

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301
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APPEAL OF RICHARD JOHNSON New Hampshire Liquor Commission Docket #95-D-3

December 15, 1994

The New Hampshire Personnel Appeals Board (Bennett and Johnson) met Wednesday, December 7, 1994, to hear the appeal of Richard Johnson, an employee of the New Hampshire Liquor Commission, who was appealing a November 22, 1993 letter of warning for unsatisfactory work/failure to meet the work standard. Mr. Johnson was represented at the hearing by SEA Field Representative Margo Steeves. George Liouzis, Human Resources Administrator, appeared on behalf of the Liquor Commission. The appeal was heard on offers of proof, without objection by either party.

Mr. Liouzis offered to prove through the testimony of Daniel Atwood, Manager of Store #51 in Pelham, that in September, 1993, a customer had complained that Mr. Johnson, Assistant Manager, had refused to make an exchange when the customer had purchased a product in error, and wanted to exchange it for another product. Mr. Atwood would testify that the customer also claimed that the appellant told him that exchanging or refunding a product would "mess up" his inventory. Mr. Liouzis said that Peter Engel, Store Supervisor, would testify that when he discussed the matter with Mr. Johnson, the appellant said he completely forgot that there was a refund and exchange policy, and admitted that he told the customer there was no policy for exchanging merchandise. Mr. Atwood also would testify that the appellant told him that because of staffing problems in the store that day, the appellant forgot that the Commission had a refund and exchange policy. Mr. Liouzis argued that the Liquor Commission should be able to expect its employees in customer service and stores management to know and adhere to the Commission's policies, and that employees who failed to do so could be subject to discipline.

Ms. Hurley offered to prove through the testimony of Mr. Johnson that the appellant had been under a great deal of stress as a result of his being transferred from Store #49 to Store #51. She said Mr. Johnson would testify that in more than 30 years as an employee of the Liquor Commission, he had never been disciplined until the time of his transfer, and that he considered the warnings an insult. She said Mr. Johnson would also testify that when the customer came into the store, he was unpleasant. He would testify that he never told the customer that exchanging or refunding stock would create an inventory problem; he simply forgot that there was such a policy. Mr. Hurley argued that although the appellant had committed an error, a letter of warning was too severe a disciplinary action in this instance, as there had been only one such incident and one complaint.

Ms. Hurley argued that the Liquor Commission was inconsistent in its administration of its policies, noting that Mr. Johnson had been issued a warning for failing to make a refund or exchange, while another employee had been issued a warning for making an exchange. Ms. Hurley stated that the Commission's policies change frequently, making it difficult for

employees to know what they are expected to do.

Mr. Liouzis said that whenever policies are adopted or changed, employees in the stores are notified by memo, and posters detailing the policy are provided for posting in the stores. Although Mr. Liouzis was unaware of the date on which the Commission's current refund and exchange policy was adopted, he said he believed it had been in place long enough for Mr. Johnson to be familiar with it. No contradictory offer was made by the appellant.

On the evidence and offers of proof, the Board voted to uphold the written warning as issued to Mr. Johnson. The Board agrees that the Liquor Commission has a right to expect its employees, particularly its managers and assistant managers, to be familiar with the Commission's policies and procedures. The Commission also has a right to expect employees to adhere to those policies and procedures. Failure to do so constitutes unsatisfactory work for failing to meet the work standard.

The Board did not find Appellant's Exhibit #1 to be evidence of inconsistency in the administration of Liquor Commission policy on exchanges and refunds. Exhibit #1 describes an incident in which a Liquor Commission employee replaced a product which was purchased, taken home, broken by the purchaser, and returned for a replacement. The warning stated, "The Liquor Commission policy does not allow customers to return merchandise, if they broke the bottle at home." That employee's failure to act in accordance with the Commission's policy resulted in a warning. The only similarity between the incident cited in Appellant's Exhibit 1 and the letter of warning issued to Mr. Johnson is the fact that both involved incidents wherein the employees failed to utilize the appropriate Commission policy in dealing with customer requests for a refund or an exchange. In both cases, the employees were cited for failing to meet the work standard.

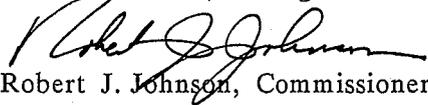
Per 1001.03 (a) (1) of the Rules of the Division of Personnel authorizes appointing authorities to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance for failing to meet the work standard. On the evidence, argument and offers of proof, the Board found that the Liquor Commission was acting within its authority when it issued Mr. Johnson a written warning for failing to meet the work standard. The appellant, through his evidence, argument and offers of proof, failed to persuade the Board that the Liquor Commission's decision to issue a warning in this case was either inappropriate or excessive.

Accordingly, Mr. Johnson's appeal is denied.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
George E. Liouzis, Human Resources Administrator, N.H. Liquor Commission
Margo Steeves, SEA Field Representative

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**APPEAL OF RICHARD JOHNSON
New Hampshire Liquor Commission
Docket #95 -D-3**

Response to Motion for Reconsideration

April 26, 1995

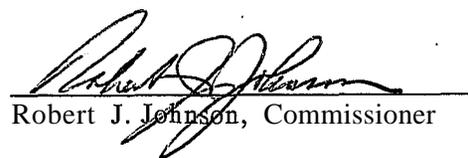
On December 30, 1994, the Board received SEA Field Representative Margo Steeves' Motion for Reconsideration of the Board's December 15, 1994 decision in the above-captioned appeal. The State's Objection to that motion, submitted by Human Resources Administrator George Liouzis, was received by the Board on January 9, 1995. In consideration of the Motion and Objection, in light of the Board's decision in this matter, the Board voted unanimously to deny Ms. Steeves' request for reconsideration.

The appellant failed to offer evidence or argument that the Board's decision in this matter is either unlawful or unreasonable.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
George E. Liouzis, Human Resources Administrator, N.H. Liquor Commission
Margo Steeves, SEA Field Representative