

**The State of New Hampshire**

**Supreme Court**

**No. 98-458, Appeal of Darren L. Johnson**

**TO THE CLERK OF NH PERSONNEL APPEALS BOARD 98-T-10**

***I hereby certify that the Supreme Court has issued the following order in the above-entitled action:***

November 8, 2000. The court upon October 31, 2000, made the following order:

Having considered the briefs and oral arguments of the parties, the court concludes that a formal written opinion is not necessary for the disposition of this appeal.

The petitioner appeals the decision of the personnel appeals board upholding his termination by the department of corrections for falsifying his employment application. We affirm.

"We will overturn an agency decision when there is an error of law, or when the order is unjust or unreasonable by a clear preponderance of the evidence." Appeal of Boulay, 142 N.H. 626, 627-28 (1998).

The petitioner first asserts that his termination violated New Hampshire Administrative Rules, Per 1001.08(f) (1992), which provides that before termination, the appointing authority must:

- (1) meet[] with the employee to discuss whatever evidence the appointing authority believes supports the decision to dismiss the employee . . . [;]
- (2) provided the employee an opportunity at the meeting to refute the evidence presented by the appointing authority . . . [;]
- (3) document[] in writing the nature and extent of the offense; [and]

1001.08(f) (1992)

(4) list[] the evidence the appointing authority used in making the decision to dismiss the employee[.]

The board found that the department complied with Rule 1001.08(f) when the warden met with the petitioner, read a document to him that explained the allegations and their evidentiary bases, and asked him if he had any evidence to refute them, to which the petitioner responded that he did not. The board found also that no important details of the investigation or the alleged misconduct were withheld from the petitioner. We hold that the board's determination that the department complied with Rule 1001.08(f) was not erroneous. See *id.* at 628-29.

Next, the petitioner asserts that his termination violated his rights to due process under the State and Federal Constitutions, see N.H. CONST. pt. I, art. 15; U.S. CONST. amend. XIV. Specifically, he argues that his due process rights were violated when, before his termination, the department "refused to give [him] any of the written documents making allegations against him" and did not permit him to present evidence about the allegations. We disagree.

We address the petitioner's assertion under our State Constitution, citing federal law only to aid in our analysis. See *State v. Ball*, 124 N.H. 226, 233 (1983). Because the federal standard provides the petitioner no greater protection, we need not undertake a separate federal analysis. See *State* 144 N.H. \_\_\_, 744 A.2d 598, 600 (1999).

Prior to the petitioner's termination, the department informed him that he was alleged to have falsified his application and gave him more than one opportunity to respond to this allegation. Before his termination, the department also informed the petitioner of the factual bases for this allegation. Given that the petitioner also received a three-day evidentiary hearing before the board, this is "all the process that [was] due." *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 546-48 (1985).

The petitioner's remaining arguments lack merit and warrant no further discussion, see *Vogel v. Vogel*, 137 N.H. 321, 322 (1993).

Affirmed.

Horton, Broderick, Nadeau, and Dalianis, JJ., concurred;  
Groff, J., superior court justice, specially assigned under  
RSA 490:3, concurred.

Date of clerk's notice of decision: November 8, 2000

July 26, 2001.

The court upon July 17, 2001, made the following order:

Petitioner's motion for reconsideration is denied.

Broderick, Nadeau and Dalianis, JJ., concurred; Groff, J.,  
superior court justice, specially assigned under RSA 490:3,  
concurred.

Date of clerk's notice of decision: July 26, 2001

**September 12, 2001**

**Attest:** Carol A. Belmain  
**Carol A. Belmain, Deputy Clerk** /dc

**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

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**Howard J. Zibel,  
Clerk**

Date of clerk's notice of decision: July 26, 2001

Distribution:

NH Personnel Appeals Board 98-T-10

Michael C. Reynolds, Esquire

John E. Vinson, Esquire

Michael K. Brown, Esquire

Donna R. Craig, Supreme Court

Laura Mitchell, Supreme Court

File

THE STATE OF NEW HAMPSHIRE

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File

State of New Hampshire



**PERSONNEL APPEALS BOARD**

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

***APPEAL OF DARREN JOHNSON***

***Docket #98-T-10***

***Department of Corrections***

Response to Appellant's Motion for Reconsideration/Rehearing

And State's Objection to Said Motion

June 17, 1998

By letter dated June 8, 1998, SEA General Counsel Michael Reynolds timely filed<sup>1</sup> with the Board a Motion for Reconsideration/Rehearing in the above-titled appeal. The State's Objection to that Motion, filed by Department of Corrections Counsel John Vinson, was received by the Board on June 10, 1998.

After reviewing both the Appellant's Motion and the Board's May 7, 1998, Decision in detail, the Board voted unanimously to deny Appellant's Motion for Reconsideration/Rehearing. In so doing, the Board found that its decision denying Mr. Johnson's appeal was complete, lawful and reasonable in accordance with the statutes and the Rules of the Division of Personnel.

THE PERSONNEL APPEALS BOARD

Handwritten signature of Mark J. Bennett in cursive.

Mark J. Bennett, Chairman

Handwritten signature of Patrick H. Wood in cursive.

Patrick H. Wood, Commissioner

Handwritten signature of James J. Barry in cursive.

James J. Barry, Commissioner

<sup>1</sup> Part of the State's objection to the motion relies on Per-A 204.06 (a) which provides any aggrieved party 20 days after the date of the decision to file a Motion for Rehearing. That rule has been superseded by RSA 541:3, which allows a party thirty days from the date of a decision to request reconsideration or rehearing.



cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Michael C. Reynolds, SEA General Counsel, PO Box 3303, Concord, NH 03302-3303  
John E. Vinson, Corrections Counsel, Dept of Corrections, PO Box 769, Concord, NH 03302-0769

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

## ***APPEAL OF DARREN JOHNSON***

***Docket #98-T-10***

***Department of Corrections***

Thursday, May 07, 1998

The New Hampshire Personnel Appeals Board (Bennett, Wood and Barry) met on April 15, April 28 and April 29, 1998, under the authority of RSA 21-I:58, to hear the appeal of Darren Johnson, a former employee of the Department of Corrections. Mr. Johnson, who was represented at the hearing by SEA General Counsel Michael Reynolds, was appealing his December 3, 1997, suspension without pay and December 19, 1997, termination from employment as a Corrections Officer on charges that he violated Per 1001.08 (b) (6) e., for willful falsification of his application for employment, and for violations of Department of Corrections Policy and Procedure Directive 2.16. Attorney John E. Vinson appeared on behalf of the State.

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

### State's Exhibits

1. 75 page packet of documents beginning with Mr. Johnson's application for employment as a Corrections Officer, and ending with his March 29, 1997, statement to Cpl. Hickman
2. September 26, 1994, letter from Darren Johnson to Nick Pishon
3. 2 page document titled "My experience as a police officer"
4. September 24, 1997, statements of Mark McAlpine and Kevin Washburn to Cpl. Wilson
5. Officer Interview (Oral Board) Summaries completed by Maj. Guimond and Carol Cochrane

6. November 11, 1997, Report of Polygraph Examination of Darren L. Johnson
7. Investigative Conclusions - Case #S-97-055
8. Investigative Conclusions - Case #2-97-121
9. January 20, 1996, statement of Lt. Gerald M. Haney to Sgt. Provost
10. November 12, 1997, letter fi-om SEA General Counsel Reynolds to DOC Counsel John Vinson

Appellant's Exhibits

- A. Transcript and audio tape of investigation hearing held on May 1, 1997, in re: Darren Johnson
- B. Transcript and audio tape of investigation hearing held on May 5, 1997, in re: Darren Johnson
- C. Darren Johnson's single page summary of police experience
- D. Investigators' statements and findings - DOC Investigations#S-97-121 and #S-97-055
- E. December 1, 1997, Report of Investigation forwarded by N. E. Pishon to Warden Cunningham for review and appropriate action
- F. November 26, 1997, Report of Investigation forwarded by N. E. Pishon to Warden Cunningham for review and appropriate action
- G. November 14, 1997, memo from Darren Johnson to Craig Wiggins requesting "Validity Paper Test"
- H. May, 1995, letter from Darren Johnson to Marilyn Whitten requesting review of his qualifications for a position on the Shock Incarceration Program staff
- I. September 29, 1997, letter from Geno A. Nigro to Mike Reynolds
- J. Letters from Warden Cunningham to Darren Johnson dated August 31, 1995 and September 22, 1995, with attached letters of appreciation from visitors to the prison

The following persons gave sworn testimony during the three days of hearing:

Darren Johnson	Raymond Guimond	Louis Currier
Michael Cunningham	Carol Cochrane	Wayne Brock
Lisa A. Currier	William Wilson	Gerald M. Haney

At the State's request, the witnesses were sequestered. On its own motion, the Board also voted to redact fi-om any printed or transcribed record of the proceedings the names of any inmates, other than Mr. Eldridge.

The State argued that during the course of its investigation into allegations involving Inmate Timothy Eldridge, information also was disclosed that Mr. Johnson had previously worked as a part-time police officer, and had been discharged from that position. The Department initiated a second investigation into Mr. Johnson's employment history and concluded that the appellant had intentionally omitted information from his original application for employment. The State argued that Mr. Johnson knew that if he had disclosed that he had worked as a part-time police officer in Fremont, Newmarket and Raymond, and the terms under which he was separated from those departments, he never would have been hired. The State argued that Mr. Johnson's decision to omit that information represented a willful falsification of an agency record in violation of Per 1001.08 (b)(6)e, and that by having committed such a violation, Mr. Johnson was subject to immediate termination from employment. The State also argued that Mr. Johnson's conduct during both investigations violated Corrections Policy and Procedure Directive 2.16, in that the appellant provided to Investigations only that information he chose to disclose, omitting relevant information that he considered damaging. The State argued that Mr. Johnson was neither honest nor forthcoming during the investigation, proving that he was not sufficiently trustworthy to work as a Corrections Officer.

The appellant argued that in carrying out his termination, the Department of Corrections failed to give effect to Per 1001.08(f) and (g) of the Personnel Rules, and that such violation, in light of relevant case law, mandated the appellant's immediate reinstatement. The appellant argued that there had been no willful falsification of records, and no evidence of conduct that would warrant his termination. The appellant also argued that the investigators had decided early on in the investigation that Mr. Johnson should be dismissed, and therefore conducted an incomplete and unfair investigation to which the Board should give no weight. Finally, the appellant argued that misrepresentations by Department of Corrections and State Police personnel during the investigation, and the Department's own negligence in failing to conduct a thorough investigation of the appellant's employment history prior to his selection for a position of Corrections Officer, should weigh in the appellant's favor. The appellant argued that the agency could not sustain its burden, nor could it demonstrate compliance with the Rules of the Division of Personnel. He indicated that at the close of the State's case, he would move for summary judgment<sup>1</sup>, requesting full back-pay and benefits.

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<sup>1</sup> The Board advised Appellant that his Motion for Summary Judgment would be more accurately described as a Motion for a Directed Verdict. The Board denied that Motion, finding that the State had offered sufficient evidence of the alleged offenses to avoid a ruling against it.

Having considered the evidence and oral argument, the Board made the following Factual Findings:

1. At the time of his termination from employment, Mr. Johnson was a Corrections Officer assigned to the New Hampshire State Prison in Concord, New Hampshire.
2. On March 29, 1997, Mr. Johnson submitted to the Investigations Unit at the Prison a written statement concerning Inmate Timothy Eldridge. In that statement, Mr. Johnson asserted that he had been approached by an inmate informant who reported that Inmate Timothy Eldridge said that Mr. Johnson had beaten up Eldridge's cousin Nancy Palmer, the appellant's former girlfriend. He reported that the informant also said that Inmate Eldridge had told him he would like to get his hands on Mr. Johnson.
3. Mr. Johnson asked Investigations to monitor Inmate Eldridge's mail and check his visitors list for Ms. Palmer's name. He wrote that he wanted to avoid Ms. Palmer, "...causing [him] any problems or interfering with [his] employment."
4. Mr. Johnson did not report in his statement that while in the presence of other inmates, he already had confronted Inmate Eldridge that day in the dining hall. He also did not report that he already had attempted to check the agency's computerized records to determine if Ms. Palmer was on the list of Mr. Eldridge's visitors.
5. Investigators were unable to locate the statement that Mr. Johnson said he had submitted to Investigations advising them of his involvement with Nancy Palmer after he had discovered that she knew, and had visited, Inmate Eldridge at the prison.
6. Investigators became suspicious when Mr. Johnson appeared to over-react to questions about his employment as a part-time police officer, prompting them to review Mr. Johnson's personnel file.
7. Mr. Johnson's personnel file included a completed application for a position of Corrections Officer, which the appellant had signed and dated September 26, 1994. [State's 1, pages 1-41]
8. The State Application for Employment instructs applicants: "In the sections below, please describe your experience/work history, with emphasis on experience pertinent to the position for which you are applying. Résumés submitted in lieu of a completed application will not be accepted. Please be sure to list your MOST RECENT EXPERIENCE FIRST. You are encouraged to bring an up-to-date résumé to any interview for this position." (Emphasis added.)
9. Mr. Johnson's State application does not list any positions held as a part-time police officer, although that employment was more current than some of the positions he listed.
10. Mr. Johnson's State application does indicate that he had attended Police Standards and Training for certification as a part-time officer.

11. Mr. Johnson's personnel file also included a "Self Reported Background" statement that Mr. Johnson signed and dated October 11, 1994. That form, completed as part of the application process, advises applicants to answer all questions accurately and truthfully. It warns applicants that although a positive or "yes" answer would not, in and of itself, disqualify the applicant for employment, disclosure of any willful misrepresentation would constitute grounds for disqualification. [State's 1, pages 6-6a]
12. The form includes instructions to explain any positive or "Yes" answers and, if necessary, to use the reverse of the form for such explanation.
13. In his "Self Reported Background," in response to the question, "Have you had other jobs not listed on your state application?" Mr. Johnson answered no.
14. In his "Self Reported Background," in response to the question, "Have you ever been investigated by a law enforcement agency?" Mr. Johnson answered no.
15. In his "Self Reported Background," in response to the question, "Have you ever been fired from a job?" Mr. Johnson responded yes. Mr. Johnson explained that he had been, "...let go for not meeting Advanced Custom Cabinets Qualifications."
16. Mr. Johnson did not indicate on the form that he had been employed as a part-time officer in the towns of Fremont, Newmarket and Raymond.
17. Mr. Johnson did not indicate that he had been investigated by the Raymond Police Department in 1991, for on-duty conduct involving the purchase of a canoe and an unauthorized pursuit of two motorcycles.
18. Mr. Johnson's Raymond Police Department personnel file contained a memorandum from Sgt. Murphy of the Raymond Police Department that the appellant received on 8/21/91, advising Mr. Johnson that he would not be assigned additional duty hours, "...until an investigation into the following incident(s) are complete: 1. A purchase of a canoe while on duty August 17, 1991; 2. A pursuit of two motorcycles on August 24, 1991."
19. Also included in Mr. Johnson's personnel file was a letter dated September 26, 1994, from Darren Johnson to Nick Pishon concerning Mr. Johnson's interest in appointment as a Corrections Officer. The letter stated that Mr. Johnson had "three years experience as a part-time police officer," and that he had worked in Fremont, New Market and Raymond, NH. He wrote that he had successfully completed the Police Standards and Training Course for part-time officer certification, and that his work history demonstrated his, "ability to work independently as well as with part of a team." The letter did not mention his having been suspended during the course of an investigation into his on-duty conduct while in the employ of the Raymond Police Department, or the conduct giving rise to the investigation. The letter did not mention Mr. Johnson's suspension from the Fremont Police Department, nor does it advise

the reader that Mr. Johnson was discharged from the Newmarket Police Department for his on-duty conduct.

20. Corrections personnel normally find correspondence reviewed by Mr. Pishon marked with a green "P," indicating that he has seen the correspondence. Mr. Johnson's September 26, 1994, letter to Mr. Pishon bears no such mark, although the parties agree that Mr. Pishon recalled seeing some correspondence from Mr. Johnson.
21. When the letter was discovered in the personnel record, it was located in a different section of the file than the section normally reserved for application information, and was filed under employee benefits information that normally would be completed by new employees on their first day of appointment.
22. The 2-page summary of police experience that the appellant testified he had submitted with his application made no reference to the conditions under which he left employment with the Fremont, Newmarket or Raymond Police Departments.
23. Carol Cochrane, a Probation/Parole Officer who sat on the appellant's oral board, told investigators that she recalled some discussion of Mr. Johnson's part-time police work, and the fact that he had been fired while on probation because of a high-speed pursuit and misuse of the cruiser loudspeaker. She recalled that it was not Mr. Johnson who broached the subject, and she told investigators that if there had been any serious reasons for his dismissal, she would have noted that on the selection form.
24. Neither P.P.O. Cochrane nor Maj. Joe Guimond, the other interviewer, made any notation on their oral board forms that they had discussed police work or employment difficulties with Mr. Johnson.

#### Rulings of Law

- A. "In cases such as, but not necessarily limited to, the following, the seriousness of the offense may vary. Therefore, in some instances immediate discharge without warning may be warranted while in other cases one written warning prior to discharge may be warranted."... "(6) Willful falsification of agency records, including, but not limited to ... e. Applications for employment." [Per 1001.08 (b)]
- B. "No appointing authority shall be authorized to dismiss an employee under this rule until the appointing authority: (1) meets with the employee to discuss whatever evidence the appointing authority believes supports the decision to dismiss the employee prior to issuing the notice of dismissal; (2) provides the employee an opportunity at the meeting to refute the evidence presented by the appointing authority...; (3) documents in writing the nature and extent of the offense; [and] (4) lists the evidence the appointing authority used in making the decision to dismiss the employee." [Per 1001.08 (f)]

## Decision and Order

Mr. Johnson was dismissed for willful falsification of his application for employment, in violation of Per 1001.08 (b)(6)e., and for violation of posted or published agency Policy and Procedure Directive 2.16.

Although the letter of termination quotes from PPD 2.16, and there is evidence supporting the State's claim that Mr. Johnson's conduct during investigation of the Eldridge incident did violate the policy, neither party offered PPD 2.16 into evidence. Accordingly, the Board had no evidence to support the State's assertion that such violations, if proven, constituted offenses warranting immediate termination without prior warning.<sup>2</sup>

With respect to Mr. Johnson's employment application, the Board found that Mr. Johnson did willfully falsify his application by intentionally omitting information about his employment history at the Fremont, Newmarket and Raymond Police Departments from the State application form, and from official documents completed during the application process. Despite Mr. Johnson's insistence that he gave the Department of Corrections notice of his part-time police employment in the form of a letter to Mr. Pishon and an enclosure in his application, there is conclusive evidence that the appellant made intentionally false statements on his "Self Reported Background" statement by indicating that he had held no jobs other than those listed on his State application, and that he had been fired only from a production position at a cabinet manufacturer.

On direct examination, Mr. Johnson admitted to having intentionally omitted information on his application and "Self Reported Background" statement about his part-time police work. Mr. Johnson testified that he didn't want to be "prejudged" by the Department of Corrections, and didn't want whoever was conducting the background check on his application to "hear the lies that came from the police departments" about him. The appellant's own testimony reveals that he understood that the information he omitted was materially relevant to the position for which he was applying, and his omissions were clearly willful. As such, the

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Per 1001.08 (a)(3) provides for immediate termination of an employee who violates a posted or published agency policy, the text of which clearly states that violation of same will result in immediate dismissal. Similarly, Per 1001.08(b)(3) provides for dismissal of an employee who violates a posted or published agency policy, the text of which clearly states that violation of same may result in immediate dismissal. In the absence of evidence that PPD 2.16 carries either warning, or that Mr. Johnson's conduct rose to the level of such violations, the charge can not be sustained.

Board found that Mr. Johnson was subject to immediate termination without prior warning under the provisions of Per 1001.08 (b)(6)e.

The appellant argued that the State violated Per 1001.08 (f) and (g) and that in light of the Court's ruling in Boulay, regardless of the allegations supporting the actual termination, the Department must reinstate the appellant with full pay. The Board does not agree, as there was no such violation.

Per 1001.08 (f) of the Rules of the Division of Personnel provides that, "No appointing authority shall be authorized to dismiss an employee under this rule until the appointing authority: (1) meets with the employee to discuss whatever evidence the appointing authority believes supports the decision to dismiss the employee prior to issuing the notice of dismissal; (2) provides the employee an opportunity at the meeting to refute the evidence presented by the appointing authority...; (3) documents in writing the nature and extent of the offense; [and] (4) lists the evidence the appointing authority used in making the decision to dismiss the employee."

The appellant argued that the agency violated Per 1001.08 (f) (1) by failing to: 1) disclose the identity of everyone interviewed during the investigation; 2) release copies of every statement received during the course of the investigation, and 3) describe in detail every factor that the Warden may have considered, including which parts of the investigation he accepted and which he rejected in reaching his decision that the appellant had falsified agency records and had violated PPD 2.16. The Board disagrees. That broad a reading of the rule would make compliance virtually impossible.

The rule requires the appointing authority to meet with the employee to "discuss whatever evidence the appointing authority believes supports the decision to dismiss the employee." At investigative meetings in May, 1997, Investigators Nolan and Wilson discussed in detail Mr. Johnson's application, his omission of information about his part-time police employment, his inaccurate and untruthful responses to questions on the "Self Reported Background" form, his omission of critical information on the March 29<sup>th</sup> incident report, and their belief that someone who had made such willful misrepresentations should be dismissed. At

his meeting with the appellant on December 3, 1997, Warden Cunningham read aloud to the appellant the investigators' conclusions, which satisfy the requirements of Per 1001.08(f)(1)<sup>3</sup>.

Per 1001.08(f)(2) requires an appointing authority to, "provide[s] the employee an opportunity at the meeting to refute the evidence presented by the appointing authority." Warden Cunningham met with Mr. Johnson on November 18, 1997. He reviewed with Mr. Johnson the investigation of the dining hall incident with Timothy Eldridge, and discussed the second investigation involving willful misrepresentations on Mr. Johnson's application for employment. When Mr. Johnson brought materials with him to the meeting, Warden Cunningham asked if the information would "refute the evidence" supporting the allegations. Mr. Johnson responded that they would not, but could help the Warden understand the situation more completely. Warden Cunningham refused to accept the documents, but told Mr. Johnson to bring them back at a follow-up meeting if he believed they would refute the allegations. Mr. Brock, who was present at the meeting as an SEA steward, testified that at the meeting, Mr. Johnson admitted that his documents would not actually refute the evidence, but would help the Warden understand the entirety of the circumstances surrounding both investigations. Mr. Johnson was suspended with pay pending completion of the investigation. It was clear from the testimony, including that of Mr. Johnson, Mr. Brock, Warden Cunningham and Investigator Wilson, that Mr. Johnson understood both the seriousness of the charges against him and the nature of the evidence supporting those charges.<sup>4</sup>

Warden Cunningham met with the appellant again on December 3, 1997. Cpl. Currier testified that he received a last minute request to sit in as the SEA representative because Mr. Brock was unavailable. He testified that Mr. Johnson was directed to a chair, and Warden Cunningham read the specific charges against him.<sup>5</sup> Mr. Johnson asked to be allowed to go home and pick up his paperwork, claiming he didn't know he needed it at that meeting. He testified that Warden Cunningham told him he should have known the purpose of the meeting, and refused to allow him to collect his paperwork from home. However, he did so only after Mr. Johnson admitted that the documents he intended to retrieve would not "refute the evidence."

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<sup>3</sup> In Boulay, the Court cited Ackerman v. Ambach, 530 N.Y.S.2d 893, 894 (App. Div. 1988): "The dates and nature of the alleged misconduct must be sufficiently precise, when considered with information available to the charged individual, to allow the presentation of an intelligent defense."

<sup>4</sup> Unlike the facts in Boulay, no "...important details of the investigation, including names of complainants, dates and specific details of the alleged misconduct" were withheld. Mr. Johnson knew that he was being accused of lying on his application for employment, and of withholding critical information during the course of an investigation.

<sup>5</sup> The Board voted to sustain the termination solely on the basis of Appellant's willful falsification of his application for employment, and the Board's findings generally are limited to that aspect of the investigation and discipline.

Per 1001.08 (f)(3) requires the appointing authority to, "document[s] in writing the nature and extent of the offense." The appellant argued that because the letter of termination was not available for Mr. Johnson's review at the December 3, 1997, meeting, the appointing authority failed to comply with Per 1001.08 (f)(3). Again, the Board does not agree. The appointing authority did document in writing the nature and extent of the offense in both its written investigative conclusions, and later in the letter of termination.

Per 1001.08 (f) (4) requires the appointing authority to "list[s] the evidence the appointing authority used in making the decision to dismiss the employee." Once again, the appellant has asked the Board for an overly broad reading of the rule, insisting that the appointing authority was responsible for producing a "list" of the evidence. However, nothing in the rule requires the list to be provided in writing, or that the agency must create a document specifically for that purpose. By reading Mr. Johnson the investigative conclusions, Warden Cunningham did, in fact, list the evidence upon which the department relied in deciding to dismiss the appellant. [See State's Exhibits 7 and 8]

The agency's delivery by certified mail of the notice of dismissal to Mr. Johnson satisfied the requirements of Per 1001.08 (g). The appointing authority, having complied with the provisions of Per 1001.08 (f), and having found that there were sufficient grounds to dismiss the appellant, sent to him a "written notice of dismissal, specifying the nature and extent of the offense" and advising him of his right to appeal his termination to this Board.

The Board rejects the appellant's argument that he should be reinstated because the agency allegedly failed to exercise appropriate diligence in its process for screening and selecting applicants. The agency would be well-advised to review its screening and selection process to decrease the likelihood of similar problems arising in the future. In this instance, had the agency completed a more thorough pre-employment review, including contact with New Hampshire Police Standards and Training, facts surrounding the appellant's work as a part-time police officer might have been uncovered. The agency's failure to do so, however, does not excuse the appellant for having made intentionally false or misleading statements on his "Self-Reported Background" report in response to questions II e., II f.<sup>6</sup>, and II g.

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<sup>6</sup> Mr. Johnson's testimony that he misunderstood the question and believed it pertained to criminal conduct only was somewhat disingenuous, in light of the memorandum from Sgt. Murphy notifying Mr. Johnson of suspension pending the outcome of an investigation.

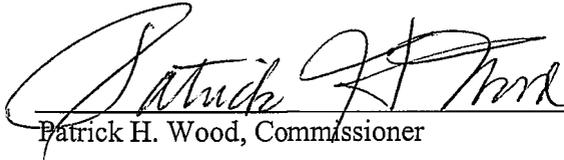
For the reasons set forth above, the Board voted unanimously to deny Mr. Johnson's appeal.

THE PERSONNEL APPEALS BOARD



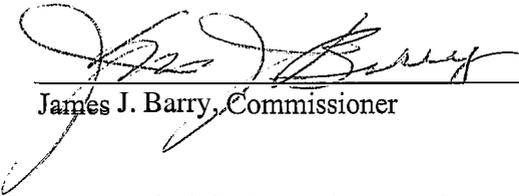
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Mark J. Bennett, Chairman



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Patrick H. Wood, Commissioner



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James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301  
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