

State of New Hampshire



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

APPEAL OF NANCY RAMSDELL

Docket #2004-T-004

Department of Transportation

March 30, 2004

3 A quorum of the New Hampshire Personnel Appeals Board (Wood and Urban) met on Wednesday, March 17, 2004, under the authority of RSA 541-A:31 and Per-A 206.03 of the Code of Administrative Rules, to convene a mandatory pre-hearing conference in the above-titled appeal. At that meeting, the appellant was provided an opportunity to show cause why her appeal should not be dismissed for her failure to appear as scheduled for an earlier pre-hearing conference convened on November 21, 2003. Ms. Ramsdell appeared *pro se*. Assistant Attorney General Margaret Fulton appeared on behalf of the Department of Transportation.

The Board had met as scheduled on November 21, 2003. When the appellant failed to appear, the Board voted to dismiss the appeal for lack of prosecution. It so advised Ms. Fulton, who was present at the time. Before a written order was issued by the Board dismissing the appeal, the appellant contacted the Board by telephone and by email, advising that she had accidentally marked the date of the pre-hearing conference on her calendar as November 24, 2003. In her email message, she admitted that she had made an error, apologized for the inconvenience, and asked that she be given an opportunity to have her appeal heard.

The Board's staff responded by email that same day, informing Ms. Ramsdell that the matter had been dismissed for lack of prosecution. Ms. Ramsdell was informed of her right to file a Motion for Reconsideration and cautioned, "...whenever you communicate with the Board on any matter pending before the Board, it is your obligation to ensure that copies of all documents and communications are served simultaneously on the other party to the appeal. In this case, the Department is represented by Attorney Margaret Fulton of the NH Department of Justice, 33 Capitol Street, Concord, NH." The Board's message was copied to Ms. Fulton. Relevant portions of the Board's procedural rules concerning *ex parte* communication were reproduced and forwarded with the Board's reply.

At the March 17, 2004 pre-hearing conference, Ms. Ramsdell argued that her failure to appear at the first pre-hearing conference had been an oversight. She said she had taken what she believed to be appropriate steps to correct her error and argued that she should be entitled to present her appeal.

Ms. Fulton argued that the appellant had not shown good cause why the Board should not affirm its decision to dismiss the appeal for lack of prosecution. Ms. Fulton argued that the appellant never notified the department when her appeal was originally filed. She argued that after failing to appear at the mandatory pre-hearing conference on November 21, the appellant again communicated with the Board about reconsidering its decision without providing notice to the Department. Ms. Fulton argued that the appellant continued to have *ex parte* communication with the Board's staff, despite continuing reminders to Ms. Ramsdell by the Board's staff of her obligations regarding service of documents on other parties to the appeal. Ms. Fulton argued that Ms. Fulton's failure to communicate with the department demonstrated bad faith, noting that the Department would have been unaware of the appellant's email messages if copies had not been forwarded to Ms. Fulton in each instance by the Board's Executive Secretary. Ms. Fulton requested that the Board dismiss the appeal.

After considering the parties' arguments, the members of the Board present for the hearing voted unanimously to DISMISS the appeal, finding that Ms. Ramsdell's communication violated the Board's rules and the appellant failed to show good cause for her original failure to appear at the mandatory pre-hearing conference.

THE PERSONNEL APPEALS BOARD

/s/ _____
Patrick H. Wood, Chairman

/s/ _____
Anthony B. Urban, Commissioner

cc: Sara J. Willingham, Acting Director, Division of Personnel
Nancy Rainsdell, 33 Barefoot Place, Gilford, NH 03249
Asst. AG Margaret Fulton, Dept. of Justice, 33 Capitol St., Concord, NH 03301