BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

NORA DAVENPORT, Appellant, v. LIQUOR CONTROL BOARD, Respondent.	Case No. DSEP-02-0009 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; GERALD L. MORGEN, Vice Chair; and BUSSE NUTLEY, Member. The hearing was held at the office of the Personnel Appeals Board, in Olympia, Washington, on July 29, 2003.

1.2 **Appearances.** Appellant Nora Davenport did not appear and no representative appeared on her behalf. Morgan Damerow, Assistant Attorney General, represented Respondent Liquor Control Board.

1.3 **Nature of Appeal.** This is an appeal from a disability separation.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

1.4 **Citations Discussed.** WAC 358-30-170; Smith v. Employment Security Dept., PAB No. S92-002 (1992); WAC 356-05-102; WAC 356-35-010, WAC 356-05-120.

II. FINDINGS OF FACT

2.1 Appellant Nora Davenport was a permanent part-time 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 August 13, 2002.

2.2 Appellant worked as a Liquor Store Clerk with the Liquor Control Board from November 1996 until November 2001. As a Liquor Store Clerk, Appellants duties included:

- Receiving shipments of liquor
- Handling, lifting, and carrying cases of liquor weighing 50 or more pounds
- Stocking shelves
- Performing customer service
- Performing cashier duties

2.3 The essential functions and physical requirements of Appellant's position were identified in part as:

- Ability to stock shelves
- Lift 50 pounds regularly
- Carry 50 pounds regularly
- Push up to 20 pounds of force to push 200 pounds regularly
- Bend frequently
- Stoop and kneel regularly
- Crouch and crawl regularly
- Twist frequently

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.4 On November 17, 1997, Appellant's back was injured and the thoracic region of her back was affected. Appellant's back injury in conjunction with Thrombocytopenia (low platelet count) began to affect her ability to perform her job duties on a regular basis. Brian Wise, Safety Program Manager, began communicating with Appellant's physicians about her medical condition in November 1997.

2.5 By November 2001, Appellant's condition prevented her from being able to work.

2.6 By letter dated April 6, 2002, Steven Wood, Vocational Rehabilitation Counselor, requested medical information as to Appellant's physical restrictions and capabilities from Appellant's doctor, Peter Shalit, M.D. Dr. Shalit indicated that Appellant was not able to perform the job of injury but would be able to perform a sedentary job.

2.7 By letter dated April 27, 2002, Mr. Wood sent Dr. Shalit a job analysis of Appellant's position. Mr. Wood asked Dr. Shalit to review the job analysis and indicate whether Appellant was physically able to perform the work. Dr. Shalit responded that Appellant was unable to perform the essential functions required of the position because her chronic and recurring back pain was not compatible with the lifting requirements of the job. Appellant's position required her to be able to lift 50 pounds repetitively, but she could only lift up to five pounds occasionally. Dr. Shalit also indicated that Appellant's restrictions were permanent.

2.8 Mr. Wood contacted Appellant's supervisor to discuss return to work options. Appellant's supervisor reported that she was a good employee; however, there were no light duty or light jobs available within the sedentary range recommended by Appellant's physician.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.9 Maureen Clingman, Human Resource Consultant, attempted to find alternative positions for Appellant within the Liquor Control Board; however, she was unable to find any vacant positions. Ms. Clingman sent Appellant copies of bulletin announcements and application forms for potential vacant positions in other agencies. Ms. Clingman also offered to assist Appellant with placing her name on the Reduction-In-Force register. However, Appellant did not complete and return any of the state application forms.

2.10 By letter dated July 30, 2002, Pat Kohler, Administrative Director, notified Appellant of her separation from her Liquor Store Clerk position effective October 1, 2002.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argued that Appellant could not perform the essential functions of her position. Respondent asserted that they were unable to find an alternative position that met Appellant's accommodation needs. Respondent contends that a disability separation was the only recourse.

3.2 Appellant did not provide an argument.

IV. CONCLUSIONS OF LAW

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

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.2 At a hearing on appeal of a disability separation, the appointing authority has the burden of supporting the action that was initiated. WAC 358-30-170. Respondent has the burden of proving that Appellant was unable to perform the duties of the position as specified in the letter of separation and that reasonable accommodation cannot be provided. Smith v. Employment Security Dept., PAB No. S92-002 (1992).

4.3 The issue here is whether Respondent complied with the provisions of WAC 356-35-010 when it separated Appellant from her position as an Office Assistant due to her disability. WAC 356-05-120 defines a disability as "[a]n employee's physical and/or mental inability to perform adequately the essential duties of the job class." In this case, Appellant was unable to perform the essential duties of her position. Therefore, Appellant's condition meets the definition of a disability.

4.4 WAC 356-35-010(1) provides, in part, that an appointing authority "may initiate a disability separation of a permanent employee only when reasonable accommodations cannot be provided. . ." Appellant was unable to perform the essential duties of her position as a Liquor Store Clerk, and Respondent reasonably concluded that accommodation could not be provided. Although Respondent had no obligation to reallocate or alter the essential functions of Appellant's position, as a part of its accommodation process, the agency conducted vacancy searches for positions based on Appellant's qualifications; however, none existed.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.5 Respondent has met its burden of proof that Appellant could not perform the essential duties of her position and that reasonable accommodation could not be provided. Therefore, the disability separation of Nora Davenport should be affirmed and her appeal denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Nora Davenport denied.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

_____
Busse Nutley, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504