

# State of New Hampshire

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## PERSONNEL APPEALS BOARD

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

### APPEAL OF LENA RAGAS BOARD RULING ON APPELLANT'S MOTION FOR RECONSIDERATION Docket #89-T-27

June 25, 1990

The Personnel Appeals Board, at its meeting of May 16, 1990, reviewed Ms. Ragas' April 30, 1990 Motion for Reconsideration of the Board's April 17, 1990 decision in her appeal of termination from New Hampshire Hospital.

Appellant argues, in support of her Motion, that "There was no evidence presented that a suspension was initiated, that any letters of warning were issued, or that any other appropriate actions were initiated by the appointing authority pursuant to the personnel rules<sup>u</sup> and that by denying her retroactive compensation from October, 1989, to the present, "she is being 'fined'<sup>1</sup> approximately \$9,000 to \$10,000 when she did not resign her position". Although the Board found that she did not resign, the record indicates that **it** was Ms. Ragas who initially made herself unavailable for work by refusing release from jail on personal recognizance.

Notwithstanding the foregoing, **it** is apparent that the Board's decision of April 17, 1990, requires clarification. The Board's intent was essentially to restore Ms. Ragas to the status quo ante of her termination, permitting her to take leave of one type or another for the period of her incarceration. Accordingly, Ms. Ragas was eligible to return to work at the end of her period of incarceration. The Decision of April 17, 1990, is clarified to provide that back pay less interim earnings be paid to Ms. Ragas from the period commencing at the time Ms. Ragas was able to return to her employment to the date she returns to work. All other relief orders remain unchanged except as clarified herein.

While the Board remains sympathetic to the stressful circumstances involved in Appellant's decision at that time, the Board is also aware that Ms. Ragas did not request the use of leave, paid or unpaid, to cover the period of her absence. Having so found, **it** would be unreasonable for the Board to award retroactive payment when the initial absence from work was not outside of Appellant's control.

Appellant also seeks release from the Board's order that she "participate in a psychological treatment program<sup>n</sup>". To the extent that Appellant had asked the Board, in the absence of expert testimony, to find that she suffered from an acute psychological disability, Appellant's testimony that the court had

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ordered a psychological evaluation, and that Appellant believed she derived some benefit from counselling during her incarceration, the Board affirms its decision that Appellant must participate in an approved program of counselling which shall include, but not be limited to, stress management.

By way of further clarification on this point, the Board did not intend to order a lifetime of therapy that may be unnecessary. Ms. Ragas will have complied with this portion of our order upon presentation to the Hospital of a report from an accredited counsellor or psychiatrist that no further counselling is indicated and that Ms. Ragas may return to her employment in the counsellor's view.

In consideration of the foregoing, and finding no grounds to believe its previous order was either unlawful or unreasonable, the Board voted to deny Appellant's Motion for Reconsideration.

FOR THE PERSONNEL APPEALS BOARD

  
Mary Ann Steele, Executive Secretary  
N.H. Personnel Appeals Board

cc: Michael C. Reynolds, General Counsel  
State Employees' Association

Sharon A. Sanborn, Human Resource Director  
New Hampshire Hospital

Virginia A. Vogel, Director of Personnel

David S. Peck, Assistant Attorney General  
Civil Bureau

# State of New Hampshire

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## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
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APPEAL OF LENA RAGAS  
Docket #89-T-27  
New Hampshire Hospital

April 17, 1990

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, March 21, 1990, to hear the appeal of Lena Ragas, a former employee of New Hampshire Hospital. Michael C. Reynolds appeared on behalf of the appellant. Attorney Barbara Maloney represented New Hampshire Hospital (hereinafter "Hospital"). The Hospital offered the sworn testimony of two witnesses: Patricia Cutting, Licensed Nursing Home Administrator, Psychiatric Nursing Service and Sharon Sanborn, NEH Director of Human Resources. Testifying on the appellant's behalf were Neil Ragas, Appellant's son and the appellant, Lena Ragas.

The Hospital contended that on September 11, 1989, Appellant called Patricia Cutting to say she "would not be returning to work". She told Mrs. Cutting that she had been arrested for violating an eviction notice and was going to jail. When Cutting asked if she could help, Ragas was reported to have said, "No, no, I have to get done". Mrs. Cutting testified that she knew Mrs. Ragas well enough to conclude there was no point in further discussion, and believed Mrs. Ragas' intent was to resign. She said the appellant was very concerned about being allowed to return to work at the Hospital, and Cutting assured her that any paperwork would list Ragas as "recommended for rehire". Mrs. Cutting explained that usually, if an employee quits without giving two weeks notice, that employee is not recommended for re-hire.

Mrs. Cutting admitted that had Mrs. Ragas asked for a leave of absence without pay, her request would have been granted. Again, however, she testified that she believed Mrs. Ragas was intent upon resigning, and did not suggest or explore any other options with her. She told Mrs. Ragas to send her an address where she could be reached by mail, and she would forward termination and COBRA paperwork for her to complete. In the interim, she would complete the paperwork, and sign for Ragas.

Ms. Sanborn offered testimony concerning the process through which Mrs. Ragas would have been rehired, had there been any positions available. Attorney Reynolds objected, arguing that the issue was not whether or not Mrs. Ragas should have been rehired or would have been rehired, but whether or not she

had resigned in the first place. Attorney Maloney said the issue would have been moot had Ragas been rehired, and argued it was important for the Board to understand that Ragas had not been rehired simply because there were no available positions at the Hospital when a completed application from Ragas was received.

Whether or not the Hospital might have rehired Ragas has little bearing, in the Board's opinion, upon the instant appeal. The appeal turns solely upon the events of September 11, 1989. The Hospital alleges that Mrs. Ragas' called Patricia Cutting for the purpose of tendering her resignation and seeking assurance that her failure to give two weeks notice would not preclude her from applying for work at the Hospital at some time in the future. The appellant claims that when offered one telephone call from jail, she called Patricia Cutting to notify the Hospital that she would be unable to report to work that night. She further testified she wanted to let the Hospital administration know that she had been incarcerated, and that she was unsure of when she would be able to return to work.

Mrs. Ragas, testifying on her own behalf, stated that she was uncomfortable calling her immediate supervisor and therefore made her one call from jail to Mrs. Cutting instead. She testified that she was scheduled to work that night, and wanted the other employees on the shift to be forewarned of her impending absence, thus allowing them to find someone to work that shift while she was gone. When she had appeared before a judge just prior to her call to Cutting, Mrs. Ragas apparently believed she would be allowed to challenge the legality of her eviction. Instead she discovered that the court did not intend to review her case on the merits, but only establish bail and set a date for hearing. She then told the judge that if he believed she had broken the law, she should not be released but should be put in jail.

Mrs. Ragas said she believed that morally, she had to take a stand. She believed someone had to make the system aware of the wrong being done in evicting her. Although she did not know when she could be released from jail, she still chose not to accept the offer of release on personal recognizance until her case could be heard.

Mr. Reynolds asked that the Board find Mrs. Ragas suffered from an acute depressive psychological disability at the time of her incarceration. He asked that the Board order her placed on sick leave for the period of her incarceration, returning her to work with full back pay and benefits.

The Board is hesitant, in the absence of qualified expert testimony, to make a finding that at the time of her eviction and incarceration, Mrs. Ragas was suffering from acute depressive psychosis and was therefore disabled. The Board is, however, appreciative of the level of stress which Mrs. Ragas' situation had probably caused.

Based upon the evidence and testimony received, the Board did not find that Mrs. Ragas offered her resignation, or ever intended to offer her resignation by virtue of her call to Patricia Cutting. The Board was surprised, given Mrs. Ragas' work record, that Mrs. Cutting did not explore any alternatives to termination with the appellant. The Hospital's Motion to Dismiss is denied accordingly.

Mrs. Ragas is to be reinstated with no loss in seniority. While the Board declines to find that Appellant was "disabled", the Board does find that the Hospital erred in failing to provide her alternatives to termination, given her work record and the obviously difficult and stressful circumstances surrounding her absence from work. Given the above, the Board voted to order that the Hospital allow Mrs. Ragas to use any and all accrued leave to cover the period of her absence. Appellant should first be placed on sick leave, and subsequently should be allowed to utilize any other leave which she would have accumulated during that sick leave had she not been terminated from service. Any periods of time for which there is no accumulated leave shall be considered authorized leave without pay. Finally, there should be no disruption in provision of medical benefits to which the appellant would normally have been entitled.

The Board further believes that Appellant would benefit from continued psychological counselling, and hereby directs Appellant to participate in an appropriate treatment program which shall include, but not be limited to stress management.

THE PERSONNEL APPEALS BOARD

  
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Mark J. Bennett, Acting Chairman

  
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Robert J. Johnson

  
\_\_\_\_\_  
Lisa A. Rule

cc: Michael C. Reynolds, SEA General Counsel  
Barbara Maloney, NHH Staff Attorney  
Sharon Sanborn, NHH Director of Human Resources  
Virginia A. Vogel, Director of Personnel  
David S. Peck, Assistant Attorney General

# State of New Hampshire



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APPEAL OF LENA RAGAS  
Docket #89-T-27

Ruling on Motion to Continue

January 25, 1990

The Personnel Appeals Board (McNicholas, Cushman and Bennett), at their meeting of Wednesday, January 24, 1989, voted to grant New Hampshire Hospital's Motion to Continue the above captioned appeal which had been scheduled for a hearing on the merits February 28, 1990 at 1:00 p.m., January 31, 1990.

The Board, in considering this Motion, noted that on January 18, 1990, Appellant had filed a Motion to Continue or for Alternative Relief, which was subsequently withdrawn.

The parties will be notified of scheduling as the Board's docket permits. Further motions to continue will only be considered for exceptional circumstances.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE  
Executive Secretary  
N.H. Personnel Appeals Board

cc: Michael C. Reynolds, General Counsel  
State Employees' Association

Barbara Maloney, Staff Attorney  
New Hampshire Hospital

Virginia A. Vogel  
Director of Personnel

David S. Peck, Esq.  
Assistant Attorney General