BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

LEE BOWER, Appellant, v. LIQUOR CONTROL BOARD, Respondent.	Case No. DISM-99-0030 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, GERALD L. MORGEN, Vice Chair, and LEANA D. LAMB, Member, for hearing oral argument pursuant to the Board's February 26, 2001 order. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on April 6, 2001.

1.2 **Appearances.** Appellant Lee Bower was present and was represented by Martinus Johnson Jr., Attorney at Law. Mark A. Anderson, Assistant Attorney General, represented Respondent Liquor Control Board.

II. FINDINGS OF FACT

2.1 On March 30, 1996, Appellant accepted an Intermittent position as a Liquor Store Clerk with the Liquor Control Board (LCB). In October 1997, Appellant began a probationary appointment as a Part-time Liquor Store Clerk. Appellant completed his probationary period and became a Permanent Part-time Liquor Store Clerk.

2.2 On June 14, 1999, Lou Spignesi with the United Food and Commercial Workers Local 1001, submitted an appeal on Appellant's behalf indicating that Appellant was appealing his dismissal from the LCB.

2.3 By letter dated June 23, 1999, Respondent informed the Board that Appellant was an Intermittent employee and that he was given proper notice of the effective date of his termination.

2.4 By letter dated July 2, 1999, Mr. Spignesi responded that Appellant had submitted a Personnel Action Request (PAR) Form indicating that he wished to resign from his permanent status as a Part-time Clerk to a position as an Intermittent employee, but that he subsequently rescinded his resignation within 72 hours as permitted by the merit system rules.

2.5 On September 18, 2000, Respondent filed a Motion for Dismissal contending the appeal should be dismissed because Appellant was an Intermittent employee at the time of his dismissal, and therefore lacked standing to appeal. Appellant argued that he did not sign the PAR form, that the signature was a forgery, that he was a permanent part-time employee at the time of his dismissal, and therefore had standing to appeal his dismissal. By order dated October 18, 2000, the Board denied Respondent's motion and concluded that the issue of Appellant's employment status at the time of his dismissal was central to the appeal and to whether Respondent initiated the dismissal in accordance with the appropriate merit system rules and regulations.

2.6 On February 5, 2001, Respondent filed a Motion for Preliminary Ruling on Whether Appellant has Standing to Appeal and asked the Board to determine whether the signature on the PAR form was legitimate. Appellant opposed the motion and argued that the appeal should proceed

to hearing. By order dated February 26, 2001, the Board granted Respondent's motion and directed the parties to appear before the Board to conduct a limited hearing on the issue of whether Appellant's signature on the PAR form was authentic.

2.7 A PAR form is utilized by Respondent to make official changes of an employee's work status. The PAR form in question here was purportedly signed by Appellant on April 15, 1999, and indicates that Appellant was voluntarily demoting from a Part-time Clerk to an Intermittent Clerk. The PAR form was received by the Liquor Control Board's Personnel Office on May 6, 1999.

2.8 On June 1, 1999, Appellant was notified of the termination of his Intermittent appointment effective June 2, 1999.

2.9 During the course of the hearing, both parties presented testimony from expert witnesses who conducted handwriting analysis and compared Appellant's alleged signature on the PAR form to numerous other documents which contained Appellant's authentic signature. However, both experts' opinions differed on whether the signature on the form was Appellant's authentic signature or a forgery. Robert G. Floberg, Respondent's expert witness, concluded that the signature on the PAR form was "a valid, holographic signature written by Mr. Bower." Timothy P. Nishimura, Appellant's expert witness, concluded that the signature on the PAR form was "non-genuine" and a "simulated forgery."

2.10 In making a determination of whether the signature on the PAR form is a forgery or Appellant's authentic signature, we have weighed other evidence and testimony presented during the course of the hearing, and we make the following findings.

2.11 In the spring of 1999, Appellant's father was seriously ill and Appellant was frequently off from work to care for him. In approximately April 1999, Appellant made an inquiry to his supervisor, Store Manager Tracy Kaminae, about how to get additional time off from work. After discussions with District Manager Nicole Johnston, Mr. Kaminae informed Appellant that he could opt to demote to a position as an intermittent employee. Appellant responded to Mr. Kaminae, "Let's go ahead."

2.12 The following day, Mr. Kaminae informed Appellant that he would lose his employee benefits and seniority if he changed his work status to that of an intermittent employee. What occurs at this point is disputed by Appellant. Appellant testified that he responded to Mr. Kaminae that he did not want to "be demoted" to intermittent status and that Mr. Kaminae told him, "I'll take care of it." Appellant also asserts that he did not become aware that a PAR form existed which changed his work status to intermittent until he received discovery material from Respondent in September 2000.

2.13 However, we do not find credible Appellant's assertions that he did not sign the PAR form and that he was unaware that he was an Intermittent employee based on the following events.

2.14 On June 1, 1999, Appellant was served with a letter from Daniel Lieberman, Deputy Director for Retail Sales, which informed Appellant of "the termination of your **intermittent** employment as a Liquor Store clerk, position number 1406, effective June 2, 1999" (emphasis added). Appellant admits that he received and read the contents of the letter, however, Appellant

did not question the statement in the letter that he was being dismissed from his intermittent employment.

2.15 Furthermore, Mr. Spignesi's July 2, 1999 letter, written on Appellant's behalf in response to our Notice of Potential Dismissal indicates:

> Appellant agrees that he did submit a Personal (sic) Action Form (PAR) wherein he wished to resign from his permanent status as a Part-time Liquor Clerk to that of an Intermittent employee. However, the Appellant also states that he rescinded his resignation as a Part-time Liquor Clerk and so informed Tracy Kaminae, Manager, within the seventy-two (72) hours permitted by the Merit System Rules . . .

2.16 Appellant admits that he received and read a copy of the July 2, 1999 letter. However, he asserts that he received the letter months after it was issued because he was in Idaho visiting his ill father. Appellant further testified that when he read the letter, he called John Amato, the union employee who initially interviewed him and gathered information on his case, to clarify that he had not made the statements in this letter.

2.17 Both the June 1, 1999 letter of termination and the July 2, 2000 letter from the union indicate that Appellant was an intermittent employee. Appellant should have been aware of the contents of these documents, however, there is no credible evidence that Appellant disputed the statements in the letters that indicated he held status as an intermittent employee. Appellant began his employment with the LCB as an intermittent employee, and he understood the implications of occupying an intermittent position, namely the lack of civil service rights. However, there is no showing that he reasonably acted to question why he was designated or referred to as an intermittent employee when, as he alleges, he never submitted a PAR form.

2.18 There is no credible evidence or testimony to support Appellant's contention that the union's letter resulted from a misunderstanding during his initial conversation with Mr. Amato or that he subsequently attempted to correct any misstatements in the July 2 letter. Moreover, the letter from Mr. Spignesi frames the issue as whether or not Appellant rescinded his resignation from his Permanent Part-time Clerk Position within the requisite 72 hour period of time. This notice to rescind would not be necessary unless a resignation was, as Respondent contends, submitted by Appellant. Finally, there is no evidence of a motive or desire on the part of any LCB employee to forge Appellant's signature. On the other hand, there is sufficient credible evidence and testimony that establishes that Appellant desired to become an Intermittent employee and more likely than not, that he signed a PAR form reflecting that his work status was changing to Intermittent employment. Therefore, based on a preponderance of the credible evidence, we are more persuaded by Mr. Floberg's opinion that the signature on the PAR form is Appellant's valid, holographic signature.

III. ARGUMENTS OF THE PARTIES

3.2 Respondent argues that Appellant voluntarily demoted to Intermittent status and that there was no forgery on the PAR form. Respondent argues that Appellant was given written notice that he was terminated from his position as an Intermittent employee and that he was aware of the contents of the letter. Respondent argues that Appellant understood the significance of becoming an intermittent employee with no civil service rights, yet failed to question his work status immediately upon reading his termination letter. Respondent argues that Mr. Floberg's testimony and the testimony of other witnesses establishes far beyond a preponderance of the evidence that the signature on the PAR form is legitimate.

3.2 Appellant does not dispute that he expressed an interest in becoming an Intermittent employee, but he asserts that he changed his mind when he discovered he would lose his seniority status and benefits. Appellant asserts that although he did complete a PAR form, he subsequently destroyed and disposed of it. Appellant argues that the signature on the PAR form in question is a forgery. Appellant also contends that he did not complete or sign any subsequent PAR form and did not authorize anyone to sign his name to a form or authorize one to be processed. Appellant further argues that the testimony of Mr. Nishimura was credible, cogent and consistent and establishes that it was not his genuine signature on the PAR form, but a simulated forgery and drawing.

IV. CONCLUSIONS OF LAW

4.1 The issue before this Board is whether the signature on the PAR form is Appellant's authentic signature or a forgery. Based on the credible evidence before us, we conclude that Appellant signed and submitted the PAR form which changed his employment status from Part-time Liquor Store Clerk to Intermittent Liquor Store Clerk. As a result, Appellant was an Intermittent employee at the time of his termination.

4.2 WAC 356-34-080, subsection (1) provides that "Any permanent employee ... who is dismissed ... may appeal such action to the personnel appeals board . . ." In this case, Appellant was not a permanent employee, therefore, he lacks standing to appeal his termination. The Board lacks jurisdiction to hear an appeal of the dismissal of an intermittent employee, therefore, the appeal should be dismissed.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Lee Bower is dismissed.

DATED this _____ day of _____, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

_____
Leana D. Lamb, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504