

# State of New Hampshire

PERSONNEL APPEALS BOARD  
Edward J. Haseltine, Chairman  
Gerald Allard  
Loretta Platt



EXECUTIVE SECRETARY  
Mary Ann Steele

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

## APPEAL OF DONELDA HORNE

April 1, 1988

On August 18, 1987, Donelda Horne filed a Notice of Appeal with the Personnel Appeals Board, following her discharge from a position as Administrative Secretary/Supervisor at the Industrial Development Authority (hereinafter "IDA"). Ms. Horne had been discharged from that position on July 7, 1987, because her performance allegedly did not meet the required work standard. In her Notice of Appeal, Ms. Horne alleged that her discharge had been arbitrary and capricious and that subsequent to receiving notice of her discharge, she had entered into an agreement with her supervisor at the Industrial Development Authority, Miss Vasilike Kounas, and Virginia A. Vogel, Director of Personnel under which she would transfer to another agency rather than be terminated from state service.

On September 1, 1987, the IDA moved to dismiss Ms. Horne's appeal based on lack of timeliness and failure to state a cause of action. The appellant filed a response to that Motion to Dismiss, which was received by the Board on September 9, 1987. After reviewing the matter, the Board voted to grant a hearing, limiting the evidence and testimony to whether or not Ms. Horne's appeal was timely.

On October 13, 1987, the Board consisting of Commissioners Haseltine, Allard and Platt, conducted the hearing. The appellant was represented by Attorney Katherine Daly. Attorney Charles Putnam represented the IDA. The Board received testimony from all three parties to the alleged agreement.

After considering the evidence presented, the Board made the following findings and rulings. Ms. Horne was discharged from state service on July 7, 1987. In the letter of discharge, she was advised that she had 15 days within which to initiate an appeal. On that date, she contacted Virginia Vogel, Director of Personnel to ask what she should do. During the course of their meeting on this date, they discussed the reasons for Ms. Horne's termination, her rights of appeal and alternative employment. Ms. Horne informed Ms. Vogel that she had been seeking other employment within state service. Ms. Vogel, who knew Ms. Horne from their past positions at New Hampshire Hospital, informed Ms. Horne that although she had no authority to require such action, she would ask Miss Kounas to consider granting Ms. Horne a

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one week leave of absence without pay, if Ms. Horne obtained a job within state service within one week, so that Ms. Horne would not have a break in state service. At no time during the meeting did Ms. Voxel inform Ms. Horne that the 15 day appeal period referenced in her letter of termination would be enlarged or waived.<sup>1</sup>

On July 15, 1987, Miss Kounas received a telephone call from Ms. Horne informing her that Ms. Horne had obtained a position with the Department of Environmental Services and requesting a leave of absence without pay (Miss Kounas had previously been informed of this possible alternative of a one week leave of absence without pay by Ms. Vogel). Miss Kounas, believing that the employment would begin immediately, agreed.

Ms. Horne learned on July 16, 1987 that she did not have a position with the Department of Environmental Services. She did not subsequently inform Miss Kounas, who learned of the change in circumstances through a phone call from a Department of Environmental Services official. Miss Kounas had initiated paperwork reflecting a change in Ms. Horne's employment status to leave of absence without pay, based on Ms. Horne's representation that she had obtained a position with DES. After the phone-call, she took steps to rescind this paperwork. When Ms. Horne informed Ms. Vogel that she did not have the position, Ms. Vogel advised her that her anticipated vacati<sup>o</sup>ri might not be in her best interests at that time.

The Board found that Ms. Horne was advised by Miss Kourias that her termination would be changed by the IDA to a one week leave of absence without pay, based on her representation that she had found a job with DES. The agreement was made to rescind the termination if Ms. Horne found employment within a week of that termination. The Board found implausible the contention that the Director of Personnel would, without conferring with the appointing authority, offer an employee of another agency an unlimited leave of absence to find another position in state service and rescind a termination. Moreover, the appellant stated in her testimony that she intended to begin her new position at DES on July 17, 1987, although she also had not decided whether to forego the two week vacation which she had planned beginning July 18, 1987. Such an employment schedule was consistent with the chronology and time limits stated by the Director of Personnel in her testimony.

Finally, although emphasis was placed on Exhibits 2 and 5 by the appellant and the State's failure to notify her of the changes processed in those documents, her testimony revealed that she had first seen them on the day before the hearing. They therefore could not have played a role in misleading her as to the terms of the agreement which she reached with the State.

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<sup>1</sup>Ms. Vogel, because she was not the hiring authority, would have no authority to do so unilaterally.

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For the foregoing reasons, the Board found that Ms. Horne's appeal should have been filed at the latest within 15 days of July 16, 1987, the date on which she learned that the position she anticipated filling at DES was not hers. It is the Board's finding that Miss Kounas' agreement to change Ms. Horne's termination to a leave of absence without pay was immediately voided upon that notice, and that although Ms. Horne might have successfully argued that an appeal was timely if filed within 15 days of July 16, 1987, it was well beyond the 15 day limit when filed on August 18, 1987. The Board therefore voted to dismiss the appeal.

The Board ruled as follows on the parties' requests for Findings of Fact and Rulings of Law:

**Appellant's Requests:**

Paragraphs 1, 2, 6, 7, 8, 9, 10, 11, 13, 14, 15:  
Granted

Paraygraph 3: First sentence granted to extent it accurately reflects one of the issues discussed; second sentence denied

Paragraphs 4, 5, 12 16, 17: Denied

**IDA's Requests:**

Findings of Fact:

Paragraphs 1, 2, 3, 5, 6, 7: Granted

Paragraph 4: Granted, with insertion of "Ms. Horne" after "on July 7, 1987."

Rulings of Law:

Paraygraphs 1, 2: Denied, see last paragraph of decision

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE  
Executive Secretary

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cc: Katherine Daly, Esquire  
Charles Putnam, Esquire  
Virginia A. Vogel, Director of Personnel

State of New Hampshire

88-T-104

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APPEAL OF DONELDA HORNE  
Motion for Rehearing

June 17, 1988

By letters dated April 14, 1988 and April 20, 1988, Donelda Horne, a former employee of the Industrial Development Authority, filed with the Personnel Appeals Board a Motion for Rehearing of her termination appeal. Assistant Attorney General Charles T. Putnam filed an objection on behalf of the I.D.A. by letter dated May 4, 1988.

At its meeting on June 14, 1988, the Personnel Appeals Board, Commissioners Cushman and Platt sitting, voted unanimously to deny the Motion and to affirm the Board's decision of April 1, 1988 upholding Ms. Horne's dismissal from employment. The Board found that the appellant's arguments did not require reconsideration of the findings and rulings contained in the Board's April 1, 1988 decision in this matter. The appellant again argued that she was not advised that she had 15 days in which to appeal her termination, that she was not informed that there would be a time limit placed upon her leave of absence, and that her appeal was timely. Each of these issues was addressed in the Board's decision of April 1, 1988, and the Board found no cause to overturn its previous findings.

The appellant also alleged that the Board's Chairman and the appellant's former employer had a luncheon engagement "several months" before the appellant's termination hearing and that the Chairman should therefore have recused himself. The Board found no cause to order a rehearing, noting that the appellant did not object to the composition of the Board either before or at the time of hearing.

FOR THE PERSONNEL APPEALS BOARD

*Mary Ann Steele*

MARY ANN STEELE  
Executive Secretary

cc: Charles T. Putnam, Assistant Attorney General

Donelda Horne

Virginia A. Vogel  
Director of Personnel