

State of New Hampshire



PERSONNEL APPEALS BOARD

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Concord, New Hampshire 03301
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Appeal of Peter Tortolano – Docket #2012-T-007

Department of Administrative Services – Bureau of General Services

July 27, 2012

The New Hampshire Personnel Appeals Board (Wood, Bonafide¹ and Johnson) met in public session on Wednesday, June 13 and Wednesday June 27, 2012, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeal of Peter Tortolano, a former probationary employee of the Department of Administrative Services. Mr. Tortolano, who appeared *pro se*, was appealing his March 12, 2012, termination of employment from his position of Plant Maintenance Engineer V prior to completion of his probationary period, for failure to meet work standards. Senior Assistant Attorney General Rosemary Wiant appeared on behalf of the State.

The record of the hearing in this matter consists of pleadings submitted by the parties prior to the hearing, notices and orders issued by the Board, the audio recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

State's Exhibits

1. Supplemental Job Description – Plant Maintenance Engineer V
2. Organizational Chart, General Services
3. Email from Peter Tortolano to Ron White (May 27, 2011)
4. Email from Peter Tortolano to Ron White, with attachments (June 14, 2011)
5. Email from Peter Tortolano to Ron White, with attachments (June 26, 2011)

¹ Commissioner Bonafide noted for the record that he was familiar with one of the Appellant's proposed witnesses, and that he had represented him and his family a number of years ago. He also noted that he had been involved in a lawsuit involving one of the State's witnesses. Neither party objected to Commissioner Bonafide participating in the appeal. Neither party objected to the remaining members of the Board.

6. Email from Ron White to Peter Tortolano (January 31, 2012)
7. 2011 Fire Drills (November 3, 2011)
8. Email from Pamela Sopczyk to Peter Tortolano (November 18, 2011)
9. HHS Safety Issues (November 22, 2011)
10. Email dated after the date of dismissal not admitted into evidence
11. Email from Mike Connor to Alexis Martin (January 24, 2012)
12. Email from Peter Tortolano to Alexis Martin (January 24, 2012)
13. Work Schedule
14. Work Plan
15. Project List
16. Memorandum from Mike Connor to Commissioner Hodgdon, with attachments
(February 3, 2012)
17. Google Earth aerial view of 27-29 Hazen Drive (Dept. of Information Technology)
18. Fax to Ralph King at Total Security from Peter Tortolano (January 23, 2012)

Appellants Exhibits

- A. Letter from Peter Tortolano to Carol Jerry (March 11, 2012)
- B. Email from Ronald White to Peter Tortolano (January 12, 2012)
- C. Email from Ronald White to Peter Tortolano (October 7, 2011)
- D. Email from Ronald White to Peter Tortolano (October 10, 2011)
- E. Email from Ronald White to Peter Tortolano (November 16, 2011)
- F. Email from Ronald White to Peter Tortolano (August 1, 2011)
- G. Email from Julie Seiger to Peter Tortolano (September 7, 2011)
- H. Email from Ronald White to Peter Tortolano; Carpenters; Thomas Carleton
(November 7, 2011)
- I. Email from Ronald White to Peter Tortolano (August 25, 2011)
- J. Email from Ronald White to Peter Tortolano (August 29, 2011)
- K. Email from Ronald White to Ronald Huppe; Peter Tortolano (December 19,
2011)
- L. Email from Ronald White to Peter Tortolano (January 11, 2012)
- M. Lochinivar "Sync Condensing Boiler" manual, pages 40 and 60 and cover
- N. Security Schedule (12/23 thru 1/6)
- O. Security Schedule (1/13 thru 1/26)
- P. Email from Peter Tortolano (March 5, 2012) re: Central Alarm

- Q. Alarm "Programming Information" (December 28, 2011)
- R. Alarm Detail Report (February 27, 2012)
- S. Email from Michael Connor to Peter Tortolano and R. King (January 17, 2012)
- T. Scope of Services for bid (Burglar Alarm & Access Control System Maintenance, Alarm Monitoring Services)
- U. Northeast Mechanical Corporation Emergency Service Report (January 20, 2012)
- V. Security Schedule (1/13 thru 1/28)
- W. Boiler - Fired Pressure Vessel Report of Inspection 1/31/2012
- X. Email from Ronald White to Peter Tortolano (January 30, 2012)
- Y. Listing of State Buildings
- Z. Meeting Minutes page 3 of 4 (date unknown)
- AA. Email from Pamela Sopczyk to Peter Tortolano with attachments and handwritten notes November 18, 2011)
- BB. Calendar page for 2/17/12 – not admitted into record
- CC. 14 item list with reference to 3/12 letter – not admitted into record

The following persons gave sworn testimony:

Ronald Allen White, Administrator of the Bureau of General Services
Dawn Schriever, HR Administrator, Department of Information Technology
Michael Connor, Director, Division of Plant and Property Management
Bill Kordas, Maintenance Technician
Brooks Young, Maintenance Technician
David Goulet, Public Works Project Manager
Peter DeNutte, Assistant Director of the Bureau of Emergency Communications
Ed Granger, Security Officer
Peter Tortolano, Appellant

Having carefully considered the evidence and argument offered by the parties, the Board made the following findings of fact and rulings of law:

1. Peter Tortolano was hired by the Department of Administrative Services on July 25, 2011, to work as a Plant Maintenance Engineer V, salary grade 30. In that role, the Appellant was expected to “administer a program of building and grounds maintenance, construction over site [sic], including the management of buildings and grounds personnel” assigned to approximately thirty state buildings. Among the eleven “accountabilities” included in the Appellant’s Supplemental Job Description was the Appellant’s responsibility to, “Manage[s] buildings and grounds personnel in the completion of painting, carpentry, grounds, security, electricity, plumbing, HVAC and general maintenance assignments.” (Exhibit 1) The Appellant reported directly to the Bureau Administrator, and was responsible for supervising approximately forty subordinate employees, including technicians, building superintendents, tradespersons, security officers, craftsmen and maintenance personnel. Ten of those employees reported directly to the Appellant. (Exhibit 2)
2. During the first several months of his employment, the Appellant participated in an unstructured orientation process that included daily meetings with the bureau administrator and General Services supervisory staff and visits to each of the buildings under the Appellant’s supervision to meet assigned maintenance personnel, to assess the needs in each work area, and to review projects from the capital plan. The Appellant accompanied the second-shift security officer on a walk-through of each of the buildings maintained by General Services. The Appellant also was invited to participate in project planning meetings to review projects in progress and become acquainted with vendors, contractors and State personnel involved in those projects. (Testimony of Ron White and Peter Tortolano)
3. The classification of Plant Maintenance Engineer V is the most highly compensated position in the Plant Maintenance Engineer class series in State service, and is unique to the Bureau of General Services because of the level of responsibility assigned to the position and the agency. General Services is responsible for several buildings considered “mission critical” including the DoIT Data Center on Hazen Drive, the Incident Planning and Operations Center on Smokey Bear Boulevard, and the State labs at the Department of Health and Human Services building on Hazen Drive. The data center operates “24/7” and processes paychecks and welfare

payments. The Incident Planning and Operations Center (IPOC) houses the Emergency Operations Center, E-911, State Police dispatch, Homeland Security, the State Fire Marshall, and Department of Transportation Planning. It is one of only five such facilities on the East coast and is considered "mission critical" by the Department of Homeland Security. The Health and Human Services Building houses a Bio-Level 3 facility authorized by the Centers for Disease Control to test for bio-chemical hazards and contagious diseases. (Testimony of Michael Connor)

4. The Public Service Answering Point (PSAP) at the IPOC handles between 1500 and 2000 calls to 911 each day. In the event that regular electric power to the facility fails, the IPOC is equipped with an emergency generator to run all electrical systems including phones and computers. If the generator fails as well, the phone and computer systems can remain operational for approximately 45 minutes running on battery power. Without regular electric transmission or power from the emergency generator, emergency 911 dispatchers would need to relocate to the PSAP in Laconia, and State Police dispatch would have to be transferred to the State Police Barracks in Twin Mountain. Regular power at the facility surges on average two to three times a month, requiring the system to rely on the emergency generator for continued operation. (Testimony of Peter DeNutte)
5. Administrative Services was managing an upgrade of the emergency generator at the IPOC to correct a problem of exhaust fumes in the facility. The Appellant met on October 27, 2011, with Bryan Covey and Patrick Fall of Northern Peabody, LLC, and with David Goulet and Kevin Shuman from the State of New Hampshire to review those upgrades and schedule work that would require disconnecting the emergency generator for a period of time. At the October 27, 2011, meeting contractors advised that the IPOC generator tie-in, which had been scheduled for October 28, 2011, would instead be scheduled for November 3, 2011 from 8:00 a.m. until noon, because of operational issues at the facility. At the next meeting, that date was changed to November 8, 2011. The Appellant was responsible for coordinating schedules with the building occupants. (Attachment 10 B to Appellant's prehearing submission; and testimony of Ron White and Peter Tortolano)
6. Peter DeNutte, Assistant Director at Emergency Communications, was not aware of plans to shut down the generator until he found the generator's exhaust pipe lying in the parking lot at the facility. When he questioned the General Services technician assigned to the IPOC about the pipe, he learned that the emergency generator had

been taken off-line, information that the Appellant had failed to relay. Mr. DeNutte contacted Mr. Connor at Administrative Services to tell him that maintenance could not simply shut down a part of the operation without notice because it could put people's lives in jeopardy. Although there was no actual interruption in service, protocol required Mr. DeNutte to notify the Governor, the Commissioner of Safety, the Commissioner of Transportation and other key stakeholders. (Testimony of Peter DeNutte) Mr. Connor contacted the Appellant, who then reported to Mr. White that he had failed to notify the building occupants at the IPOC that the emergency generator was going to be taken off-line. (Testimony of Michael Connor and Peter Tortolano)

7. On October 7, 2011, the Appellant emailed members of his staff to remind them to, "Immediately check all building exterior lighting, including parking lot and walkway lighting for proper operation. This includes checking the power source, photocell and/or time clock settings and operation, and a visual confirmation that each and every fixture is operating and on when we need it to be." In that same email, the Appellant asked for return email confirming that the checks had been completed along with a list of any fixtures that were not working. (Appellant's Exhibit C)
8. The Department of Information Technology shares a building with the Department of Environmental Services and the Department of Health and Human Services. On November 4, 2011, a staff person from the Department of Information Technology submitted a work order to the Bureau of General Services, reporting that lights in the parking lot at 27 Hazen Drive were not working. (Testimony of Ron White) Employees who left work after sunset were walking into a parking lot that was completely dark, and they were using cell phones in some cases to light their way to their vehicles. Employees were becoming increasingly concerned about their personal safety as the situation remained unchanged in the following few weeks. Pat Bernard, an Administrative Assistant at DoIT who had placed the original work order, had taken a number of complaints from employees, and when she called General Services to follow-up and ask when the lights would be repaired, she was told to be patient because the electricians were very busy. (Testimony of Dawn Schriever) The lighting issue was brought up again at a Health and Human Services safety meeting on November 22, 2011, at which time the Appellant committed to have the lights fixed by November 28, 2011. (Appellant's Exhibit AA and testimony of Ron White)

9. In early December, Ms. Schriever called Mr. Connor to tell him that the issue with the lights still had not been resolved, and that the situation would be increasingly hazardous for employees trying to navigate an icy or snowy parking lot in the dark. Ms. Schriever explained that when her employee, Pat Bernard, had followed up with a phone call to General Services, she was told to be patient because the electricians were busy. (Testimony of Dawn Schriever and Michael Connor) Mr. Connor relayed that information to Mr. White, telling him to make sure the problem was fixed and to discipline whoever made the remark to Ms. Bernard about being patient. The lights were fixed within a few days. (Testimony of Michael Connor)
10. The Department of Administrative Services is responsible for maintaining the State House, an historic building nearly 200 years old. Administrative Services had received a complaint from a legislative staffer that the wooden doors at the main entrance were binding, creating safety and security risks. Mr. White and the Appellant agreed that the bureau's carpenters would remove the doors, plane them smooth, and coat them with polyurethane to keep them from swelling and sticking. That work was to be performed on November 30, 2011. That afternoon, the legislative staffer called Mr. White to report that the doors had not been removed as planned, and that the carpenters were using a belt-sander instead of a plane to remove material from the doors instead. (Testimony of Ron White) The Appellant believed that he had given the carpenter supervisor clear instructions about how the work was to be performed, but when he arrived on the job about twenty minutes later, he saw that they had left the doors in place and were using a belt sander instead of a plane. The Appellant realized that the job was being done badly, but decided that it was too late to have the carpenters take the doors down and remove even more material. The "customer" was unhappy with the result. The Appellant felt he should have given the carpenter supervisor a letter of warning, but did not want to increase the level of stress. (Testimony of Ronald White and Peter Tortolano)
11. In December 2011, the Appellant participated in a project meeting regarding the boiler replacement at the Health and Human Services Building. Participants discussed concerns about the temperature of combustion air entering the building from the outside through metal louvers, and that the proximity of those louvers to water lines feeding the boilers could result in the lines freezing during periods of severe cold. Bill Kordas, the technician assigned to the building indicated that freezing had been an issue historically, and that in the past the louvers letting in

combustion air had been sealed during the winter months. Completely closing the louvers was a code violation, and a decision was made to block some of the cold air by building a wall inside the boiler room between the boilers and the outside louvers. The Appellant was responsible for having an insulated buffer wall built between the outside air baffles and the water lines, and the Appellant had plywood and insulation delivered to the facility for that purpose. No wall was constructed, although there was some sort of temporary buffer put in place by Bill Kordas. (Testimony of Peter Tortolano, Ronald White and Bill Kordas)

12. On or about December 28, 2011, the Appellant identified missing alarms for one or more boilers at the Health and Human Services Building and notified the alarm company that several zones needed to be added to the list. The boiler alarms were not tested, however, and it was unknown at the time that if a boiler were to fail, the phone number for the alarm company to call was the number for an answering machine in Public Health Services, not the number for security or a building technician in General Services. (Testimony of Ronald White and Peter Tortolano, and Exhibit 4)
13. During the Martin Luther King, Jr., holiday weekend in January, 2012, temperatures fell to eight to ten degrees below zero. Appellant did not schedule someone to work security or to do a walk-through of any of the buildings managed by Administrative Services during this holiday weekend. The Appellant never checked on the status of any buildings himself, and the Appellant never called anyone to inspect potential problem spots such as the State Labs. (Testimony of Ronald White, Michael Connor, and Peter Tortolano, and Exhibit N)
14. At 3:22 a.m. on January 15, 2012, a trouble alarm on "Boiler 2" in the Health and Human Services Building was received by the alarm company. The company called 271-5557 as specified in the contact information, but there was no answer, as the call was being directed to an answering machine and there was no back-up number listed. As a result, no one was aware that all three of the boilers had failed, and that temperatures in the building had fallen below freezing, causing damage to fire suppression and mechanical systems within the building. Conditions in the building were not discovered until the first shift security officer arrived shortly after 7:30 a.m. on Monday, January 16, 2012. (Testimony of Ronald White, Michael Connor, Peter Tortolano, and Exhibit R and 16)

15. Security Officer Ed Granger called the Appellant around 9:00 p.m. on January 30, 2012, to advise him that one of the doors at the Morton Building could not be secured and could be easily opened. The Appellant asked what would normally be done under those circumstances and was informed by Mr. Granger that on one or more occasions, the previous Maintenance Mechanic had authorized chaining a door shut. Most of the maintenance mechanics have a key and could unlock the door when they arrived on shift. Otherwise, they could clip the chain. Mr. Granger told the Appellant that it would have to be the Appellant's decision what action to take.

(Testimony of Ed Granger)

16. On January 31, 2012, Alexis Martin from the Department of Transportation emailed the Appellant, copying Mr. White on the email, asking why the door had been chained. The Appellant responded, explaining that the decision had been made to chain the door shut and to call for a PELMAC technician to repair the door the following day. Mr. White followed up with an email asking who had authorized the doors being chained. Upon learning that the Appellant had given the authorization, Mr. White told the Appellant that he was not to allow exit doors to be chained at any time in the future. (Testimony of Ronald White and Peter Tortolano)

Position of the Parties

The Appellant argued that he was being singled out as the cause of the January 15, 2012, freeze-up at the State Labs, so the decision to dismiss him was arbitrary. The Appellant argued that the decision to dismiss him was also capricious, in that the agency changed its opinion of his work performance in a period of about two weeks. The Appellant argued that reasons listed in the agency's probationary assessment as provided to him on February 24, 2012, were different than those upon which it relied in dismissing him on March 11, 2010. The Appellant argued that his dismissal also was made in bad faith, as he was "being made a scapegoat for the media visibility and the political rhetoric following this incident [at the State labs]."

The Appellant argued that there had been no complaints about his work performance prior to the January 15, 2012, "freeze-up" at the State labs in the Health and Human Services Building. After that date, the Appellant argued, the agency was looking for any excuse to fire him so that others in the agency could deflect blame from themselves for

longstanding problems that existed before the Appellant was hired. The Appellant argued that Mr. White and others had complimented him for his work, and that he had accomplished a great deal for the agency in his short tenure.

In his notice of appeal, the Appellant argued that the purpose of a probationary period is to “observe and counsel” and to “train and aid the new employee in adjustment to the position.” The Appellant admitted that Mr. Connor had expressed some concerns about delays in testing the alarm systems; otherwise, the Appellant argued, he received no other feedback to suggest that he was not meeting work standards. He argued that the Agency “did not provide [him] proper or adequate counsel, or training,” and that the agency “judged his performance on a pass/fail basis, with a majority of the issues presented occurring within a short period of time (1/16/12 through 1/30/12).”

Ms. Wiant argued that the Appellant was, at all relevant times, an initial probationary appointee subject to the provisions of Per 1002.02 (a), Dismissal During Initial Probationary Period, which states, “(a) At any time during the initial probationary period an appointing authority may dismiss an employee who fails to meet the work standard provided the dismissal is not: (1) Arbitrary; (2) Illegal; (3) Capricious; or (4) Made in bad faith.” Ms. Wiant argued that the Appellant was certified as meeting the minimum requirements for appointment to the position of Plant Maintenance Engineer V, and was fully aware of the accountabilities and responsibilities as outlined in his Supplemental Job Description. Ms. Wiant argued that the Appellant tended to deflect responsibility to other employees rather than acknowledging his own responsibility. Ms. Wiant argued that an assessment of the Appellant’s work performance was about his exercise of poor judgment in many cases, and that many of those situations created risks. Ms. Wiant argued that it was the Appellant’s burden to prove that his dismissal was arbitrary, in bad faith or capricious, and that he failed to meet that burden.

Decision and Order

The Appellant is convinced that the decision to dismiss him stems entirely from the “freeze-up” at the State labs in January 2012. The Board does not agree. The Board believes that the Appellant’s work performance in that instance was a contributing factor, and it may have prompted a more thorough assessment of the Appellant’s work

performance overall. In the end, however, the Board found that there were sufficient examples of the Appellant's failure to meet work standards that supported the agency's decision to dismiss him, and the Appellant has failed to demonstrate by a preponderance of the evidence that his dismissal was arbitrary, capricious, or made in bad faith.

Although there is substantial evidence to show that the Appellant worked very hard, that he met the work standard in most cases, and that he received positive feedback for many of his efforts, there also is sufficient evidence to support the State's assertion that the Appellant failed to meet work standards in enough other instances to warrant his dismissal during his initial probationary period. Several examples follow.

When the Appellant authorized the use of a chain and a lock to secure one of the exits to the Morton Building, he failed to exercise good judgment, relying instead on the statement from the security person that the door in question was not a main point of egress, and that one of Appellant's predecessors had allowed a door to be chained shut in the past. When the Appellant authorized the use of a chain and lock to secure the door, he had no idea how many people may still have been in the building, nor would he have had a way of knowing whether anyone in the building was familiar with the planned evacuation routes. In the event of an emergency, anyone left in the building may not have known of another exit, or the pathway to any alternative exit might have been blocked. The fact that there was no emergency, that no one was hurt, and that chaining doors shut may have occurred in the past does not excuse the lack of judgment that the Appellant demonstrated in allowing exit doors to be chained shut in the first instance.

The Appellant also showed poor judgment by failing to notify building occupants at the IPOC that their emergency generator was going to be taken off line for mechanical upgrades and/or repairs. The entire State of New Hampshire relies on that facility remaining operational twenty-four hours a day so that appropriate personnel can be dispatched in the event of an emergency, whether it involves a statewide disaster, report of a fire, a request for police assistance, a call for medical aid, or a call to report a traffic accident. Again, although nothing untoward occurred while the emergency generator was off-line, by failing to provide appropriate notice, the Appellant deprived the various

agencies housed in that building an opportunity to create a contingency plan in the event that power to the building was lost for more than an hour.

Another example of the Appellant's failure to meet the work standard involves the issue of inadequate lighting throughout the month of November 2011, in the parking lot at the Department of Information Technology. The Appellant clearly was aware of his staff's responsibility to ensure that parking lots and walkways were safely illuminated in the evenings, and instructed his staff in an email dated October 7, 2011, to check all building exterior lighting to ensure the lights were operational. It certainly is possible that the Appellant was unaware of the work order placed by DoIT staff on November 4, 2011, about lights in their parking area not working. The evidence reflects that the Appellant did know on November 22, 2011, that the parking area at DoIT was pitch black after dark, and that employees were being forced to arrive and leave in unsafe conditions. The Appellant did not correct the problem immediately, but made a commitment to have the problem fixed by November 28, 2011. He and his staff failed to do so until Ms. Schriever reported the problem to the Director of the Division of Plant and Property Management, who directed the Administrator of General Services to get the problem fixed.

In his closing statement, the Appellant argued that when he came to the State, he saw it as an exciting opportunity, that he worked hard and made significant progress. The Appellant argued that he received positive feedback from customers and was surprised when he found that he was being let go. The Appellant argued that management acted capriciously, changing their opinion of the Appellant overnight, and that other than Mr. Connor saying he wasn't happy about the alarm testing, and Mr. White instructing the Appellant never to chain doors shut again, no one said anything to him about problems with his work performance until February 24, 2012.

The Appellant argued that he was told in his meeting with Mr. White that "it was a political situation and someone had to go, and if it wasn't [the Appellant], it was going to be [Mr. White]." The Appellant argued that he was not an inexperienced person, but that there needed to be some consideration for the fact that this was a new situation for him in a new facility, and although he was not perfect in his interpretation of the rules or standards, no one was hurt and there was no damage to the State's assets. The

Appellant argued that his dismissal was arbitrary, and best characterized by an impulsive decision by management that was looking for someone to blame.

In accordance with the provisions of Per-A 207.12 (a) of the NH Code of Administrative Rules:

"In probationary termination appeals, the board shall determine if the appellant proves by a preponderance of the evidence that the termination was arbitrary, illegal, capricious or made in bad faith. Allegations that the appellant does not know the reason(s) for the dismissal, or evidence that the appointing authority took no formal disciplinary action to correct the employee's unsatisfactory performance or failure to meet the work standard prior to dismissing the employee, shall not be deemed sufficient to warrant the appellant's reinstatement."

Even if the Board were to agree entirely with the Appellant's assertion that management needed someone to blame, or that the agency should have provided more training and clearer feedback, the fact remains that the agency had grounds upon which to determine that the Appellant had failed to meet certain work standards. Under those circumstances, absent a finding by the Board that the dismissal was arbitrary, illegal, capricious or made in bad faith, the Board's authority to modify a decision of an appointing authority regarding the termination of an employee serving an initial probationary period is limited by both the statutes and the administrative rule regarding probationary employees.

In a decision issued on March 23, 2012 in the Appeal of William Harris, the NH Supreme Court stated:

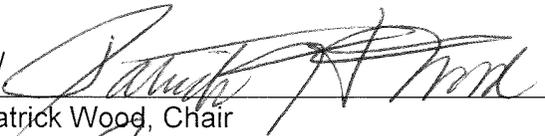
Under New Hampshire Administrative Rule, Per 1002.02(a), "the discretion to dismiss a probationary employee who fails to meet the work standard" rests with the appointing authority, not the board. "The dismissal of a probationer must not be arbitrary, illegal, capricious or made in bad faith, but the courts will not interfere with a reasonable exercise of discretion by a department head or an administrative official."

Clark v. Manchester, 113 N.H. 270, 275 (1973) (quotation omitted).
Similarly, once the board found that the dismissal was not arbitrary,
illegal, capricious or made in bad faith, it was not entitled to interfere with
HHS's exercise of discretion in terminating Harris's employment.

For all the reasons set forth above, the Board voted unanimously to DENY the appeal
and to uphold the agency's decision to dismiss the Appellant.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD

/s/


Patrick Wood, Chair

/s/


Philip Bonafide, Vice-Chair

/s/


Robert Johnson, Commissioner

cc: Karen Hutchins, Director of Personnel
Peter Tortolano
Rosemary Wiant, Senior Assistant Attorney General