching position. He was concerned that a report of abuse could ruin her chances at a job. The appellant didn't believe the child was at risk, and made no report of suspected abuse. The foster parent did not make a written report of abuse either, although she did discuss the matter with Ms Hindley and Mr Hecker.

The seriousness of the allegations came to light on March 26, 1991, when a meeting was held between Judith Hindley, Frederick Hecker, Paul Donahue, the child's therapist and Herb Eskedahl, the appellant's supervisor, to discuss case planning. The meeting was also scheduled to discuss the child's current foster parents to see if they would be suitable adoptive parents for the second child placed in their home if the biological parents' parental rights were terminated. Instead, the therapist wanted to discuss the "taping" of the first child, and disclosed that in February or March, the child had told him the former foster mother had spanked her and had taped her hands and mouth.

Eskedahl confronted the appellant with the information in the parking lot after the meeting, and Hecker admitted hearing allegations of abuse by the former foster mother in October or November of the previous year. He told Eskedahl his decision not to file a report was the sort of decision licensing officers have to make from time to time. Eskedahl initiated an investigation, interviewing the two foster children, the foster mother who had discussed the alleged abuse with Hecker and Hindley, and the alleged abuser. Eskedahl concluded the appellant knew enough in October or November, 1990, to have warranted making a formal report of suspected abuse.

The DCYS Manual specifically requires each and every employee receiving a report of suspected abuse to "screen" the report. "Screening out" a report which the employee believes to lack substance still requires the employee to make a written report. The appellant's reliance upon the foster mother's refusal to make a "formal report" or to provide a follow-up report in writing did nor relieve the appellant of this responsibility.

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Both the foster parent's and Ms Hindley's reports constituted third party contact, requiring the appellant to make an effort to contact possible sources who may have had first hand knowledge about the alleged neglect or abuse [DCYS Manual - Family Services Program, ID 89-17 (c)(4)] The appellant violated the policy by failing to make direct inquiries of the child, the therapist, and the former foster parent. The DCYS Manual states, in pertinent part:

"If the report [of suspected abuse or neglect] is from an agency or professional working with the family [Ms. Hindley] always request a written report to be sent to DCYS within 48 hours."

"Any subsequent calls, with an abuse/neglect allegation different from the original report, received on a specific referral while an assessment is being made or after a case has been opened, must again go through the intake process. New Forms 2206 and 202 must be completed by the intake Social Worker. The Assessment Supervisor decides which social worker must investigate the subsequent report."

"Complete the 'Inquiry Summary' (Form 2201) if the call was screened out and forward it to the Supervisor for review and signature."

The appellant's total disregard for policy and procedures for screening in or screening out allegations of abuse is inexcusable, even if other employees of the Littleton District Office are guilty of the same offense. When the foster mother made allegations of abuse, the appellant was obliged to report them to his supervisor on the appropriate forms, even if he considered the allegation unfounded. When he received the same report from Social Worker Judith Hindley, he was also obliged to report them to his supervisor on the appropriate forms. The fact that Ms Hindley made no such report of which the Board is aware, or that the Therapist made no such report of which the Board is aware, or that a licensed foster parent made no such report does not relieve Mr Hecker of his responsibility for protection of the child. The fact that treatment of the child appears to have worsened with each subsequent placement also does not excuse Mr Hecker for abrogating his own responsibilities to that child.

DCYS argued the appellant's failure to report suspected abuse constituted an offense of sufficient magnitude to warrant his immediate discharge from employment. The record reflects that several of Mr Hecker's former co-workers, as well as the individual who was hired to replace him as the Licensing Officer believed abuse and neglect allegations could be "screened out" without documentation or conforming to the screening procedures in

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instances where the caseworker did not believe a threat existed to the safety of the child, or the caseworker did not consider the source of the abuse report credible. In light of the fact that none of the other employees aware of the allegations were disciplined for failing to file the required reports, the Board considered immediate discharge too severe a penalty. However, the Board did find the appellant's blatant disregard for the reporting policy constituted a serious offense, warranting severe disciplinary action.

On the evidence, the Board voted to reinstate the appellant, subject to a suspension without pay, benefits or accrual of leave for the period from the date of discharge to the date of hearing. Upon return to duty, the appellant shall receive compensation pursuant to the limitations of RSA 21-I:58 ■ for the period from November 21, 1991 to the date of reinstatement.

"The employee shall be reinstated without loss of pay, provided that the sum shall be equal to the salary loss suffered during the period of denied compensation less any amount of compensation earned or benefits received from any other source during the period. 'Any other source' shall not include compensation earned from continued casual employment during the period if the employee held the position of casual employment prior to the period, except to the extent that the number of hours worked in such casual employment increases during the period. . . ." [RSA 21-I:58, I (supp.)]

1. The appellant shall report promptly to work on a date which shall be mutually acceptable to the appellant and the Department of Health and Human Services; however, such date shall not be later than 21 calendar days from the date of this order.
2. The appellant shall, at the time of his return to work, provide the Department of Health and Human Services with verification of earnings from any income source for the period of November 21, 1991 to the date of reinstatement. Such verification shall include an accounting of any monies received by the appellant in the form of Unemployment Compensation, salary, wages, etc. Failure to produce that documentation in acceptable form upon reinstatement shall be deemed an act of willful insubordination subject to appropriate disciplinary provisions of the Rules of the Division of Personnel.
3. Failure of the appellant to report promptly to work on the date established by the parties shall be deemed grounds for immediate discharge, and the appellant shall forfeit any retroactive compensation or payment for leave to which he might have otherwise been entitled.

A subsequent warning within the next 24 months for violation of agency

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reporting requirements may be deemed grounds for immediate dismissal under the disciplinary provisions of the Rules of the Division of Personnel.

THE PERSONNEL APPEALS BOARD


Mark J. Bennett


Robert J. Johnson


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cc: Virginia A. Vogel, Director of Personnel
Michael C. Reynolds, SEA General Counsel
Paul G. Sanderson, DCYS Legal Coordinator