BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MARY CHESTER, Appellant, v. LIQUOR CONTROL BOARD, Respondent.	Case No. RED-04-0044 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, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the Department of Labor and Industries, 315 – 5th Avenue South, Suite 200, Seattle, Washington on August 4, 2005.

1.2 **Appearances.** Appellant Mary Chester was present and was represented by Mark Brennan, Attorney at Law, of the Law Offices of Rinehart & Robblee. Valerie Petrie, Assistant Attorney General, represented Respondent Liquor Control Board.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of reduction in salary for neglect of duty and willful violation of published employing agency or department of personnel rules or regulations. Respondent alleges Appellant failed to properly check a Washington Intermediate Driver's License and consequently sold liquor to a minor.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

II. MOTION FOR SUMMARY JUDGMENT

2.1 **Documents Considered.** The Board considered the files and written documents in this matter without oral argument, including:

- Respondent's Motion for Summary Judgment, with attachments, filed June 29, 2005;
- Appellant's Response to Respondent's Summary Judgment Motion, with attachments, filed July 15, 2005; and
- Respondent's Reply to Appellant's Response to Motion for Summary Judgment, filed July 20, 2005.

2.2 **Background.** Appellant is a part-time Liquor Store Clerk at store #131 in Bellevue, Washington, for Respondent Liquor Control Board (LCB). By disciplinary letter dated September 17, 2004, Appellant was informed that her hourly wage would be reduced in salary, effective October 1, 2004, for selling alcohol to a minor in violation of state law and agency policy.

2.3 **Arguments.** Respondent moved for summary judgment on the grounds that Appellant effectively admitted to selling alcohol to an underage operative of the LCB's Enforcement Division when she failed to complete Respondent's Request for Admissions in a timely manner. Appellant argued that Respondent's requests for admission should not be deemed admitted merely because of the date on which Appellant completed them. Appellant further argued that summary judgment was not appropriate because genuine issues of material fact existed about whether there were mitigating factors to be considered regarding the disciplinary action taken and the level of discipline.

2.4 **Discussion.** The Board may decide an appeal by motion if the documents on file, depositions and affidavits show there is no genuine issue as to any material fact and the appeal should be dismissed as a matter of law. WAC 358-30-060(1). All facts and reasonable inferences

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

therefrom are to be determined in favor of the nonmoving party. See Hall v. University of Washington, PAB No. 3863-V2 (1995).

2.5 There is no dispute that Appellant sold alcohol to an underage operative. However, the Board is reluctant to dismiss a case based on a technical violation of discovery rules, especially when Appellant provided a response that stated a genuine issue of material of fact existed. Therefore, Respondent's Motion for Summary Judgment is denied.

III. FINDINGS OF FACT

3.1 Appellant is a permanent employee for Respondent Liquor Control Board. 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 October 19, 2004.

3.2 Appellant began her employment as a part-time Liquor Store Clerk at store #33 in Redmond in August 2001. One of Appellant's primary responsibilities is to check proper identification to ensure that alcohol is not sold to a person under age 21. In November 2003, Appellant started working in store #131 in Bellevue. Appellant has not received any prior disciplinary actions.

3.3 Appellant's six-month evaluation reflects that she received identification (ID) training through the Enforcement Division and viewed ID training video tapes located at her work location. Specifically, Appellant attended an ID and Overservice training in October 2001 and received training on polices and procedures in May 2002. In addition, Appellant signed and dated an ID-Overservice Acknowledgement Sheet on August 8, 2003, indicating she reviewed the annual training packet, including LCB's policy on prohibited sales, a Washington State Drivers Licenses

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

and ID Cards pamphlet from the Department of Licensing, and a current ID guide. Appellant also acknowledged reviewing a responsible liquor sales videotape.

3.4 By letter dated September 17, 2004, Administrative Director Pat Kohler notified Appellant of her reduction in salary, effective October 1, 2004. Ms. Kohler charged Appellant with neglect of duty and willful violation of the published employing agency or department of personnel rules or regulations when she failed to notice an underage operative's date of birth during a compliance check and sold liquor to a minor.

3.5 It is undisputed that on June 11, 2004, Appellant sold alcohol to an 18 year-old underage operative. At the time of the sale, Appellant asked to see the underage operative's identification, and he handed her a vertical Washington Intermediate License. The underage operative's vertical license showed his date of birth (DOB) as 11/08/1985, which was printed to the left of his photograph. In addition, the license emphasized the words "AGE 18 ON 11-08-2003" also printed on the left, under the DOB and above the licensee's signature.

3.6 Since July 2001, the Washington State Department of Licensing has issued vertical licenses to drivers who are under 21 years of age at the time of issuance. In addition to being vertical, the license will list a date with either the words "AGE 18 ON" or AGE 21 ON," depending on the person's age when the card is issued. While the LCB has not made any policy changes as a result of the Department of Licensing's use of vertical licenses, it has routed information to all the liquor stores to heighten awareness that a vertical license could indicate that a person is under age 21.

3.7 Appellant testified that she looked at the line reading "AGE 18 ON" and believed it read "AGE 21 ON." Appellant further testified that she was unaware of changes made by Department of

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Licensing that included two types of vertical licenses that either showed when a licensee turned 18 or 21 years of age. Appellant stated that she was trained to simply check one item, the "AGE ON" portion of the license, when presented with a vertical license. After liquor enforcement officers entered the store and informed Appellant of her sale to an underage operative, she took another look at the license and realized she had mistakenly sold alcohol to a minor.

3.8 Human Resources Consultant Tina Cooley credibly testified that sales clerks are trained on agency policies and trained how to responsibly sell liquor and check identification. Ms. Cooley explained the various steps of checking ID as portrayed in the training video, including comparison of the photograph to the customer, checking height and eye color, asking the customer questions, and checking the customer's date of birth. During Appellant's testimony, she also stated various principles regarding an ID check, such as checking the customer's date of birth and making sure the birth year and certain numbers in the license add up to the number 100. Therefore, we find Appellant clearly understood the procedures for checking identification.

3.9 The LCB Store's Policy Manual, Chapter 1, Section 12 prohibits liquor sales to "persons under 21 years of age." The policy manual also requires that employees "check IDs for anyone who does not look at least 30 years of age." Further, Chapter 10, Section 5, Prohibited Sales, states:

> Underage. Employees are cautioned to exercise extreme care to avoid sales to underage persons. An employee who sells liquor to persons under 21 years of age is in violation of state law. Acceptable identification shows correct age, bears a photograph and signature, and is valid (not expired). Any customer without appropriate I.D. will not be allowed to make a purchase.

3.10 Ms. Kohler was Appellant's appointing authority when the discipline was imposed. In determining the level of discipline, Ms. Kohler considered Appellant's employment record and the seriousness of the offense. Ms. Kohler also reviewed Appellant's training record and determined

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

that Appellant had received proper training in checking identification. After considering Appellant's response to the charges, Ms. Kohler found Appellant failed to present any mitigating facts for not properly checking ID and Appellant failed to assume any responsibility for her error. Further, Ms. Kohler was not persuaded by Appellant's assertion that she had been improperly trained on checking ID. Ms. Kohler concluded that Appellant's actions were contrary to the LCB's critical mission of keeping alcohol out of the hands of minors, and she imposed the reduction in salary to ensure Appellant would not repeat her behavior.

IV. ARGUMENTS OF THE PARTIES

4.1 Respondent argues the undisputed evidence supports that Appellant sold alcohol to a minor operative when he presented her with a vertical license at the time of purchase. Respondent asserts that vertical licenses are only issued to individuals under the age of 21 at the time of issuance and asserts that type of license, coupled with the minor operative's youthful appearance, should have caused Appellant to carefully examine his identification. Respondent argues there are multiple ways of ensuring the identification presented is valid and contends Appellant neglected her duty to exercise extreme care when selling alcohol to a young looking customer. Respondent argues Appellant simply glanced at the license, failed to observe the customer's date of birth, and as a result violated the agency's policy and created a liability for the LCB. Therefore, Respondent asserts the minimum sanction of reduction in salary is warranted.

4.2 Appellant admits that she mistakenly sold alcohol to an underage operative; however, she contends she checked the individual's identification as she had been trained to do and determined he was 21 years of age. Appellant asserts she attended a training where she was instructed to simply check the "AGE ON 21" line when presented with a vertical license. Appellant further asserts the video training did not explain procedures related to vertical licenses. Appellant argues

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

the LCB has the responsibility to train and inform employees about licensing changes that affect the way in which ID is checked. Appellant argues she understands the importance of not selling liquor to a minor and asserts she has learned from her mistake and will not repeat the behavior. Therefore, Appellant argues the $500 reduction in salary is too severe.

V. CONCLUSIONS OF LAW

5.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

5.2 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).

5.3 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).

5.4 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).

5.5 Appellant has a primary responsibility to check identification to ensure that alcohol is not sold to anyone under the age of 21. Appellant neglected her duty when she failed to thoroughly

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

look at the identification of a customer who not only presented a vertical license but who also appeared youthful. As a result, Appellant sold alcohol to a minor in violation of agency policy. There was no evidence presented to corroborate Appellant's assertion that she was trained to simply check one line on a vertical license. In fact, the credible evidence overwhelmingly supports there are multiple ways to ensure that identification is valid and the customer is at least 21 years of age. Therefore, Respondent has proven the charges in the disciplinary letter.

5.6 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness of the offenses. The penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. An action does not necessarily fail if one cause is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

5.7 Appellant's actions were clearly contrary to the agency's critical mission of ensuring that liquor sales are not made to minors and warrant a reduction in salary in this case. Under the proven facts and circumstances, the disciplinary sanction is appropriate, and the appeal should be denied.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Mary Chester is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504