

State of New Hampshire



PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
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APPEAL OF EUGENE SCHWARTZ, MD. (N.H. Division of Public Health Services)

Order of the Board

March 13, 1989

On Tuesday, November 22, 1988, the New Hampshire Personnel Appeals Board, consisting of Commissioners Brickett, Cushman and Platt, met to consider the appeal of Eugene Schwartz, M.D., a former employee of the New Hampshire Division of Public Health. For the following reasons, the Board voted unanimously to deny the appeal.

By letter dated August 3, 1988, Dr. Schwartz filed a request for a declaratory ruling. Dr. Schwartz alleges the following: until July 5, 1988, he was a permanent employee at the N.H. Division of Public Health Services (Division) when he was forced to resign. Dr. Schwartz had previously filed an appeal with the Assistant Director of the Division. In that appeal Dr. Schwartz alleged that he had been harassed and retaliated against because he had been outspoken in his concern for the health and safety of New Hampshire citizens. After Dr. Schwartz resigned on July 5, 1988, the Division refused to further hear his appeal.

Dr. Schwartz, pursuant to N.H. Code Admin. Rules Per-A 102.02, seeks a declaratory ruling that he may continue his appeal, and an order requiring the Division to uphold or deny his appeal on the merits.

The Division has objected to this request, and moved that this matter be dismissed.

The issue before the Board does not concern Dr. Schwartz's alleged forced resignation. Rather, it is apparent that the appeal before the Division sought to address alleged harassment and retaliation, and to effect certain changes in his working conditions. Once Dr. Schwartz resigned, however, the Division no longer could provide him any relief even if he prevailed in his appeal. Thus, Dr. Schwartz's appeal became moot.

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Based upon the facts alleged, Dr. Schwartz is not entitled to an order requiring the Division to uphold or deny his appeal on the merits. Based upon the facts alleged, the appeal was properly dismissed by the Division as moot.¹

Accordingly, the request for a declaratory ruling is denied, and the motion to dismiss is granted.

¹ The Board does not address the question of whether Dr. Schwartz was entitled to appeal to this Board from the Division's order denying his appeal on the grounds of mootness.

FOR THE PERSONNEL APPEALS BOARD



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Dr. William Wallace, Director
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