

# State of New Hampshire



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

**Appeal of Erica Richard, Docket #2009-T-009**  
**Department of Health & Human Services, (DCYF)**  
**Decision and Order of the Board Confirming Dismissal of Appeal**  
**March 2, 2009**

On January 7, 2009, the NH Personnel Appeals Board issued a Notice of Scheduling, informing Ms. Richard that she was scheduled to appear for a mandatory prehearing conference on February 4, 2009. That notice advised her that, "Motions for postponement or special scheduling will only be considered for exceptional circumstances and must be made in writing to the Personnel Appeals Board within ten (10) calendar days of the date of this notice to be considered. Except in the event of a *bona fide* emergency, untimely requests will be denied. Further, except for good cause shown, failure of an appellant to appear as scheduled may result in dismissal of the appeal for lack of prosecution," Ms. Richard did not appear for the prehearing conference as scheduled,

On February 6, 2009, the Board issued an order allowing Ms. Richard ten days in which to submit a written response showing good cause why her appeal should not be dismissed for lack of prosecution. Because of the holiday on February 16, 2009, Ms. Richard was given until February 17, 2009 to respond. Ms. Richard was instructed to provide specific information explaining her failure to appear as scheduled. She also was directed to send a copy of her response to Attorney Jones, the agency's representative of record.

In her response (dated February 16, 2009) to the Board's February 6, 2009 Order:

1. Ms. Richard explained that she left an after-hours voicemail message the night before her scheduled prehearing conference because she had received no response from the Board to a letter she said she mailed to the Board on January 26, 2009, explaining that she would be unable to appear. She indicated that she left the message at a phone number other than the one appearing on the Board's Scheduling Notice because she had only a "general mailbox" for the Appeals Board, she "felt more comfortable leaving a message for [Robin Hoyt] the person [she] had previously been in contact with."
  - a. The Board never received a copy of the letter Ms. Richard reports mailing on January 26, 2009.
  - b. Ms. Richard provided no copy of the letter in her response.

2. Ms. Richard provided documentation that she was enrolled as a full-time student at Hesser College effective January 12, 2009. She also provided payroll records showing that she worked at Unifil 8 ½ hours on Wednesday, February 4, 2009, but offered no evidence of an emergency to preclude timely notice to the Board.
3. Ms. Richard stated that she mailed a letter to the Board on January 26, 2009 explaining why she could not attend the prehearing conference. She wrote that she never sought Attorney Jones' agreement to a continuance as she had never been instructed to do so. She also stated that Attorney Jones never contacted her. Ms. Richard wrote that she "was still having a hard time obtaining [Attorney Jones'] contact information" and asked the Board to send that information to her.
  - a. The Notice of Scheduling sent to Ms. Richard on January 7, 2009, indicates that all prehearing activities will be conducted in accordance with the NH Code of Administrative Rules (Rules of the Personnel Appeals Board). Although there were no explicit instructions to Ms. Richard regarding the appeals process, she had constructive notice that there were rules that would apply to both parties. Ms. Richard made no attempt between January 7, 2009, and February 3, 2009, to contact the Board to obtain more information or to apprise the Board of her situation, other than by the letter she says she sent dated January 26, 2009, which, as noted above, the Board did not receive nor did Ms. Richard enclose a copy with her response dated February 16, 2009.
  - b. Attorney Jones' mailing address appears at the end of the Board's February 6, 2009 Order; it also appears that Ms. Richard did not send a copy of her response to Attorney Jones.

Taking the above facts into consideration, the Board found that Ms. Richard failed to provide appropriate or timely notice that she would not be appearing before the Board on February 4, 2009, as directed. Ms. Richard failed to submit any persuasive evidence of any attempt to contact the Board prior to the evening of February 3, 2009, the night before her scheduled prehearing conference. The Board also found Ms. Richard's rationale for failing to provide a copy of her response to Attorney Jones unpersuasive, as Attorney Jones' mailing address appeared at the end of the Board's February 6, 2009 order, and Ms. Richard made no attempt by mail or phone or email to obtain information from the Board's staff.

For all the reasons set forth above, the Board voted to affirm its decision, dismissing Ms. Richard's appeal, effective the date of this order.

FOR THE PERSONNEL APPEALS BOARD



Mary Ann Steele, Executive Secretary to the NH Personnel Appeals Board

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Erica Richard, 335 US Hwy 4, Unit 1, Barrington, NH 03825  
Attorney Jennifer Jones, Dept. of Health and Human Services, 129 Pleasant St., Concord, NH 03301

State of New Hampshire



**PERSONNEL APPEALS BOARD**

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

Appeal of Erica Richard, Docket #2009-T-009  
Department of Health & Human Services, (DCYF)

. February 6,2009

The New Hampshire Personnel Appeals Board met in public session *en banc* on Wednesday, February 4,2009, under the authority of RSA 21-I:58, RSA 541-A:31 and Chapters Per-A 100-200 of the NH Code of Administrative Rules to conduct mandatory prehearing conferences in several pending appeals. Among those scheduled was the appeal of Erica Richard, a former probationary employee who was appealing her termination from employment as an Executive Secretary for failure to meet work standards prior to completion of her probationary period for repeated unscheduled absences and unauthorized absences from work. Attorney Jennifer Jones appeared on behalf of the State. Neither Ms. Richard nor anyone representing her appeared for the scheduled prehearing conference.

The Board asked Attorney Jones if she had had any contact with Ms. Richard. Attorney Jones indicated that she had not. The Board's Executive Secretary confirmed that appropriate written notice had been provided to Ms. Richard, by first class mail, that the mail had not been returned, and there had been no other form of contact with Ms. Richard. The Board then voted unanimously to dismiss the appeal in 10 days unless Ms. Richard could show good cause why her appeal should not be dismissed for lack of prosecution based on her failure to appear.

After the prehearing conferences concluded, but before the Board's meeting adjourned, Robin Hoyt of the Division of Personnel advised the Board that she had received a voice mail message from Ms. Richard that was time stamped as being received at 6:25 p.m. on Tuesday, February 3,2009. Except for the voicemail message that Ms. Richard left after the close of business the night before the scheduled prehearing conference, there is no evidence of any other attempt by Ms. Richard to contact the Board.

The transcript of Ms. Richard's message, which was forwarded via email to Attorney Jones on the afternoon of February 4, 2009, is as follows:

"Hi, Robin. This is Erica Richard. I had a pretrial hearing scheduled for Wednesday at 9:00 a.m. and a few weeks ago I sent in paperwork either asking that to be rescheduled or if the court, um, I'm not sure, the people would take the paperwork that they had, you know, that I already submitted and go with that, Reason being that I started full time at night and I'm also working full time during the day in a temp job right now, and it's only a couple weeks, but obviously being unemployed since September, I really needed to take this temp job and I can't miss any work. So I just ask if I could have that rescheduled, you know, if they could just look at the paperwork that I previously submitted and go from there, but I haven't heard from anybody so I just didn't want to let it go and I didn't know who else to call. But my phone number is [redacted] if you or somebody else could get a hold of me in regards to this I'd appreciate it. Thank you very much. Bye-bye."

In light of the content of Ms. Richard's voicemail, the Board concluded that that Ms. Richard had received the Board's January 7, 2009 notice of scheduling. That notice clearly advised Ms. Richard that all prehearing activities would be conducted in accordance with Chapter Per-A 100-200 of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board), that motions for postponement or special scheduling would only be considered for exceptional circumstances, and that such requests must be made in writing to the Personnel Appeals Board within ten (10) calendar days of the date of the notice to be considered: Finally, the notice explained that except in the event of a bona fide emergency, untimely requests would be denied, and that except for good cause shown, failure of an appellant to appear as scheduled could result in dismissal of the appeal for lack of prosecution.

In accordance with Per-A 206.12 of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board)

- (a) Any party may request that the board postpone or reschedule a hearing, or specially schedule the hearing for a different date, time, duration or place, or in a different manner, than indicated in the board's notice.
- (b) A party requesting postponement or rescheduling of a hearing shall:
  - (1) Submit such request in writing to the board no later than 10 days from the date of the notice of hearing; and
  - (2) Prior to submission of the request to the board, attempt to ascertain whether the other party agrees or disagrees with the request to reschedule or postpone the hearing.
- (c) A request to postpone or reschedule a hearing shall include the following:
  - (1) The reason or reasons that a postponement or rescheduling is believed necessary; and
  - (2) A statement whether the other party either agrees or disagrees with the request to reschedule or postpone the hearing, if known.
- (d) The board shall not grant a request to postpone or reschedule a hearing unless it concludes that to do so is necessary to address:
  - (1) The unavailability of a party, material witness or his or her representative that is beyond the person's control;
  - (2) The possibility that a hearing will not be necessary because the parties have reached a settlement; or
  - (3) Any circumstances that demonstrate that a postponement or rescheduling would assist in resolving the case fairly,

After reviewing the relevant procedural rules and after considering the content of Ms. Richard's voicemail, the Board noted that it received nothing in writing from Ms. Richard requesting a reschedule of the prehearing conference, nor is there any indication that Ms. Richard communicated in any fashion with Attorney Jones to request her agreement to postpone or reschedule the prehearing conference. The Board decided to allow Ms. Richard 10 calendar days from the date of this order in which to submit a written response to the Board and to Attorney Jones showing good cause why her appeal should not be dismissed for lack of prosecution as ordered at the conclusion of the scheduled prehearing conference. Ms. Richard's response must be received no later than the close of business on Tuesday, February 17, 2009. At a minimum, the response must address the following:

1. Ms. Richard should explain why she left voicemail at a telephone number other than the one provided on the January 7<sup>th</sup> notice of scheduling that she received from the Board.
2. Ms. Richard must detail attempts that she made to contact Attorney Jones in order to obtain her agreement to reschedule the prehearing conference.
3. Ms. Richard must provide a full explanation for her missing the prehearing conference, and some form of proof to support her explanation.

The Board will review Ms. Richard's response and explanation and will then decide whether to allow her appeal to continue or whether to leave the order of dismissal in place.

FOR THE PERSONNEL APPEALS BOARD



Mary Ann Steele, SPHR

Executive Secretary to the NH Personnel Appeals Board

cc: Erica Richard, 335 US Hwy 4, Unit 1, Barrington, NH 03825  
Karen D. Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Attorney Jennifer Jones, Department of Health and Human Services, 129 Pleasant St., Concord NH 03301