State of New Hampshire

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

APPEAL OF LISA SZANTO
Docket #91-T-17
Response to Appellant's Motion for Reconsideration

January 13, 1992

By letter dated December 16, 1991, SEA General Counsel Michael Reynolds filed a Motion for Reconsideration of the Board's November 25, 1991 decision in the above-captioned appeal. The Board (Bennett, Rule and McGinley) met Wednesday, January 8, 1992, to consider the Motion and the State's objection in conjunction with its November 25, 1991 Decision denying Ms. Szanto's appeal.

Those grounds offered by the appellant in support of her Motion for Reconsideration, and the Board's review of same are summarized as follows:

1. The Board illegally and unfairly aided the appointing authority in determining what constitutes an allowable basis for discharge.

RSA 21-I:46 1 provides that:

> "The personnel appeals board shall hear and decide appeals as provided by RSA 21-I:57 and 21-I:58 and appeals of decisions arising out of application of the rules adopted by the director of personnel..."

The Board acted within its statutory authority in determining that willful misrepresentation of information on an application for employment/promotion is an offense for which an employee may be discharged under the optional discharge provisions of Per 308.03.

2. The language on the application for employment only contemplates termination from a position when the employee has lied on the application for that particular position.

That argument was raised, considered, and addressed by the Board in its original decision in this matter.

3. The Board "put an unreasonable spin" on testimony which the Board found to contradict Ms. Szanto's testimony.

The Board considered all the evidence and testimony, finding the State's case to be more credible than the appellant's. The Board's findings are not inherently "unreasonable" simply because the appellant disagrees with the Board's assessment of the credibility of the witnesses and the weight of the evidence.

4. In order to find that Ms. Szanto's misrepresentations were "willful", the Board would first have had to "...study Ms. Szanto's state of mind" and compare her understanding of words such as "supervise" and "schematics" with the definition of those words as understood by Ms. Fitts and the other "hearsay 'witnesses'".

The Board did not rely solely on Ms. Fitts' testimony, or evidence offered by "hearsay witnesses". After comparing the various applications for employment completed by Ms. Szanto, the Board found the discrepancies in her own description of her experience and supervisory responsibilities were too great to support a finding that any misrepresentations were accidental, that they constituted "highlighting" or "puffery" as she alleged, or that they were anything other than willful misrepresentations of fact designed to improve her chances at promotion.

5. Because the agency did not meet with Ms. Szanto prior to termination and allow her to give an explanation for the discrepancies in the application, the Board should have considered the termination to have been in bad faith.

Per 308.03(4)i of the Rules of the Division of Personnel states:

> "Whenever possible, before any type of disciplinary action appealable to the personnel [appeals board] is taken by an appointing authority or within 10 days from the date of the action, the employee shall be entitled, with representation if requested, to a hearing (an informal meeting) between an employee and/or his chosen representative for the purpose of attempting to adjust the problem before said appointing authority." (Emphasis added)

There was no evidence that Ms. Szanto and/or her representative requested a meeting with the appointing authority within ten days of her termination. The only request for a meeting by Ms. Szanto or her representative involved the original denial of certification which eventually prompted the investigation into her employment history by the appointing authority.

6. The Board failed to look at each and every alleged misrepresentation and issue extensive findings after such investigation.

The Board need only find that Ms. Szanto "...intentionally made false statement of material fact in [her] application". Neither the appointing authority nor the Board is under any obligation to investigate each and every suspected misrepresentation to conclude that she intentionally made false statement of material fact.

7. The Board "appears to have validated the appointing authority's misinterpretation of "Per 308.03 (2).

The Board did not find that there was "no way the employee can correct the problem". The Board's November 25, 1991 decision specifically states the following:

> "The Board found the extent of misrepresentation of material facts to be sufficient to warrant discharge without prior warning."

In consideration of the foregoing, the Board unanimously to deny the appellant's Motion for Reconsideration and to affirm its decision of November 25, 1991, denying Ms Szanto's appeal.

THE PERSONNEL APPEALS BOARD

Mark J. Bennett

Lisa A. Rule

Karen S. McGinley

cc: Virginia A. Vogel, Director of Personnel
John Dabuliewicz, Esq., Assistant Commissioner, Environmental Services
Michael C. Reynolds, SEA General Counsel

State of New Hampshire

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APPEAL OF LISA SZANTO
Docket #91-T-17

Department of Environmental Services

November 25, 1991

The New Hampshire Personnel Appeals Board (Bennett, Rule and McGinley) met Wednesday, October 23, 1991, to hear the appeal of Lisa Szanto, a former employee of the Department of Environmental Services who was discharged from employment effective April 10, 1991, for allegedly falsifying information about her prior work experience on an application for promotion to Air Pollution Technician I. Ms. Szanto was represented at the hearing by SEA General Counsel Michael C. Reynolds. Attorney John Dabuliewicz, Assistant Commissioner of Environmental Services, appeared on behalf of the Department of Environmental Services.

Ms. Szanto's notice of termination, dated April 10, 1991, signed by Commissioner Robert Varney, stated in part:

> "The reason for your termination is your willful misrepresentation of previous experience on your application for promotion to Air Pollution Technician I, dated January 31, 1991. Specifically, an investigation found that your claims of duties, responsibilities and supervisor authority were grossly inaccurate for four of the jobs listed...
>
> "You signed this application in which you certified that there were no willful misrepresentations made, and that should an investigation disclose such misrepresentation, you could be terminated from your employment."

In his original pleadings on Ms. Szanto's behalf, Attorney Reynolds argued that even if the Board were to find the information supplied by Ms. Szanto on her application to be a willful misrepresentation of material facts: "...the purpose of the affirmation on the application form is not to provide a basis for termination of an employee from a position she is already employed in. It is to allow an employer to terminate an employee from a position for which the employee has provided false information".

Attorney Reynolds argued that Ms. Szanto had not willfully misrepresented any material facts about her prior work experience. He contended that the appellant had "highlighted" certain information about her background to improve her chances at promotion. He contended that even if the Board were to find that the appellant supplied inaccurate information about her prior work experience, at worst the inaccuracies must be deemed "puffery" rather than a willful attempt to deceive.

After consideration of the testimony and evidence received, the Board voted to deny Ms. Szanto's appeal, finding that she had willfully misrepresented material facts on her application for promotion. The Board found that such willful misrepresentation, whether or not it related to her application for the position occupied by the employee at the time of discovery, constitutes sufficient justification for termination under the optional discharge provisions of the Rules of the Division of Personnel, Per 308.03(a)(2). The Board voted to grant the Appointing Authority's request for findings of fact and rulings of law, 1 - 9, to the extent that they are consistent with the findings below. In so ruling, however, the Board notes that it received testimony concerning the April 1, 1991 letter from Virginia Vogel to Thomas Hardiman. However, the letter itself, Exhibit DE13, was never admitted into the record.

On January 31, 1991, Ms. Szanto applied for promotion to the position of Air Pollution Technician I. Her application was rejected by John Roller, Human Resource Administrator for the Department of Environmental Services when Mr. Roller concluded that Ms. Szanto's work experience did not meet the minimum qualifications for the position in question. Ms. Szanto called Mr. Roller about the application, and was informed that she did not have experience in the repair of mechanical and/or electrical equipment required by the specification for Air Pollution Technician. Ms. Szanto continued to disagree with the denial of certification, and the matter was referred to Jo An Bunten of the Division of Personnel. Ms. Bunten confirmed the denial of certification.

Subsequently, Mr. Roller was contacted by Tom Hardiman, SEA Director of Field Operations, who suggested that Ms. Szanto's experience should be deemed sufficient to certify her for the promotional vacancy. Mr. Roller testified that he had originally initiated an investigation into the appellant's work experience to determine whether work he had initially considered "assembly" duties might actually be "repair" duties as required for certification for Air Pollution Technician I. He indicated that at the outset he had only intended to call those employers where he believed he might have misinterpreted what

the appellant's actual duties had been. He testified that during his first conversation with a former employer, however, the information received by him was so different from that described by the appellant that he decided to call each of the former employers.

Mr. Roller testified that after having spoken to representatives of the State Division of Water Resources, Transcam Industries, L&S Electric, Sprague Electric, Cilley's Auto Body, and Grappone Toyota, he determined that the appellant had falsified her application by willfully misrepresenting her work experience. At the request of the appointing authority, Mr. Roller forwarded the information to the Director of Personnel for her review.

Personnel Director Vogel testified that she had been contacted by both the State Employees' Association and the Department of Environmental Services concerning Ms. Szanto's denial of certification for the position of Air Pollution Technician I. Ms. Vogel testified that in both oral and written communications with Mr. Hardiman, she had advised him that the appellant's stated education and experience did not meet the minimum qualifications for the position in question. She also testified that she'd advised Mr. Hardiman that in her opinion the information contained on Ms. Szanto's application constituted a willful misrepresentation of material facts and could, at the discretion of the appointing authority, provide grounds for discharge. That same interpretation of the Rules was relayed to the Department of Environmental Services in a letter from the Director to John Roller dated April 4, 1991. Ms. Szanto was discharged by letter dated April 10, 1991.

In support of her request for reinstatement, Ms. Szanto testified that she had made no willful misrepresentations in any of her applications for employment. Ms. Szanto offered a number of explanations for the discrepancies between the information appearing on her applications and the information supplied by her previous employers. The Board did not find those explanations persuasive, however. For example, Ms. Szanto described her experience at Sprague Electric as the following: "Three years experience testing and supervising the operation of testing transistors on Computer test system. Set tollerances [sic] on testing equipment. Created new programs utilizing schematics. Loaded program onto test system and ran products. Periodically checked with the system operators to see if the product was running properly and to make sure that they were monitoring' the product properly to meet the specified tollerances [sic]. Worked with engineering staff to make any necessary changes if required. I also final tested products and packed for shipping." She indicated that she supervised 6 employees.

Peggy Helms, Ms. Szanto's former supervisor at Sprague Electric, testified that except for a 3-month period during which Ms. Szanto had worked as a Check Inspector A on the transistor side of the plant, she had worked on the second shift assembling tantalum capacitors. Although Ms. Helms could offer no information concerning what duties Ms. Szanto may have performed as a Check Inspector A, she testified that during the appellant's employment as a Tantalum Assembly Operator, she had no supervisory responsibilities. Ms. Helms also testified there was no engineering staff on second shift with whom the appellant might have worked or had any contact during her employment as a Tantalum Assembly Operator.

Ms. Szanto explained that she could have been clearer in describing her duties at Sprague Electric, but argued that no one had ever asked her what portion of her three years of employment there had involved which duties. She testified that she was responsible during her three months as a Check Inspector A for "testing and supervising the operation of testing transistors on computer test system" by checking the other operators' machines to make sure they were running properly. She indicated that when a problem occurred, she would inform an engineer who would then make a correction. She testified that her claim to having "created new programs utilizing schematics" involved the process of keying in voltage changes to the computer program, and that she keyed in those changes "...several times".

Diane Fitts, Human Resource Administrator for Sprague Electric testified that she had never directly supervised the appellant, but was familiar with the work she would have performed having been employed as production and assembly staff before transferring into the Human Resource Department at Sprague. She testified that all employees serve a three-month probationary period, and that a probationary Check Inspector A would not be assigned any supervisory duties.

The Department of Environmental Services also offered into evidence Employment Verification Authorizations signed by the appellant and completed by her former employers or their representatives. The forms returned to Environmental Services and entered as Exhibits 8, 9, and 10 from Cilley's Auto Body, Transcam Industries and Grappone Toyota, substantiated the Department of Environmental Services' determination that the appellant had intentionally misrepresented her prior work experience in order to qualify for promotion.

The appellant argued that during her employment at Transcam Industries, there was little or no supervision, and that her employers probably were not aware of what work she was actually performing. With regard to her description of work performed for Cilley's Auto Body, she insisted that she had worked a full

forty-hour week, but had received no compensation because she was involved in a personal relationship with the owner. She suggested that the owner had not actually completed the employment verification requested by the Department of Environmental Services, that the form had probably been completed by Mary Cilley, and that the owner probably signed it in spite of the misstatements it contained in order to avoid a conflict with her. In discussing her work experience at Grappone Toyota, the appellant argued that the employment verification was completed by someone other than her supervisor, who would not have been aware of the work she actually performed.

Taken individually, exhibits 8, 9 and 10 have little weight. Cumulatively, however, when viewed in conjunction with the testimony of Ms. Fitts and Ms. Helms relative to the appellant's employment at Sprague Electric, the Board found the evidence sufficient to support the Department's allegation that Ms. Szanto had willfully misrepresented her prior work experience.

Accordingly, the Board found that Ms. Szanto had willfully misrepresented material facts in her application for promotion. On her applications dated 1/31/91, 2/15/91, and 3/4/91, Ms. Szanto certified the following: "...that there are no willful misrepresentations of the above statements and answers to questions. I understand that should an investigation disclose such misrepresentations, my application may be rejected and, should I be employed, my service may be terminated". An investigation, prompted by the appellant's insistence that her application should be certified as meeting the minimum experience requirements for promotion to Air Pollution Technician I, disclosed willful misrepresentations of material facts on at least two of her applications for promotion.

The appellant argued that she should have been provided an opportunity to meet with a representative of the appointing authority prior to her discharge to explain any inconsistencies between the information appearing on her application and the information supplied by her previous employers. The Board fully agrees that a complete investigation should have included 'a face to face meeting with Ms. Szanto to address the alleged misrepresentations. However, the Board found that had the appellant been given the opportunity to meet with the appointing authority, and had she offered the same explanation for the misrepresentations appearing on her application, no different outcome would have been achieved. The appointing authority would have reasonably concluded that Ms. Szanto willfully misrepresented material facts in her application for promotion, and would have had the same discretion to discharge her from her employment for such misprepresentations. Therefore, the lack of an opportunity to meet with a representative of the appointing authority prior to the discharge was a harmless error.

Ms. Szanto had the burden of proving, through her hearing on the merits, that the Department of Environmental Services improperly discharged her for willful misrepresentation of material facts on an application for employment. Having failed to meet her burden, her appeal is denied.

Per 308.03(2) of the Rules of the Division of Personnel provides:

> "In cases such as, but not necessarily limited to the following, the seriousness of the violation may vary. Therefore, in some instances immediate discharge without warning may be warranted, while in other cases one written warning prior to discharge may be indicated..."

The Board found the extent of misrepresentation of material facts to be sufficient to warrant discharge without prior warning.

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