

# State of New Hampshire

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## PERSONNEL APPEALS BOARD

State House Annex  
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### APPEAL OF PATRICIA PARIZO Department of Environmental Services Docket #90-T-9

dated: December 7, 1990

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, October 24, 1990, to hear the appeal of Patricia Parizo, a former employee of the Department of Environmental Services. Ms. Parizo appeared pro se. The Department was represented by Kenneth Morrissey, Business Administrator. John Roller, Human Resource Coordinator, also appeared on the agency's behalf.

During the time of Ms. Parizo's employment with the Department of Environmental Services, she was also employed briefly on a part-time basis at Loon Mountain Ski Area as a night auditor. She was arrested by the Lincoln Police Department on February 2, 1990, and charged with theft by unauthorized taking in the amount of \$3,636.00. Ms. Parizo allegedly altered audit documents and receipts to reflect distribution of a number of free "over 70" ski passes, instead of the paid tickets which had been reported by the ticket sellers, and for which cash payment had been made by patrons of the ski area. Ms. Parizo plead guilty to the charges against her on March 1, 1990.

Upon learning of the charges against Ms. Parizo, the Department of Environmental Services notified her that effective February 15, 1990, the appellant would be suspended without pay pending the outcome of her criminal trial proceedings. On March 16, 1990, the Department notified Ms. Parizo that she was discharged from service, effective March 1, 1990. In that letter of termination, the Department stated, "We have received official papers from Lincoln District Court which indicate that you appeared in court on [March 1, 1990] and pleaded guilty to the offense 'Theft by Unauthorized Taking'. Due to the nature of this offense and the fact that your duties for this department involve handling the deposit of state funds and the processing of payment vouchers, this termination is the appropriate course of action."

Ms. Parizo's position of Account Clerk III for the Department of Environmental Services involved the initial reporting of departmental transactions, including receipt and reporting of fees which the Department collects. Although Mr. Morrissey testified that the State's accounting system provides for substantial checks and balances, Ms. Parizo is part of that system, and as

the person responsible for receipt of fees, and preparation of payment vouchers at the agency level, the Department felt **it** could not continue to employ her.

*Mr. Roller* testified that Ms. Parizo's position had been abolished as part of the budget process. Ms. Parizo would have been subject to lay-off in April, 1990. With fewer than five years of continuous service, Ms. Parizo would not have had "bumping rights". Although the Department could have taken the course of least resistance and removed Ms. Parizo from the Department through lay-off, they found her offense to be serious enough to warrant her discharge.

*Ms. Parizo* argued that the theft by unauthorized taking was "just something that happened". She testified that at the time of her arrest, she had only recently returned to work following the birth of a child. She said she was depressed, she had gone back to work too soon after the baby was born, she shouldn't have tried taking on a second job, and she was under a great deal of stress. She said she had simply "cracked", but that losing her job was too harsh a punishment for having made one "mistake". Ms. Parizo admitted that in the five to six weeks she had been employed by Loon Mountain, she had actually only worked about eight days. She also admitted that during that time she would have had to alter approximately 200 documents in order to account for the large sums of money which were taken.

In consideration of the record before **it**, particularly in light of the similarity of duties between Ms. Parizo's former position at Environmental Services and those she was performing at Loon Mountain at the time of her offense, the Board voted to uphold the Department's decision to discharge Ms. Parizo from her employment as an Account Clerk III.

Although the Board voted to deny Ms. Parizo's appeal, **it** notes that the agency appeared completely unprepared at the hearing to meet its burden of going forward. Although the appellant bears the burden of proof in appeals of disciplinary action, the agency is responsible for describing the action **it** has taken, and for offering evidence in support of that action.

The Department of Environmental Services made the grave error of assuming that the Board already had a complete record of the events which lead to Ms. Parizo's termination. In fact, the only information in the Board's record was a copy of the termination letter dated March 16, 1990; a copy of the suspension letter dated February 15, 1990; the appellant's hearing request dated April 3, 1990; the Board's notice of assignment of a docket number; notice that the State Employees' Association had withdrawn as the appellant's representative in the matter; the Board's notice of scheduled hearing; and the Board's letter to Ms. Parizo to request information about anyone who might be appearing to represent her.

The Department should understand that notices of disciplinary action (i.e., letters of warning, suspension, demotion, termination) have no evidentiary value in and of themselves. They are merely the tools by which an agency notifies an employee and the Division of Personnel of the action **it** has taken, and the circumstances which **it** believes to have occurred to warrant the level of discipline described therein. When such action is appealed by the affected employee, the Department is responsible for showing proof that the events which lead to the discipline occurred, and that the level of discipline taken was consistent with the Rules of the Division of Personnel.

Realizing that neither party was prepared to offer any evidence for the Board's consideration, the Board was forced to request the production of evidence, pursuant to the provisions of Per-A 203.09 of the Rules of the Personnel Appeals Board. Had the Board chosen not to request such evidence, none of Ms. Parizo's arrest or conviction records would have been available to illustrate the seriousness of the appellant's offense. Had the Department of Environmental Services continued to rely solely upon the Board's records, and the statements of its representative and its witness, the appellant might easily have succeeded in her appeal and won reinstatement.

In its original notice to the parties, assigning of a docket number to Ms. Parizo's appeal, the Board cautioned both parties parties to "... familiarize themselves with the Board's rules, and to conduct themselves in accordance with the provisions therein." The Board further cautioned the parties that "Inexperience shall not be deemed an acceptable excuse for violation of any pre-hearing or hearing procedures".

In consideration of the agency's presentation, it is apparent that such admonition was ignored or over-looked.

The Board strongly recommends that the Department avail itself of the resources of the Division of Personnel and the Office of the Attorney General to familiarize itself with the administrative appeal process utilized by this Board. Failing to take such measures will undoubtedly result in the agency routinely finding its decisions overturned on appeal.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett



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Lisa A. Rule

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