

State of New Hampshire



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

Appeal of Carl Temple - Docket #2012-T-008
New Hampshire State Liquor Commission
May 23, 2012

The New Hampshire Personnel Appeals Board (Wood, Bonafide and Johnson) met in public session under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to review the Appeal of Carl Temple, a former employee of the New Hampshire State Liquor Commission. The Board reviewed the following documents:

1. Mr. Temple's hand-delivered letter dated April 5, 2012, requesting a hearing to appeal his termination from employment.
2. E-mail from the office of Attorney Lawrence Getman on April 6, 2012, filing a notice of appearance on Mr. Temple's behalf.
3. Messenger mail, with enclosures, from the NH Liquor Commission, received and dated, April 10, 2012, titled "Response to Allegations," with a request for the Board to deny the appeal because Mr. Temple's separation from service was a resignation given in lieu of dismissal. Enclosures included certification from Human Resources Administrator Kelly Mathews that an attached letter of resignation signed by Mr. Temple was a true copy of the resignation given by him to the Liquor Commission on March 21, 2012.
4. E-mail received from the office of Attorney Lawrence Getman on April 17, 2012, filing a request for formal discovery including permission to request admissions, request the production of documents, file interrogatories and depose Richard Gerrish, David Harrison and Kelly Mathews.
5. E-mail from the office of Attorney Lawrence Getman filing a document titled "Petitioner's Response to Allegations."
6. E-mail from the Liquor Commission dated May 7, 2012, filing the "Commission's Response to Request for Formal Discovery" which included the Commission's objection to that request.

The Personnel Appeals Board's jurisdiction is described by RSA 21-I:46, I, which states, in pertinent part, "The personnel appeals board shall hear and decide appeals as provided by RSA 21-I:57 and 21-I:58 and [with specified exceptions] appeals of decisions arising out of application of the rules adopted by the director of personnel..." The rule at issue here is Per 1002.08 (b) which states, "Nothing in this rule shall prohibit an appointing authority from allowing an employee to request that he or she be allowed to resign in lieu of discharge, provided that the employee meets certain conditions, including acknowledgement that the employee has forfeited any right to appeal."

The Appellant now characterizes the Appellant's resignation as a termination, and argues that the Commission's use of rule Per 1002.08 (b), "violates public policy and is not the kind of heavy handed practice the Commission should embrace." The Appellant also argues that the Appellant should be entitled to a hearing, arguing that the Appellant "did not knowingly and voluntarily resign his position."

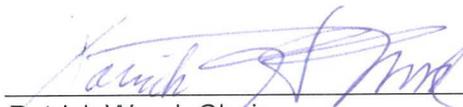
Per 205.08 of the NH Code of Administrative Rules lists nine separate events that are considered "Invalid Appeals and Matters Not Subject to Informal Settlement Process," including Per 205.08 (i): "Resignation, unless the employee can demonstrate by a preponderance of evidence that the resignation was made under extreme duress." (Emphasis added.)

While represented by his Union representative, and in that representative's presence, the Appellant signed the following statement:

"Effective 3-21-12 I hereby respectfully request that I be allowed to resign from my position as a Warehouseman, from the NH Liquor Commission. Upon review of the information in regards to termination, I certify that this resignation is in full consideration of the evidence used In support of this decision. I also certify my understanding that this resignation in lieu of dismissal may not be resolved through the settlement of disputes, pursuant to the provisions of RSA 21-I:58."

Absent a timely appeal which alleges extreme duress, the Board finds that the Appellant's resignation is a matter outside the Board's subject matter jurisdiction. As a result, the Board voted unanimously to DISMISS the Appeal of Carl Temple.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



Patrick Wood, Chair



Philip Bonafide, Commissioner



Robert Johnson, Commissioner

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301
Kelly Mathews, HR Administrator, NH Liquor Commission, 50 Storrs St., PO Box 503,
Concord, NH 03302-0503
Attorney Lawrence Getman, Getman Schulthess & Steere, PA, 1838 Elm St.,
Manchester NH 03104