

# State of New Hampshire



## PERSONNEL APPEALS BOARD

25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

### *APPEAL OF PATRICIA BOOKER*

*Docket #96-T-25*

*New Hampshire State Liquor Commission*

*Response to Appellant's Motion for Reconsideration/Rehearing and State's Objection*

May 21, 1997

On April 14, 1997, the Personnel Appeals Board received Appellant's Motion for Reconsideration and Rehearing. The State's Objection to that Motion was received on April 23, 1997.

Having reviewed the Motion and Objection in light of the Board's March 13, 1997, decision in this matter, the Board voted unanimously to deny the Motion for Reconsideration and Rehearing, and to affirm its decision denying Ms. Booker's appeal.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD

Handwritten signature of Mark J. Bennett in cursive.

Mark J. Bennett, Acting Chairman

Handwritten signature of Lisa A. Rule in cursive.

Lisa A. Rule, Commissioner

Handwritten signature of James J. Barry in cursive.

James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Martha A. Moore, Assistant Attorney General  
Michael C. Reynolds, SEA General Counsel  
George Liouzis, NHSLC Human Resources Administrator

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## ***APPEAL OF PATRICIA BOOKER***

***New Hampshire State Liquor Commission***

***Docket #96-T-25***

March 13, 1997

The New Hampshire Personnel Appeals Board (Bennett, Rule and Barry) met on Wednesday, August 28, 1996, under the authority of RSA 21-I:58, to hear the appeal of Patricia Booker, a former employee of the New Hampshire State Liquor Commission. Ms. Booker was represented at the hearing by SEA General Counsel Michael Reynolds. Assistant Attorney General Martha Moore appeared on behalf of the Liquor Commission. Ms. Booker was appealing her termination from employment as a Retail Store Clerk II, effective March 19, 1996, upon receipt of a third written warning for unsatisfactory work. The record in this matter consists of the audio tape recording of the hearing on the merits of Ms. Booker's appeal, pleadings submitted by the parties prior to the hearing, and documents admitted into evidence as follows:

|               |                                                                               |
|---------------|-------------------------------------------------------------------------------|
| State's #1    | Letter of Warning dated March 19, 1996                                        |
| State's #2    | Inter-Department Communication from Mercier to Engel dated February 23, 1996  |
| State's #3    | Inter-Department Communication from Booker to Engel dated March 5, 1996       |
| State's #4    | Revised Letter of Warning dated January 27, 1996                              |
| State's #5    | Letter of Warning dated March 21, 1995                                        |
| State's #6    | Retail Store Clerk II Job Description                                         |
| State's #7    | State Liquor Commission Store Operations Manual Policy 2-14, Store Cash Funds |
| State's #8    | State Liquor Commission Store Operations Manual Policy 4-5, After Store Hours |
| Appellant's A | St. Elizabeth's Medical Center Records for Patricia Booker                    |
| Appellant's B | July 22, 1996 report of psychiatric evaluation of Patricia Booker             |

The following persons gave sworn testimony at the hearing:

John Bunnell, Director of State Liquor Stores  
George Liouzis, State Liquor Commission Human Resources Administrator  
Daniel Mercier, Store Manager  
James Booker  
Patricia Booker

Mr. Reynolds argued that while the offenses described in the written warnings may have occurred as described by the Commission's witnesses, none of the offenses was intentional. He argued that during the relevant period of time, Ms. Booker was experiencing extreme personal and medical difficulties. He argued that the appellant's personal circumstances were sufficiently mitigating to warrant a reversal of the termination decision. Mr. Reynolds argued that even if the Board were to find that the third warning was justified, the Board should exercise its broad equitable powers and order the appellant reinstated.

Ms. Moore argued that the Liquor Commission's decision to dismiss Ms. Booker by issuance of a third written warning for the same offense was in full compliance with the Rules of the Division of Personnel. She argued that Ms. Booker was aware of her responsibilities as a Retail Store Clerk, and that by failing to adhere strictly to store operations procedures, she had breached store security and increased the risk of theft. Ms. Moore argued that the Commission has been consistent in its practice of dismissing employees who have received three warnings for the same offense, and that the Board should not second guess that decision-making process. Ms. Moore asked the Board to affirm the Commission's decision and deny the instant appeal.

After considering the testimony, documentary evidence and oral argument offered by the parties, the Board made the following findings of fact and rulings of law:

#### FINDINGS OF FACT

1. Ms. Booker was originally hired by the Liquor Commission in 1985 as a part-time cashier, and was promoted to a full-time Retail Store Clerk II in September, 1988.

2. As a Retail Store Clerk II, when there was no Manager or Assistant Manager on duty, Ms. Booker was required to assume their responsibilities for evening store closing activities, including ensuring that store funds, receipts and lottery tickets are properly locked in the store's safe at the close of business.
3. Ms. Booker received a first letter of warning for unsatisfactory work on March 21, 1995. The letter was issued after the store manager discovered that Ms. Booker had left a night deposit bag containing \$3,753.30 on top of the safe with a note explaining that she had difficulty unlocking the safe. The first warning advised Ms. Booker that failing to lock up the funds represented a breach of security, as well as unsatisfactory work. She was reminded of the requirement to adhere to store operating procedures.
4. Ms. Booker received a revised second letter of warning for unsatisfactory work on January 27, 1996, after Ms. Booker was observed purchasing lottery and power ball tickets at her own register in violation of Commission policy, and after Store Manager Daniel Mercier discovered that Ms. Booker had left the safe open when closing the store on the evening of December 16, 1996. The second warning reminded Ms. Booker of her responsibilities for proper cash handling and was informed her of the need to adhere to store operating procedures. The letter also informed her that she could be dismissed if she received a third written warning for the same offense.
5. Ms. Booker was responsible for store closing procedures on the evening of February 22, 1996. When Store Manager Daniel Mercier opened the store on the morning of February 23, 1996, he discovered that the office safe had not been closed tightly or locked the night before.
6. When Mr. Mercier questioned Ms. Booker about the safe and the breach of store security, she responded that she must have forgotten to lock the safe.
7. Ms. Booker met with the Liquor Commission on March 15, 1996, to review the violation.
8. On March 19, 1996, the Liquor Commission issued a third and final warning, advising Ms. Booker of her termination from employment.
9. Ms. Booker attributed her difficulty concentrating on work to a series of personal problems she had experienced between 1994 and 1996, including undergoing treatment for cancer, recuperating from a serious automobile accident, caring for a parent suffering from Alzheimer's disease, and coping with the death of several family members.

10. After her termination from employment, Ms. Booker sought counseling and treatment for severe depression. She believes that she now is capable of carrying out her position responsibilities satisfactorily.

#### RULINGS OF LAW

A. Per 1001.03 (a) of the Rules of the Division of Personnel authorizes an appointing authority to use the written warning as the least severe form of discipline to correct an employee's unsatisfactory work performance.

B. Per 1001.08 (b) of the Rules of the Division of Personnel authorizes an appointing authority to dismiss an employee by issuance of a third written warning for the same offense.

#### DECISION AND ORDER

Having considered the testimony and evidence presented by the parties, the Board voted unanimously to deny Ms. Booker's appeal. In her capacity as a Retail Store Clerk II, Ms. Booker was responsible for strict adherence to store operations procedures to ensure the proper handling of inventory and receipts. Ms. Booker received three separate warnings for violation of cash handling procedures, each involving a failure to lock the store safe at the close of business. While there was no evidence that any of these infractions resulted in an actual loss of funds, they did represent significant breaches of security and failure to perform her duties satisfactorily.

In deciding to uphold the Commission's decision, the Board took into consideration the Commission's past practice of dismissing employees who receive three written warnings for the same offense. Ms. Booker was clearly warned of the need to take corrective action by adhering to store operations procedures, particularly with respect to her handling of Commission funds.

failed to take corrective action, she was subject to additional discipline, up to and including her termination from employment.

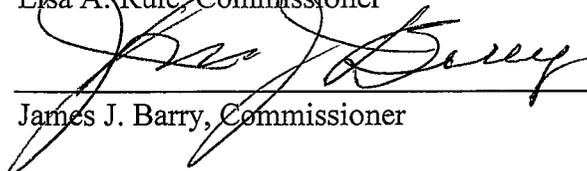
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