

State of New Hampshire



PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
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APPEAL OF ROBIN LEVESQUE Docket #89-T-10 Laconia Developmental Services

On Wednesday, August 16, 1989, the Personnel Appeals Board (McNicholas, Cushman and Johnson) heard the termination appeal of Robin Levesque, a former employee of Laconia Developmental Services. Ms. Levesque was terminated from employment prior to completion of her probationary period for excessive absenteeism and tardiness.

Lisa Currier, Human Resource Coordinator for Laconia Developmental Services represented the agency. Virginia Levesque represented the appellant. The State called one witness, Jeanne Cusson, Facility Administrator - Speare, Ms. Levesque's former supervisor. Ms. Levesque testified in her own behalf.

In addition to materials submitted prior to the hearing by Laconia Developmental Services (without objection from Appellant), the State offered into evidence the letter of termination dated March 31, 1988, to Ms. Levesque from Ms. Cusson.

Ms. Levesque was hired as a Resident Care Assistant Trainee on December 30, 1988. At the time of hiring, Ms. Cusson explained the appellant's status as a probationary employee, including leave provisions as they apply to such employees.

Ms. Levesque did not actually report to her second shift assignment at Speare Cottage until her second week of employment, having spent the first week in training. On or about January 4, 1989, Ms. Levesque telephoned Jeanne Cusson, telling her that she had an urgent need to go out of state, and requesting several days unpaid leave, which was to be taken in conjunction with her days off. Ms. Cusson approved the leave with reservation, informing Ms. Levesque that it was imperative she be back at work by the week-end. Ms. Levesque then called to inform her supervisor that because of inclement weather, she was unable to get a flight home and was unsure of when she would be able to report back to work. She was told that she would be expected back at work at the earliest possible date.

During her three months of employment at Laconia, Ms. Levesque called in sick a total of ten days, and took seven additional days without pay for emergency personal matters. In early March, 1989, Ms. Cusson discussed with Ms. Levesque her excessive absences from work, and further informed her of the danger of being absent, in a "no pay" status, on the first work day of the month, informing her that such an absence would result in loss of her medical insurance coverage for that month.

At or about the same time as Ms. Cusson's discussions with Ms. Levesque concerning her absences, Ms. Levesque asked to be moved from the second to the first shift. She stated in a note to Ms. Cusson that she need[ed] to start birthing classes soon, and the only classes are at night. If it's not possible for me to get on first shift then maybe on the nights I go to class, I could leave work early or something like that..."

On March 15, 1989, Ms. Cusson spoke with Ms. Levesque and agreed to move her to a temporary opening on the first shift. She was also advised at that time that if her attendance did not improve, she was jeopardizing her employment. The notice of temporary transfer to the first shift was formally provided in a letter dated March 22, 1989 from Ms. Cusson to Ms. Levesque. In that note Ms. Cusson added, "As we discussed, Robin, there is a need to greatly improve your attendance record and I only hope that the change of shift will help in this area."

At no time was Ms. Levesque asked to have her absences due to illness certified, because the administration did not question the legitimacy of any of her sick leave requests. Ms. Levesque received no formal written warnings as a probationary employee, but was counselled both verbally and in writing concerning her attendance.

The final events culminating in Ms. Levesque's termination from employment began with her transfer to the first shift. Ms. Levesque was to have started work on the first shift on March 24th. Leave records indicate that she was one hour late on March 25th and called in sick on March 26th. Friday that same week, she called in sick again and was told that she needed to report to work because of critical staffing levels. Ms. Levesque said she would try to come in by 9:30 am. When she did report to work on March 31st, she was told that her employment was being terminated. She was formally notified of same by letter dated March 31, 1989.

Ms. Levesque believed she was entitled to a leave of absence for any illness related to her pregnancy, and that the agency could not terminate her employment because of such absences, regardless of the number of work days missed or the unavailability of accrued leave for such absences. She intended to continue working until the birth of her child to insure that the State would pay the cost of her medical insurance.

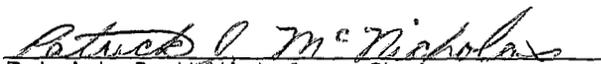
During the course of the hearing, the appellant asked if the agency intended to address her complaints that the termination was motivated by racial discrimination, or discrimination against her as a pregnant woman. The Board informed Ms. Levesque that in order to protect her rights to pursue a pending appeal of same before the Human Rights Commission, the Board would consider the matter based solely upon the legitimacy of her termination as a probationary employee for absenteeism and tardiness. The Board offered Ms. Levesque the opportunity to pursue a line of argument relative to issues of discrimination, but cautioned her that it might jeopardize her appeal at Human Rights. Appellant then chose not to address any issues related to racial prejudice.

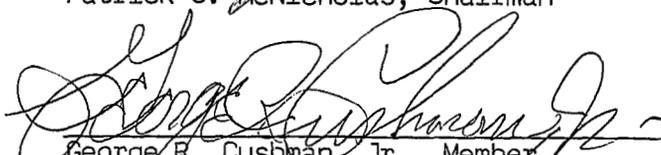
The Board, in consideration of the record before it, upheld the decision of Laconia Developmental Services to terminate Ms. Levesque's employment under the Rules of the Division of Personnel (Per 302.23). Appellant was apprised through a written performance appraisal, counselling, and correspondence from her supervisor that her absenteeism was unacceptable and that continued absenteeism could result in her termination. She was properly notified of termination and apprised of her rights to appeal in the letter of termination dated March 31, 1989.

Laconia Developmental Services is cautioned, however, to look carefully at its utilization of leave slips and approval of same when contemplating future personnel actions. While the leave records provided may be an integral part of the bookkeeping procedures at Laconia Developmental Services, those submitted did not clearly reflect the administration's position with regard to this employee's requests for leave. Were it not for the fact that sufficient additional documentation and uncontroverted testimony supported Laconia's claim that Ms. Levesque was fully apprised of the potential consequences of her continued absenteeism, the Board would have been hard pressed to deny this appeal.

In light of Appellant's failure to sustain the allegations of arbitrary or capricious action on the agency's part, the Board upheld the termination of Robin Levesque, voting unanimously to deny her appeal.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


George R. Cushman, Jr., Member


Robert J. Johnson, Member

cc: Lisa Currier, Human Resource Coordinator
Laconia Developmental Services

Robin Levesque

Virginia A. Vogel
Director of Personnel

DATED: August 30, 1989