WPPID909

State of New Hampshire

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

APPEAL OF TIM RICKER
Docket #91-T-18
Response to Appellant's Request for Reconsideration

March 19, 1992

By letter dated November 22, 1991, received by the Board November 26, 1991, Tim Ricker filed a request for rehearing of his termination appeal. The Board had issued an oral order dismissing the appeal at the conclusion of Mr. Ricker's November 13, 1991 hearing. A written decision was issued by the Board on January 13, 1992.

Having considered the appellant's request for rehearing in conjunction with the record in this matter, the Board unanimously voted to deny the request for rehearing. The Board voted to affirm its January 13, 1992 decision that New Hampshire Hospital had offered sufficient evidence of the appellant's failure to meet the work standard to warrant his discharge from employment, and that the appellant had failed to offer proof that his discharge was either arbitrary, illegal, capricious or made in bad faith.

THE PERSONNEL APPEALS BOARD

Patrick J. McNicholas, Chairman

Robert J. Johnson

Karen S. McGinley

cc: Virginia A. Vogel, Director of Personnel
Barbara Maloney, Director of Legal Services, New Hampshire Hospital
Tim Ricker, 86 Fisherville Rd., Apt. 3, Penacook, NH 03301

State of New Hampshire

WPPID856

PERSONNEL APPEALS BOARD
State House Annex
Concord, New Hampshire 03301
Telephone (603) **271-3261**

APPEAL OF TIM RICKER
Docket #91-T-18

New Hampshire Hospital

January 13, 1992

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and McGinley) met Wednesday, November 13, 1991, to hear the appeal of Tim Ricker, a former employee of New Hampshire Hospital who was discharged from his employment prior to completion of his probationary period. New Hampshire Hospital was represented by Barbara Maloney, Director of Legal Services. Mr. Ricker appeared without representation.

Mr. Ricker was discharged from employment at New Hampshire Hospital by letter dated April 11, 1991. His separation from service occurred effective April 18, 1991.

In his letter of appeal dated April 29, 1991, Mr. Ricker argued that he was a handicapped employee who could have performed his duties satisfactorily if New Hampshire Hospital had made accommodations for his handicap.

Initially, New Hampshire Hospital had filed a Motion to Dismiss the instant appeal, arguing that Mr. Ricker had failed to provide adequate notice of his appeal to the Hospital pursuant to Per-A 206.02 (c) of the Rules of the Personnel Appeals Board. The Hospital also requested the Board dismiss the appeal in consideration of the appellant's failure to allege facts sufficient on their face to support an allegation that discharge was arbitrary, capricious, illegal, or made in bad faith. The appellant objected to the Motion, testifying that he had not been provided copies of the Board's procedural rules until several weeks after his termination from employment. He also argued that his failure to meet the work standard was a direct result of New Hampshire Hospital's failure to make reasonable accommodation for his handicap, and that his termination was therefore illegal.

The Board's own records indicate that following receipt of Mr. Ricker's appeal, he called the Board offices to see if his appeal was received. He was informed the appeal had arrived on April 30, 1991. The Board sent docket notices to all the parties on May 7, 1991. Mr. Ricker telephoned the Board's

office on May 9, 1991, requesting a copy of the Rules of the Personnel Appeals Board. The Rules were mailed to him by first class mail on May 10, 1991. The letter of transmittal read as follows:

> "Yesterday you called me to request a copy of the Rules of the Personnel Appeals Board. Those Rules are attached for your information and use.
>
> As I informed you, you can expect some delay in receiving notice of acceptance of your appeal and scheduling should the Board decide to hear your appeal. The delay is a result of the lengthy docket of appeals currently awaiting consideration.
>
> You indicated during your conversation with me that you intended to seek legal counsel to represent you in this matter. Please be advised that your attorney should notify New Hampshire Hospital of such representation at the earliest possible date. It will facilitate the exchange of any information which you or the hospital may require in further preparing your appeal."

Mr. Ricker telephoned again on May 20, 1991 to ask if the Rules had been forwarded, and again on June 13, 1991, claiming they had not been received. Another copy was mailed by certified mail, return receipt requested on June 14, 1991. The appellant signed for receipt of that correspondence on June 17, 1991.

The Board found that Mr. Ricker had received copies of the Board's procedural rules and had not complied with them. However, the Board also found that the appellant's failure to provide notice of his appeal to New Hampshire Hospital, particularly in light of his lack of representation, was not so grievous an error to warrant dismissal of his appeal.

Similarly, New Hampshire Hospital had requested and received from the Board a copy of Ricker's notice of appeal which alleged that New Hampshire Hospital's failure to accommodate his handicap precipitated his unsatisfactory performance and ultimate dismissal from employment. The Board was not persuaded that the procedural deficiencies in the appellant's notice of appeal would cause undue prejudice to the Hospital in its defense of the termination decision. Accordingly, the Board voted to deny New Hampshire Hospital's Motion to Dismiss and proceeded with a hearing on the merits of Mr. Ricker's appeal.

In consideration of the fact that Mr. Ricker was a probationary employee at the time of his discharge from employment, Mr. Ricker presented his evidence first pursuant to the provisions of Per-A 201.05 of the Rules of the Personnel Appeals Board:

(a) The probationary employee shall have the burden to produce evidence and prove facts sufficient for the Board to find a violation of the applicable standard.

(b) Accordingly, unless otherwise ordered by the Board, the probationary employee shall have the duty to proceed first; and the Board may dismiss any case at the close of the probationary employee's case where the employee has failed to establish sufficient credible facts to support his position.

At the conclusion of Mr. Ricker's presentation, New Hampshire Hospital made a Motion to Dismiss, arguing that Mr. Ricker had not offered evidence to support a conclusion that his termination was arbitrary, illegal, capricious, or made in bad faith. The Board held that motion in abeyance until taking the testimony or' David Bixby, immediately after which the Board granted the Hospital's Motion. The Board issued a verbal decision, dismissing the appeal. In so doing, in consideration of the evidence before it, the Board made the following findings of fact and rulings of law:

1. Mr. Ricker is visually impaired and is a recipient of Vocational Rehabilitative Services.

2. Mr. Ricker was employed as a Laborer assigned to the New Hampshire Hospital Laundry from June 29, 1990 through April 18, 1991.

3. Mr. Ricker was unable to demonstrate satisfactory performance of his job assignments during his initial 6 month probationary period and was evaluated as "below expectations" in virtually all categories in his probationary performance summary.

4. Mr. Ricker's probationary period was extended for 6 months to allow him time for his work to improve.

5. Mr. Ricker continued to have difficulty completing his assignments on time, and completing them in a satisfactory manner.

6. New Hampshire Hospital discharged Mr. Ricker prior to completion of his extended probationary period for failure to meet the work standard.

7. Mr. Ricker's job assignments were repetitive in nature, and could have been performed by him without any accommodation for his visual impairment.

8. Mr. Ricker did not suggest modification of the timer on the automatic clothes dryer prior to his discharge. The modification he suggested, placing a large paper dial behind the regular timer dial, was not necessary for him to be able to use the machine properly.

9. Mr. Ricker did not suggest modification of the towel folding machine prior to his discharge. The machine is equipped with highly visible guides for feeding towels directly into the center of the machine, and the modification suggested by Mr. Richer was not necessary for him to be able to use the machine properly.

10. Mr. Ricker's suggestion that New Hampshire Hospital should have been required to hire a assistant to help him perform his duties or a special foreman to supervise his work was not reasonable.

11. In appeals by probationary employees, the appellant bears the burden of proof. Mr. Ricker did not prove that his handicap prevented him from performing the bona fide occupational requirements of his position, or that any reasonable accommodation could have been made to allow him to meet the work standard.

Having considered all the evidence, the Board found that the appointing authority had offered sufficient evidence of the appellant's failure to meet the work standard. Further, the Board found that the appellant did not sustain his burden of proving that his discharge from employment was either arbitrary, illegal, capricious or made in bad faith. The Board voted unanimously to dismiss Mr. Ricker's appeal.

THE PERSONNEL APPEALS BOARD

Patrick J. McNicholas, Chairman

Robert J. Johnson

Karen S. McGinley

cc: Virginia A. Vogel, Director of Personnel
Sharon Sanborn, Director of Human Resources, New Hampshire Hospital
Barbara Maloney, Director of Legal Services, New Hampshire Hospital
Tim Ricker, 86 Fisherville Rd., Apt. 3, Penacook, NH 03301