

# State of New Hampshire

WPPID739



## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

### RESPONSE TO APPELLANT'S MOTION FOR RECONSIDERATION Appeal of Timothy Powers Docket #90-T-15

May 2, 1991

By letter dated April 23, 1991, Timothy Powers, through his representative the State Employees' Association, requested that the Board reconsider its decision of April 3, 1991 dismissing his appeal, *Mr.* Powers had originally alleged that he was forced to resign from his position of Liquor Investigator for the New Hampshire Liquor Commission. The Board, in dismissing his appeal, found that he was not forced to resign.

In support of his request for reconsideration, the appellant argued that the Liquor Commission's instructions to *Mr.* Powers to resign or be fired was based in part upon some extremely prejudicial misinformation, specifically that he had been "faking" an injury during training at Police Standards and Training.

The record clearly reflects that the Liquor Commission's decision to not request an additional waiver for *Mr.* Powers stemmed from the fact that he had lied to staff at Police Standards and Training about medical attention he was instructed to seek as a result of his physical problems. When questioned about his physical condition during exercises, *Mr.* Powers was instructed to contact his physician. He claimed to have contacted his physician, when in fact he had simply discussed with a local pharmacist what medication he might take for pain in his hip. His failure to be truthful, rather than his physical condition, precipitated the decision by Police Standards and Training to dismiss him from the academy. *Mr.* Powers was allowed to resign from the academy, citing personal reasons, to avoid dismissal for cause.

*Mr.* Powers' subsequent resignation from the Liquor Commission was also accepted in order to allow him to protect his personnel record. After consulting with his attorney, he chose to resign to avoid having his records reflect that his employment had been terminated because of the honors violation at Police Standards and Training.

The appellant also argued that the Liquor Commission could have sought an additional waiver to allow *Mr.* Powers to make a fifth attempt at completing the mandatory training at Police Standards. What the Commission could or

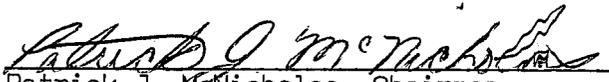
could not have done is not dispositive of this appeal. The Commission had already provided more opportunity for Mr Powers to complete the required training than had been offered to any other employee. The Commission was under no obligation to seek an additional waiver for Mr Powers. Similarly, Police Standards and Training had no obligation to grant another waiver to the Liquor Commission for Mr Powers, even if such waiver had been sought.

Police Standards and Training had already informed the appellant that because he had lied about contacting a physician when so instructed, and because his lie was considered a serious honors violation, he would have been dismissed from the academy on those grounds. Instead, he was allowed to withdraw from the academy "for personal reasons" rather than having the record reflect that he had been dismissed for cause.

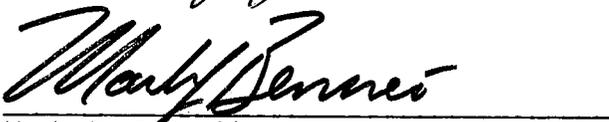
Finally, the appellant argued that given all the circumstances, his resignation was the result of coercion and could not be considered voluntary. The record clearly reflects that Mr Powers was given a number of options, and was even allowed to contact legal counsel prior to deciding to tender his resignation. His resignation was given after such consultation, and after an explanation of what his appeal rights would be, and how he could pursue such appeal if he were to be discharged. In light of the lengths to which the Liquor Commission went in explaining Mr Powers rights to him, including its assistance in allowing him to seek legal advice before making his decision, the Board does not consider his resignation from the Liquor Commission to be the result of coercion.

The Board unanimously voted to affirm its decision of April 3, 1991, dismissing Mr Powers' appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Robert J. Johnson

  
Mark J. Bennett

cc: George E. Liouzis, Human Resource Coordinator, N.H. Liquor Commission  
Michael C. Reynolds, SEA General Counsel  
Virginia A. Vogel, Director of Personnel  
Civil Bureau - Attorney General's Office

# State of New Hampshire

WPPID715



## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

### APPEAL OF TIMOTHY POWERS

Docket #90-T-15

New Hampshire State Liquor Commission

April 3, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, February 27, 1991, to hear the appeal of Timothy Powers, a former employee of the New Hampshire Liquor Commission, who alleged that he had been forced to resign from his position of Liquor Investigator on May 8, 1990. **Mr.** Powers was represented at the hearing by SEA General Counsel Michael C. Reynolds. George E. Liouzis, Human Resource Coordinator, represented the Liquor Commission (hereinafter "Commission").

In consideration of the testimony and evidence received, the Board voted unanimously to dismiss **Mr.** Powers' appeal, finding that his resignation from the New Hampshire State Liquor Commission was voluntary. The appellant was counselled by the Commission's Human Resource Coordinator prior to his resignation that such an act on his part would not be appealable. The Commission also provided the appellant an opportunity to consult with counsel for the State Employees' Association prior to accepting his resignation.

The evidence clearly indicates that the appellant was well-liked by his supervisors and co-workers at the Liquor Commission. In spite of the appellant's inability to complete the prescribed course of training through New Hampshire Police Standards and Training, the Commission continued to employ him as a Liquor Investigator, repeatedly requesting extensions of time in which he might complete the mandatory training and receive the required certification through Police Standards and Training.

Mr. Powers was employed by the Liquor Commission on March 10, 1989, and was advised in the letter confirming his appointment to the position of Liquor Investigator that he was "...not yet certified for this position [and he would] be required to attend the Police Standards and Training Academy." All Liquor Investigators are required to complete an approved course of training through New Hampshire Police Standards and Training. The job specification for the class "Liquor Investigator" (revised 11/26/86) provided that, "Upon appointment, candidates must either possess police officer certification issued by the New Hampshire Police Standards and Training Council, OR satisfactorily complete the preparatory program of police

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officer training at the New Hampshire Police Academy during the six month probationary period." The job specification was revised effective February 21, 1990 to read, "Upon appointment, and prior to the expiration of the probationary period, candidates must successfully complete a training program approved by the Liquor Commission and the Director of the Police Standards and Training Council." The Commission made arrangements on four separate occasions to enroll the appellant in Police Standards and Training to secure his certification as a Liquor Investigator.

In June 1989, the appellant asked to be "extended", requesting that the Liquor Commission seek a waiver to allow him to withdraw from Police Standards and Training. Mr. Powers explained he was experiencing "personal problems" and he found himself "unable to concentrate". David Austin, Chief of Enforcement for the Commission, agreed to request a waiver and ask that the appellant be allowed to re-enroll in the Academy in September, 1989.

During the September, 1989 session of the Academy, the appellant pulled ligaments in both knees during training. Because of his injuries, he was forced to withdraw, and the Commission again requested and was granted an extension during which he might complete his training.

The third session of the academy in which the Commission enrolled Mr. Powers began in January 1990. Mr. Powers failed the initial physical examination for entrance into the academy. Again, although the Commission was under no obligation to do so, it agreed to request a waiver to allow Mr. Powers to continue in his job. At that time, however, the Training Council advised the Commission that Mr. Powers should not be allowed to work in the field unsupervised, as he lacked the required training.

The Commission noted for the record that Mr. Powers was the only Liquor Investigator for whom it had requested waivers from Police Standards and Training. With the full understanding that it had given Mr. Powers ample opportunity to complete the required training, the Commission informed Mr. Powers that it would allow him to be enrolled in the certification program one last time. If he failed to satisfactorily complete the academy on his fourth attempt, the Commission would not request further extensions or waivers.

Before completing his fourth enrollment at Police Standards and Training, the appellant resigned from the Academy. The Board found that the Commission was under no obligation to seek further waiver of the training requirements on the appellant's behalf. The Board also found that the Commission had provided the appellant more than ample opportunity to complete the training program as required for certification as a Liquor Investigator. Having failed to complete the required training, and faced with discharge for failing to satisfy the requirements of his position, Mr. Powers submitted his written resignation to the Liquor Commission. The Board did not find the Commission's position in this matter to constitute coercion. Mr. Powers was fully aware of the Commission's position prior to his enrollment at Police Standards and Training.

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The Board ruled as follows on the Appointing Authority's Request for Findings of Fact and Rulings of Law:

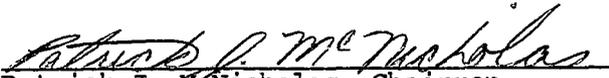
Proposed Findings of Fact:

#1 through 14 are granted to the extent that they are consistent with the decision above.

Proposed Ruling of Law:

1 through 8 are granted. 2 through 4, however, are not dispositive of this appeal in light of the Board's decision that the appellant voluntarily tendered his resignation.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Robert J. Johnson

  
Mark J. Bennett

cc: Michael C. Reynolds, SEA General Counsel  
George E. Liouzis, Human Resource Coordinator, N.H. Liquor Commission  
Virginia A. Vogel, Director of Personnel