

# SUPREME COURT OF NEW HAMPSHIRE

## Appeal of Karen Hildreth

164 N.H. 340 (2012) · Decided October 30, 2012

### SUMMARY

The New Hampshire Supreme Court held that a former permanent state employee retained the right to appeal disciplinary letters to the Personnel Appeals Board after retiring. The court rejected the Board's conclusion that retirement forfeited that right, reversed the decision, and remanded the case.

### CASE DETAILS

|                       |                                                                                                                                                                                                                   |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of New Hampshire                                                                                                                                                                                    |
| WRITING FOR THE COURT | Dalianis, C.J.; Hicks, J.; Conboy, J.; Lynn, J.; Bassett, J.                                                                                                                                                      |
| JURISDICTION          | New Hampshire                                                                                                                                                                                                     |
| DECIDED               | October 30, 2012                                                                                                                                                                                                  |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | Karen Hildreth appealed the New Hampshire Personnel Appeals Board's decision that her retirement caused her to forfeit the right to appeal disciplinary actions imposed while she was a permanent State employee. |
| STANDARD OF REVIEW    | Under RSA 541:13, the Board's factual findings are prima facie lawful and reasonable, while its interpretations of statutes and administrative rules are reviewed de novo.                                        |
| PRECEDENTIAL VALUE    | Published New Hampshire Supreme Court opinion; precedential.                                                                                                                                                      |
| PARTIES               | Karen Hildreth v. State                                                                                                                                                                                           |

### TOPICS

administrative law

judicial review of agency action

statutory interpretation

appellate procedure

### PRACTICE AREAS

administrative law

employment law

appellate procedure

### QUESTIONS PRESENTED

1. Whether a permanent State employee remains a "permanent employee" for purposes of appealing disciplinary actions to the Personnel Appeals Board under RSA 21-1:58 after retiring from State service.
2. Whether the Personnel Appeals Board correctly concluded that Hildreth's retirement forfeited her right to appeal disciplinary letters issued while she was permanently employed.

## HOLDINGS

1. An employee who was permanently employed when disciplinary personnel rules were applied remains a "permanent employee" for purposes of appealing those disciplinary actions to the Personnel Appeals Board under RSA 21-1:58, even after retiring from State service.
2. Hildreth's retirement did not forfeit her pending right to appeal the disciplinary letters to the Personnel Appeals Board.

## KEY QUOTATIONS

*"We conclude, therefore, that the petitioner is a "permanent employee" for the purpose of appealing the disciplinary letters to the PAB under RSA 21-1:58 (2012)." (342)*

*"A letter of rebuttal placed in the personnel file alongside the contested letters of warning is not a substitute for removal of the letters themselves." (342)*

## FACTUAL BACKGROUND

Hildreth, a former Department of Health and Human Services employee, received letters of warning in December 2010 and May 2011 that resulted in withholding an annual salary increment and alleged failure to meet work standards. She was a permanent employee when the disciplinary actions occurred and began the personnel rules' informal settlement process. She retired after the first two steps, after which State personnel officials and the Personnel Appeals Board treated her retirement as eliminating her right to continue appealing the disciplinary actions.

## PROCEDURAL HISTORY

Hildreth received two letters of warning and initiated the personnel rules' informal four-step settlement process. After she retired, personnel officials declined to continue the process or schedule a hearing, and the Personnel Appeals Board concluded that she had relinquished her right to appeal. The Board denied rehearing, and the New Hampshire Supreme Court reversed and remanded.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The matter was remanded for further proceedings consistent with the determination that Hildreth remained a permanent employee for purposes of appealing the disciplinary letters to the Personnel Appeals Board.

## CASES CITED

- Appeal of Alexander, 163 N.H. 397, 401 (2012)
- Appeal of Higgins-Brodersen, 133 N.H. 576, 577, 579-580 (1990)
- Duckworth v. Pratt & Whitney, Inc., 152 F.3d 1, 6 (1st Cir. 1998)
- Rix v. Kinderworks Corp., 136 N.H. 548, 550 (1992)

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