

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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Appeal of Scott Kenneson
Docket #2007-T-011
NH Fish and Game Department

Personnel Appeals Board Decision on Pending Motions and Objections
May 23, 2007

Scott Kenneson, a former employee of the NH Fish and Game Department, is appealing his December 1, 2006 termination from employment as a Conservation Officer for allegedly releasing detailed information regarding an open criminal investigation, which reportedly interfered with the process of arrest and jeopardized the safety of Conservation Officers serving an arrest warrant. The Fish and Game Department (hereinafter "State") further alleged that the appellant failed to follow appropriate arrest procedures, failed to properly secure evidence, did not test a controlled substance and failed to properly notify a supervisor of a pending trial/arraignment involving a suspect who was incarcerated. The appellant argues that none of the alleged conduct would justify his termination, and that none of his actions would rise to the level of an allowable immediate termination without prior warning.

The Board convened a first prehearing conference on April 18, 2007. Senior Assistant Attorney General Peter Roth appeared on behalf of the State. SEA General Counsel Michael Reynolds appeared on the appellant's behalf. The parties indicated that there were outstanding discovery issues that they hoped to resolve without the need of a further hearing.

Deposition Motion

On May 4, 2007, Attorney Reynolds filed a Deposition Motion, asking the Board to order Fish and Game Director Lee Perry and Lt. Kevin Jordan to submit to depositions. Senior Assistant Attorney General Roth filed the State's Objection on May 11, 2007, arguing that the factual basis for the appellant's Deposition Motion was insufficient, the legal standard was not met, and the use of depositions in this proceeding before the Board would be inappropriate.

Without waiving any of the grounds raised by the State in its May 11, 2007 Objection, Attorney Roth indicated that the State would "voluntarily produce Director Perry and Lt. Jordan for deposition by the Appellant for one day (total), at the Office of the Attorney General, transcription to be arranged and paid for by the Appellant, on either June 1, June 4, or June 11, 2007."

In light of the State's offer, the Board considers the appellant's motion to be moot, and intends to take no further action on the issue.

Motion of the State of New Hampshire to Dismiss Appeal

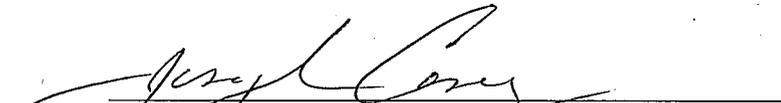
By letter dated May 11, 2007, Senior Assistant Attorney General Peter Roth submitted the State's Motion to Dismiss the instant appeal. Per-A 206.05 (c) of the Board's rules provides that a Motion to Dismiss "shall state specifically the grounds upon which the movant asserts the right to have the appeal dismissed or an order of summary judgment issued as a matter of law." Further, Per-A 206.05 (d) states, "Unless such motion is accompanied by competent evidence and a supporting memorandum of law detailing the board's authority to issue such an order, the motion shall be denied." Although the Motion was accompanied by competent evidence, and contains within legal arguments regarding the Board's authority to issue such an order, the movant failed to persuade the Board that the motion to dismiss should be granted as a matter of law.

By definition, a Motion to Dismiss is "A motion requesting that a complaint be dismissed because it does not state a claim for which the law provides a remedy, or is in some other way legally insufficient." [Blacks Law Dictionary, 6th ed., p. 1014.1 Although the State asserts that the appellant should be barred from litigating issues of bad faith, bias or retaliation if those issues were not raised during the pre-disciplinary meeting, that argument is insufficient for the Board to find that the appeal itself, or that portion of the appeal, should be dismissed. Further, assuming *arguendo* that the Board found all of the State's allegations to be true, the law would still provide the appellant a remedy if the appellant could persuade the Board to exercise its authority under the provisions of RSA 21-I:58, I, which provides that, "...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." Accordingly, the Board voted to DENY the Motion of the State of New Hampshire to Dismiss Appeal.

THE PERSONNEL APPEALS BOARD


Philip Bonafide, Chair


Robert Johnson, Commissioner


Joseph Casey, Commissioner

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