

State of New Hampshire



PERSONNEL APPEALS BOARD

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Appeal of Karen Stewart – Docket #2011-T-006

New Hampshire Employment Security

February 10, 2011

The New Hampshire Personnel Appeals Board (Bonafide, Johnson and Casey) met in public session on Wednesday, January 19, 2011, under the authority of RSA 541-A:31, RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to conduct a mandatory prehearing conference in the above-titled appeal. The Board also heard oral argument on the State's October 26, 2010, Motion to Dismiss the instant appeal, and the Appellant's October 28, 2010, Rebuttal objecting to that motion. Ms. Stewart appeared *pro se*. Attorney Richard Lavers appeared on behalf of the State.

Attorney Lavers argued that Ms. Stewart's appeal should be dismissed as moot. The Board finds that on Friday, September 30, 2010, Ms. Stewart was dismissed from her position as a Certifying Officer for violations of posted administrative rules; however, on Monday, October 4, 2010, the Appellant was notified by telephone that she was being reinstated and restored to her position. It was undisputed that even before Ms. Stewart had filed her appeal, she was returned to the same job with the same pay, benefits and seniority, and that she was fully compensated without any loss of leave for the two days of work that the Appellant missed between the date of termination and the date she actually returned to work. Attorney Lavers argued that in accordance with the provisions of RSA 21-I:58, the only remedy that the Board could provide in the case of dismissal would be an order requiring the agency to reinstate the employee without loss of seniority, status or pay. He argued that because the agency had already provided any relief that the Board might otherwise order, the Board must dismiss the appeal as moot.

Ms. Stewart argued that she filed a timely appeal within fifteen calendar days of the date of termination. Ms. Stewart argued that she was entitled to a hearing, even though she had been reinstated and had suffered no monetary damages, because she had been wrongfully terminated and the termination had caused her and her family pain, suffering, stress and embarrassment. She argued that the Board should allow her an "opportunity to provide information that the termination was based on organized retaliation, harassment, bad faith, discrimination and nepotism." (Appellant's Rebuttal, page 1.) Ms. Stewart also argued that dates and details outlined in the agency's correspondence were inaccurate, and she alleged that she was still being investigated and disciplined for the same series of events that led to her termination on September 30, 2010. Ms. Stewart argued that the appeal was not moot, as she was entitled to ask the Board to order the removal of all disciplinary documents from her file, including a letter of warning that was issued to her on November 19, 2010. Ms. Stewart advised the Board that she had received another written warning on January 11, 2011, and that she intended to appeal that warning.

In her "Proposed Prehearing Order, Ms. Stewart asked, "...to be reinstated on the grounds of Bad Faith and all disciplinary actions to be removed from [her] personnel file from the first dated email to Dianne 6/15/2010 to present."

Relevant law and administrative rules:

According to Per-A 206.05 (g) of the Board's rules:

The Board shall enter an order summarily dismissing a matter if, at any time, with or without the motion of a party, it concludes that:

- (1) The appeal was not timely filed; or
- (2) The Board does not have jurisdiction over the appeal or matters addressed therein.

RSA 21-I:58, I, states:

Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal. The appeal shall be heard in accordance with the procedures provided for adjudicative proceedings in RSA 541-A. If the personnel appeals board finds that the action complained of was taken by the appointing authority for any reason related to politics, religion, age, sex, race, color, ethnic background, marital status, or disabling condition, or on account of the person's sexual orientation, or was taken in violation of a statute or of rules adopted by the director, the employee shall be reinstated to the employee's former position or a position of like seniority, status, and pay. The employee shall be reinstated without loss of pay, provided that the sum shall be equal to the salary loss suffered during the period of denied compensation less any amount of compensation earned or benefits received from any other source during the period. "Any other source" shall not include compensation earned from continued casual employment during the period if the employee held the position of casual employment prior to the period, except to the extent that the number of hours worked in such casual employment increases during the period. In all cases, the personnel appeals board may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just.

The parties agree that Ms. Stewart was dismissed on September 30, 2010, and that she was reinstated without loss of compensation, seniority, status or pay. Although Ms. Stewart may believe she is entitled to a public forum in which to air her complaints and concerns with respect to the agency's handling of that situation or her past and current interaction with co-workers, there is no application of the personnel rules within the Board's jurisdiction that would support her request for a hearing.

Ms. Stewart also asked the Board to order that any documentation of disciplinary action appearing in her file on or after June 15, 2010, be removed from the file. In the absence of a timely appeal, the Board is without jurisdiction to consider any other

disciplinary action that might be documented in Ms. Stewart's personnel record. If Ms. Stewart chooses to appeal the January 11, 2011, written warning that she says was issued to her, an appeal must be filed with the Board no later than January 26, 2011, in order to be timely.

For the reasons set forth above, and as the State has already voluntarily provided Ms. Stewart with the only remedy the Board would be able to provide under the circumstances of this case, the Board voted unanimously do deny Ms. Stewart's request for a hearing, and to GRANT New Hampshire Employment Security's Motion to Dismiss her October 12, 2010, appeal as moot.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD


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