BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

SHERI COKER, Appellant, v. LIQUOR CONTROL BOARD, Respondent.	Case No. DISM-00-0042 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the offices of the UFCW Local 1001, 12838 SE 40th Place, Bellevue, Washington, on January 16, 2001. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Sheri Coker was present and was represented by Mark Brennan, Attorney at Law, of Webster, Mrak & Blumberg. Mark Anderson, Assistant Attorney General, represented Respondent Liquor Control Board.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for the causes of neglect of duty and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleges that Appellant failed to properly record sales and account for store funds on three occasions, allowed a customer to remove merchandise from the store without payment, misappropriated cash for the personal benefit of a coworker, conducted a 27 minute personal conversation during work time, and left a stack of currency unattended on a cash counter for two hours.

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1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

II. FINDINGS OF FACT

2.1 Appellant was a Liquor Store Clerk and permanent employee for Respondent Liquor Control Board (LCB) at the Bellevue Eastgate Liquor Store. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on June 16, 2000.

2.2 By letter dated May 15, 2000, Gary J. Ferko, Acting Deputy Director of the Retail Services Division, informed Appellant of her dismissal effective May 30, 2000. Mr. Ferko listed the causes leading to Appellant's termination as neglect of duty and willful violation of published employing agency and or Department of Personnel rules or regulations. Mr. Ferko specifically alleged that Appellant failed to properly record sales and account for store funds on three occasions, allowed a customer to remove merchandise from the store without payment, misappropriated cash for the personal benefit of a coworker, conducted a 27 minute personal conversation during work time, and left a stack of currency unattended on a cash counter for two hours.

2.3 Due to large, continuing and unexplained inventory shortages at the Bellevue Eastgate Liquor Store, the LCB's loss prevention department installed covert video cameras in the store to view the procedure compliance of employees working at the store. The cameras were installed on June 13, 1999 and were removed on August 1, 1999. Approximately four to six covert cameras were placed in the ceiling over cash registers, a cash counter and at a back door.

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2.4 Appellant began her employment as a permanent part-time Liquor Clerk in 1992. Appellant began working at the Bellevue Eastgate store in 1996. Appellant's store manager provided her with on-the-job training and instructed her on store practices and procedures. However, Appellant was not provided with a store policy manual nor was there a manual available at the Bellevue Eastgate store. Appellant's duties included providing customer service by processing merchandise sales and handling cash transactions, accounting for store funds and preparing and making deposits; assisting in receiving incoming shipments; arranging stock on shelves; replenishing supplies; and performing routine store maintenance and cleaning.

2.5 Appellant has received no prior formal or informal disciplinary actions. There is no evidence that Appellant's work performance was evaluated at anytime during her tenure at the Eastgate store.

2.6 Respondent presented testimony from the appointing authority, Gary J. Ferko, Deputy Director for the Retail Services Division, and Laurel Lewellen, Loss Prevention and Security Supervisor. Ms. Lewellen was responsible for conducting the investigation. In making findings about whether Appellant's actions occurred as alleged by Respondent, we must evaluate what the video recordings show, what the store practices among employees were at that time, what training Respondent provided to Appellant regarding her duties and responsibilities, and what was Appellant's understanding of the store's policies and regulations.

2.7 Neither Mr. Ferko nor Ms. Lewellen could testify to the practices and operating procedures at the Bellevue Eastgate store. Both Appellant and former liquor clerk Lee Bower provided testimony regarding the direction and training they received from the store's manager. Their testimony encompassed the practices at the store concerning sales, merchandise discounts and cash

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counting procedures. After listening to the testimony presented, reviewing the videotape of the incidents and the related detail transaction summaries, we make the following findings.

2.8 *Incident of June 18, 1999*

- Appellant rang four mini bottles of liquor while no customers or bottles were at the register. The detail transaction summary also reflects that four miniature bottles were processed at $1 each.

2.9 Numerous customers purchased miniature bottles of spirits on a regular basis. These customers routinely selected the merchandise and showed the store clerks the number of bottles they had selected. The customers also placed sufficient cash on the checkout counter to pay for the purchase as they exited the store with the merchandise. As a customer service, the store clerks would process the sale later. These types of sales occurred on a regular basis and the store manager was aware of the practice. We find that Appellant's actions on June 18, 1999 were consistent with this practice. Based on this routine and accepted standard operating procedure at the Eastgate store, there is no evidence that Appellant failed to properly record sales and account for store funds.

2.10 *Incident of June 19, 1999*

- A customer approaches Appellant's register with a bottle of merchandise. Appellant scans and bags the bottle. The customer does not provide payment. However, the customer removes the bagged bottle from the sales area on June 19, 1999. The detail transaction summary shows that Appellant voided the transaction.

2.11 Appellant testified that when the customer failed to pay, she voided the transaction. Appellant denies that she saw the customer leave the store with the product. Appellant had a duty to be observant and take back the bottle when the customer failed to pay for the item. Therefore,

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we find that Appellant failed to ensure that the customer paid for the merchandise and was neglectful when the customer removed the unpaid merchandise from the store.

2.12 *Incident of July 3, 1999*

- Appellant's coworker, Rick Steen, approaches Appellant's cash register when Appellant is not present. Mr. Steen has two miniature bottles in one hand and currency in the other. Mr. Steen places the currency on the counter, enters some numbers on the register keypad and walks away. Shortly thereafter, Appellant returns to the register to assist a customer. The customer has one bottle of merchandise which Appellant scans. The customer provides Appellant with a credit card which Appellant processes and returns to the customer. Appellant hands the customer a receipt which he signs. The customers takes his product and leaves the sales area. Mr. Steen then returns to Appellant's register where he and Appellant engage in conversation. Appellant reaches for the currency placed on the counter earlier by Mr. Steen and pushes it towards Mr. Steen's hand. Mr. Steen picks up the currency, places it in a pocket and then leaves the area. A review of the detail transaction summary for the purchase reflects that the customer paid for two mini bottles of spirits in addition to the bottle of spirits he placed on the counter.

2.13 Appellant testified that she did not know that Mr. Steen had used her register or that there was a sale pending on the register when she rang up the customer's purchase. Appellant also testified that when Mr. Steen approached her, he stated, "there's the money I owe you," but failed to clarify that the money was for the miniature bottles. Appellant testified that she told Mr. Steen that he did not owe her any money and she returned the currency back to him. Appellant's explanation of this event is not believable. Appellant was an experienced cashier who understood cash register procedures. In this case, we find that Appellant recognized or should have recognized that there was a sale suspended on her cash register and that items were charged to a customer who did not intend to purchase the items and who did not receive the items for which he paid. Appellant allowed the customer to pay for the two miniature bottles and then returned the purchase payment to Mr. Steen.

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2.14 *Incident of July 21, 1999*

- Appellant scans a large party pack box of wine for a customer. Appellant accepts a credit card, processes the transaction and the customer signs the receipt and walks away from the cash register with the box of wine. The detail transaction for the purchase reflects that Appellant charged the customer for two boxes of wine.

2.15 At the Eastgate store, customers who purchased more than one box of wine or purchased large quantities of merchandise were allowed to take one of the particular item to the cash register and indicate how many more of the item they wanted to purchase. The store clerk would process the sale by entering the quantity into the register and then scanning the item. This process ensured that the customer paid for the correct quantity of merchandise. The customer would then pick up the remainder of their purchases prior to leaving the store. Appellant testified that in this instance, the customer wanted more than one box of wine, but only took one box to the cash register. Appellant processed the sale of two boxes of wine. Based on the store's accepted operating procedure, there is no evidence that Appellant failed to properly record sales and account for store funds.

2.16 *Incident of July 22, 1999*

- Appellant conducts a conversation with a customer during work time which lasts approximately 27 minutes. During this time period, Appellant and the customer exchange and view photos. Appellant's attention and focus for a majority of the time is on the customer and her back is to the store. Appellant continues to ring sales for customers who approach her register.

2.17 Appellant acknowledges that she and the customer engaged in a conversation about their grandchildren, but Appellant contends she was also providing customer service to the customer who inquired about how much liquor to provide for an upcoming wedding. Appellant's

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conversation with the customer lasted for an extended period of time. Appellant failed to be watchful and attentive of customers who were in the store during that time period and only provided service to them when they directly approached her cash register. Appellant disregarded customer service and internal security when she diverted her attention from her responsibilities while engaged in a personal conversation.

2.18 *Incident of July 22, 1999*

- Appellant rings numerous bottles of wine for a customer. A review of the detail transaction of the purchase indicates the customer purchased a total of 10 bottles of wine and that Appellant gave the customer a case discount for the purchase.

2.19 Liquor store policies allow customers to receive case purchase discounts. However, the practice at the Eastgate store was to give case discounts to customers whenever the store did not have a full case of an item when the customer expressed their desire to purchase a case. Appellant testified that in this incident, the store did not have two additional bottles of the wine and she gave the customer the discount for ten bottles pursuant to store practice. Based on this accepted standard operating procedure, we find that Appellant's actions were in conformance with store practice and that there is no indication that she failed to properly record sales and account for store funds.

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2.20 *Incident of July 26, 1999*

- At approximately 5:02 p.m. Appellant appears to be counting currency at the store's cash counter. Appellant piles the currency together, places a sheet of paper on top of it and leaves the area. At approximately 5:14 p.m., Appellant enters the area, uses an adding machine, places additional currency on the stack of cash, covers it with the sheet of paper and leaves the area again. Appellant enters the area for a variety of reasons again at 5:27 p.m., 6:20 p.m., and at 6:28 p.m., At 7:03 p.m., Appellant enters the area, removes the sheet of paper from the stack of money, appears to count the currency, places it into a pile, and covers it again with a sheet of paper. Appellant then leaves the area. At 7:04 p.m., Mr. Steen enters the area and appears to count it. He then covers it with a sheet of paper and leaves. At 7:07 p.m. Appellant returns. Mr. Steen also enters and they both appear to be counting the currency, which they separate into different piles and place into the store's cash drawers. A review of the detail transaction indicates that a "cash pickup" in the amount of $1,260 was entered into the store's computer system at 7:06 p.m.

2.21 The cash counter is separated from the main area of the store by a wall of shelves containing bottled merchandise. Although the cash counter is not plainly visible, an individual in close proximity to the shelves can peer through the shelves and bottles and view the back room where the cash counter is located. Appellant testified that the cash counting practice viewed on tape was the typical procedure for counting currency at the store. However, the length of time the currency remained unsecured on the cash counter is unreasonable. As a cashier, Appellant understood the importance of accounting for and securing cash. We recognize that there were numerous standard operating procedures at the store that did not comply with Respondent's approved practices and procedures, and we do not condone or encourage these permissive practices to continue. However, the practices at the Eastgate store were condoned by the store manager and the intent of a number of them was to provide better customer service.

2.22 The cash handling procedures caught on video tape, however, are unacceptable. Respondent has proven that Appellant had a duty and responsibility to protect and safeguard the integrity of store funds. Although we recognize that the training Appellant received from the store manager did

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not conform with approved LCB procedures, it does not diminish Appellant's responsibility to use good judgment in handling store currency. Respondent has proven that Appellant disregarded internal security measures when she left a stack of currency on the cash counter unattended for a period of approximately two hours.

2.23 As Appellant's appointing authority, Mr. Ferko testified that Appellant had a duty to follow all procedures to correctly process sales and account for store funds, to maintain internal store security and the integrity of the store inventory. Mr. Ferko testified that after viewing the video tape of Appellant's actions, he concluded that Appellant neglected her duty and violated the Board's policies and procedures in each of the seven instances. Mr. Ferko testified that the correct procedures are addressed in the policy handbook and that Appellant's violations are unacceptable and reflect unconscionable behavior, lax judgment and a disregard for the integrity of the agency and the assets it is entrusted with. Mr. Ferko concluded that Appellant, as a nine-year employee, understood the agency's procedures and he did not find credible her assertions that she did not know her actions violated policy. After reviewing Appellant's employment history, Mr. Ferko concluded that Appellant's misconduct warranted termination.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant was observed on video tape engaged in seven instances of misconduct. Respondent argues Appellant's responses regarding her conduct are farfetched and unbelievable and that store policies and procedures cannot be ignored because "everybody does it this way." Respondent asserts that Appellant neglected her duty, disregarded cash register procedures and violated policy when she rang up merchandise while no customer or merchandise was there, inappropriately allowed a customer to remove merchandise without payment, allowed a customer to pay for items used by another employee, charged a customer for a box of wine they did not purchase and gave a case discount for a purchase of less than a case. Respondent further

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argues that Appellant neglected her duty and violated policy when she disregarded customers and store security by engaging in a 27 minute personal conversation. Finally, Respondent argues that the stack of currency Appellant left unattended for approximately two hours is the most egregious of the violations and that it alone constitutes a legitimate basis to support Appellant's termination. Respondent argues that it was not acceptable to leave $1,200 unattended with only a piece of paper to cover it, especially when the cash counter was visible from the lobby of the store. Respondent argues that Appellant was a 9-year veteran of the department who should have known and understood the agency's policies and procedures. Respondent asserts that misconduct occurred in each of the seven instances and termination was warranted.

3.2 Appellant argues that Respondent has not met its burden of proving the allegations that she neglected her duty or willfully violated policy. Appellant does not dispute the validity of the video, however, she disagrees with the inferences drawn by Respondent. Appellant argues that what the video tape shows is her acting consistently with what she was trained to do, and what her manager and other employees were doing at the store. Appellant recognizes that she made some simple, inadvertent mistakes, but contends they do no rise to the level of termination. Appellant argues that she received inadequate training and asserts that her employer failed to provide her with the Liquor Control Board's rules and regulations manual. Appellant argues that she was not evaluated in over five years and she asserts that she was performing her duties according to the instructions she received. Appellant argues that termination is not warranted based on the minor mistakes she made, especially when considering her unblemished employment record.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

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4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

4.5 Respondent has failed to prove by a preponderance of the evidence that Appellant neglected her duty when she rang up merchandise after the customer left the store on June 18, 1999 and when she provided customers with case discounts for purchases of less than a case on July 21 and 22, 1999.

4.6 Respondent has proven by a preponderance of the evidence that Appellant neglected her duty when she allowed a customer to remove store merchandise without making payment for the product on June 19, 1999; when she returned a purchase payment to another employee after a customer paid for the purchase on July 3, 1999; when she disregarded customer service and internal security on July 22, 1999 while she was engaged in a personal conversation during work time on

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July 22, 1999; and when she left a stack of currency unattended on the cash counter for approximately two hours.

4.7 Respondent has failed to prove by a preponderance of the evidence that Appellant had knowledge of the LCB's store policy manual and that she refused to comply with the rules and regulations.

4.8 In determining whether the sanction imposed here is appropriate, we have considered the facts and circumstances presented. The store manager of the Bellevue Eastgate store was entrusted by Respondent to properly train staff and ensure that all Liquor Control Board policies and procedures were followed. Nevertheless, the business practices at the Eastgate store were permissive and many of Appellant's actions were based on the training she received. Appellant should not be penalized for performing her duties in the manner that she was trained.

4.9 Furthermore, Respondent has failed to meet its burden of proof with respect to several of the allegations, including that Appellant was aware of the agency's policy manual. Appellant's actions with respect to the proven allegations were clearly unprofessional and inappropriate and are not condoned by the Board. However, we must consider these incidents of inappropriate behavior by an employee who received inadequate training, has no history of formal or informal disciplinary action, and our conclusion that all the allegations were not proven.

4.10 The mitigating factors notwithstanding, the seriousness and circumstances of this incident warrants a severe disciplinary sanction. We find that a lengthy suspension is sufficient to impress upon Appellant the seriousness of her actions. Therefore, the sanction should be modified to a five-month suspension without pay.

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4.11 In fashioning the remedy, we have considered Appellant's status as a part-time employee with variable work hours. Therefore, Appellant should be reinstated to her position as a Liquor Store Clerk effective November 1, 2000. Appellant is awarded back-pay for each month she was unemployed from the effective date of her reinstatement to the date of the order. Furthermore, the back-pay should be equivalent to the average number of monthly hours she worked in the six months prior to her dismissal.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Sheri Coker is granted in part and the disciplinary sanction is modified to a five-month suspension;

IT IS FURTHER ORDERED that Appellant is reinstated to her position as a Liquor Store Clerk effective November 1, 2000, and she is awarded back-pay for each month she was unemployed from the effective date of her reinstatement to the date of the order. Furthermore, the back-pay should be equivalent to the average number of monthly hours she worked in the six months prior to her dismissal.

DATED this _____ day of _____, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

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