

IDAHO PERSONNEL COMMISSION
P. O. Box 83720
Boise, Idaho 83720-0066
Phone: (208) 854-3075

IDAHO PERSONNEL
COMMISSION

DEC 08 2009

FILED

**IDAHO PERSONNEL COMMISSION
STATE OF IDAHO**

BARBARA SMITH,)	
)	
Appellant,)	IPC NO. 09-23
)	
vs.)	ORDER OF DISMISSAL
)	
IDAHO STATE LIQUOR DIVISION,)	
)	
)	
Respondent.)	
_____)	

By letter dated October 26, 2009 ("Letter of Discipline"), the Idaho State Liquor Division ("ISLD") terminated Barbara Smith's ("Appellant") employment for cause under Idaho Code § 67-5309(n)(1), (5) and (11), and IDAPA 15.04.01.190.01 a., b. and k. (DHR Rule 190.01 a., e. and k.). A copy of the Letter of Discipline is attached as Exhibit A, including Federal Express tracking history showing a ship date of October 26, 2009. The Letter of Discipline, (a copy of which was received at DHR on October 27 via Statehouse Mail) provided notice of Appellant's right to appeal her termination within thirty-five (35) calendar days from the date of the letter. See Letter of Discipline, p. 3.

Appellant appealed her termination to the Idaho Personnel Commission ("IPC"). The appeal was received in the mail and filed at the office of the IPC on December 2, 2009. A copy of her appeal is attached as Exhibit B. Appellant's appeal is dismissed pursuant to

DHR Rule 201.04. The Commission does not have jurisdiction to entertain this appeal because it is untimely filed.

Idaho Code § 67-5316(2) provides that “[t]he decision or action of the appointing authority shall be final and conclusive unless a classified employee files an appeal within thirty-five (35) days after completing the departmental problem solving or due process procedure . . .”. Idaho Code § 67-5316(2). Upon mailing of the Letter of Discipline on October 26, 2009, the departmental due process procedure was completed in this case and the IPC must have physically received Appellant’s appeal within thirty-five calendar days from October 26, 2009 in order for timely filing of the same. DHR Rule 201.03. Thirty-five (35) calendar days from October 26, 2009 (starting the count with October 27, 2009) is November 30, 2009.

For this reason, Appellant’s appeal is hereby DISMISSED.

STATEMENT OF APPEAL RIGHTS

This decision is the final order of the Commission pursuant to IDAPA 15.04.01.201.04 (DHR Rule 201.04). Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3).

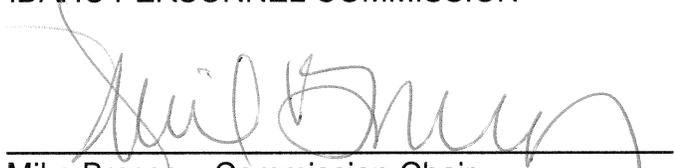
The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;

- (3) That the findings of fact by the commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED THIS 8th day of December, 2009.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION



Mike Brassey, Commission Chair

CERTIFICATE OF SERVICE

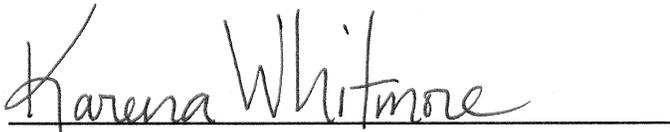
I HEREBY CERTIFY that a true and correct copy of the ORDER OF DISMISSAL in *Barbara Smith v. Idaho State Liquor Division*, was delivered to the following parties by the method stated below on this 8th day of December 2009.

FIRST CLASS MAIL

Barbara Smith
13666 W. Prairie Avenue
Post Falls, ID 83854

STATEHOUSE MAIL

Idaho State Liquor Division
Margo Edmiston/HRO



Karena Whitmore
Secretary to Idaho Personnel Commission



RECEIVED DHR
OCT 27 2009

C.L. BUTCH OTTER
GOVERNOR

STATE OF IDAHO
LIQUOR DISPENSARY
Executive Office of the Governor

DYKENALLY
SUPERINTENDENT

October 26, 2009

Barbara K. Smith
13666 W Prairie Avenue
Post Falls, ID 83854

Dear Barbara,

I am notifying you of your dismissal from classified employment with the Idaho State Liquor Division. This letter constitutes my final decision in this disciplinary action pursuant to Division of Human Resource rule 190.05 and is effective immediately.

You are charged with violating Idaho Code Section: 67-5309 (n) (1), (5) and (11) and Division of Human Resource rule 190.01 (a), (e) and (k) – “failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the department or the Division of Human Resources,” “insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the department;” and “habitual pattern of failure to report for duty at the assigned time and place.” These charges are proper grounds for termination of a classified employee.

You were notified in writing October 8, 2009 of these charges and the separate and independent bases and substance of the evidence supporting the contemplated disciplinary action up to and including dismissal. You were given the opportunity to respond to the notice until 5:00 p.m. Monday October 19, 2009.

Your response was timely received and has been included in the evidence considered by the Idaho State Liquor Division in making a decision in this matter.

The evidence as presented includes written statements and progress reports regarding the performance improvement plan given to you by your supervisor, Liquor Store Manager Richard Shenfield in which deficiencies in



your work attitude, customer service skills and attendance were noted. The evidence details Mr. Shenfield's efforts to help you improve on noted deficiencies and a May 9, 2009 Performance Evaluation reflects that you were able to "Achieve Performance Standards" for the six week improvement plan with a summary note indicating more improvement was necessary before you could be trusted to handle the store without supervision. You were given three new performance objectives at the end of the performance improvement plan period that included "store-awareness and communication, order picking and housekeeping/organization skills. Soon your performance began to deteriorate with an increase in absenteeism. On June 15, 2009 you called Mr. Shenfield at home in the middle of the night. He explained that this was unacceptable behavior when you appeared for duty the next morning. He noted that you appeared to be hung over and smelled of alcohol. On June 19 you called in sick with a rib injury. Mr. Shenfield notes an ongoing effort to keep in contact with you throughout your recovery. Records indicate that you largely ignored this opportunity to improve your communications skills during this time by having little or no contact or attempting to return phone calls. You did not return to work until July 16, 2009 after being absent for nearly a month. Another personal emergency on August 11, 2009 resulted in your absence from the store until August 19. Mr. Shenfield was very concerned for your personal well being and lack of focus while at work illustrated by late arrivals which are of particular significance when you are responsible for opening the store for the day's business, leaving cash receipts unsecured and having lost the keys to the store twice in less than a year. These are reasonable grounds to support the action of dismissal.

Your next Performance Evaluation covered your work through August 25, 2009 and reflected an overall rating of "Does Not Achieve Performance Standards."

Our Human Resource Officer Margo Edmiston instructed Mr. Shenfield to have you contact the state's employee assistance program, Business Psychology Associates (BPA) and to strictly adhere to their plan of treatment. Mr. Shenfield gave you that instruction and attempted to address early BPA recommendations regarding scheduling which you rejected.

On October 1, 2009 Ms. Edmiston was contacted by BPA who reported that you had missed your last two appointments.

Classified Liquor Store Clerks of the Idaho State Liquor Division must be able to consistently demonstrate reliability, exercise sound judgment and conduct themselves in a manner conducive to the successful completion of assigned responsibilities for the organization.

Please be advised that the Idaho Liquor Division as an employer and agency of state government, is charged with carrying out its duties and responsibilities prescribed by law and must remain in compliance with all rules and statutes.

You have thirty-five calendar days from the date of this letter to exercise the right to contact the State Division of Human Resources in regard to an appeal of this disciplinary action.

You may call Liquor Division Human Resource Officer, Margo Edmiston, to make arrangements to view the contents of your personnel file. Any personal property from Idaho Liquor Store #302 will be shipped to your home. You will receive your final paycheck November 13, 2009 by mail. The final paycheck covers the period of October 18 through October 26, 2009 and will also include payment of any accrued vacation hours.

Sincerely,



James M. Nally
Superintendent

Cc: Richard Shenfield, Liquor Store Manager 2
Cheryl Hurley, District Manager
Personnel File
Judie Wright, Administrator – State Division of Human Resources

Detailed Results

Printable Version

Help

Enter tracking number



Detailed Results	Notifications
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Tracking no.: 868475320729

E-mail notifications

Delivered

Initiated Picked up In transit **Delivered**

Delivered

Signed for by: Signature not required

Shipment Dates

Destination

Ship date Oct 26, 2009

Proof of Delivery

Delivery date Oct 27, 2009 10:28 AM

Shipment Facts

Help

Service type	Priority Envelope	Delivered to	Residence
Weight	0.5 lbs/0.2 kg	Reference	P/U 258

Shipment Travel History

Help

Select time zone:

Select time format: 12H | 24H

All shipment travel activity is displayed in local time for the location

Date/Time	Activity	Location	Details
Oct 27, 2009 10:28 AM	Delivered		Left at front door. Package delivered to recipient address - release authorized
Oct 27, 2009 9:09 AM	On FedEx vehicle for delivery	COEUR D'ALENE, ID	
Oct 27, 2009 8:27 AM	At local FedEx facility	COEUR D'ALENE, ID	
Oct 27, 2009 6:06 AM	At dest sort facility	SPOKANE, WA	
Oct 27, 2009 4:33 AM	Departed FedEx location	MEMPHIS, TN	
Oct 27, 2009 12:37 AM	Arrived at FedEx location	MEMPHIS, TN	
Oct 26, 2009 8:08 PM	Left FedEx origin facility	BOISE, ID	
Oct 26, 2009 4:25 PM	Picked up	BOISE, ID	

FedEx US Airbill File Tracking Bar 8684 7532 0729

EXPRESS

1 From Sender's name

Date **10/26/09** Sender's Fax Account Number **1255-2153-3**

Sender's Name **Margo Edmiston** Phone **208 947-9400**

Company **STATE LIQUOR DISPENSARY**

Address **1349 E BEECHCRAFT CT**

City **BOISE** State **ID** ZIP **83716**

2 Your Internal Billing Reference

3 To Recipient's Name **Barbara K. Smith** Phone **208 1691-2993**

Company **STATE LIQUOR DISPENSARY**

Recipient's Address **13666 W Prairie Avenue**

City **BOISE** State **ID** ZIP **83854**

Post Falls State **ID** ZIP **83854**

0400209953



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Simplify your shipping. Manage your account. Access all the tools you need.



4a Express Package Service

FedEx Priority Overnight FedEx Standard Overnight
 FedEx 2Day FedEx Express Saver
 FedEx Home Delivery FedEx International Priority

4b Express Freight Service

FedEx 1Day Freight FedEx 2Day Freight
 FedEx 3Day Freight FedEx 4Day Freight
 FedEx 5Day Freight

5 Packaging

FedEx FedEx FedEx FedEx Other
Envelopes* FedEx FedEx FedEx FedEx Other

6 Special Handling

Saturday Delivery Hold at Location
 Signature Required Signature Required
 Insure Insure
 Fragile Fragile
 Restricted Restricted

7 Payment Bill To

Sender Recipient Third Party Credit Card Cash/Check

8 Residential Delivery Signature Options

No Signature Required Direct Signature
 Adult Signature Signature
 No Signature Required Signature

519

PULL AND RETAIN THIS COPY BEFORE AFFIXING TO THE PACKAGE. NO POUCH NEEDED.

(OPTIONAL FORMAT)

THE IDAHO PERSONNEL COMMISSION

IDAHO PERSONNEL COMMISSION

DEC 02 2009

FILED

Barbara Smith)

Known As Appellant,)

APPEAL

State of Idaho)
(Agency))

Referred to as Respondent.)

I appeal the decision of DIVISION OF LIQUOR
(Name of Agency)

dated 11-28-09 [ATTACH A COPY OF THE DECISION LETTER.]

The decision or action I am disagreeing with is DIZ SEE

ATTACHED COPY

The remedy I request is PLEASE SEE ATTACHED

COPY

11-28-09
(Date)

Barbara Smith
(Signature)

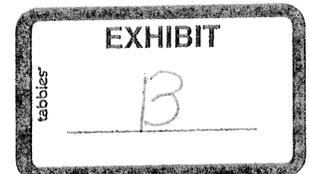
Address:
13666 W PHAULS AVE
Phone: POST FALLS ID 83854

208 691-2993

Name of Employee's Attorney (if any)

Address:

Phone:



The Idaho Personnel Commission

The decision or action I'm disagreeing with is: Termination, I do not believe I have shown intentional or willful action to establish misconduct. I have been under an extreme amount of stress since January 2009.

I am more than willing to go through any process in which to keep my job. I have been distracted and have made mistakes I own up to these, they have not been caused by willful behavior. It has just been caused by one unfortunate stressful incident after another starting in January. I do know my job, and have excellent customer service skills. I do not have a problem personally with any of my co-workers or management.

I wish these things had not happened like this. I wish my boss could possibly understand what this kind of stress can do. I do not want this to be the end of my employment with the State of Idaho.

The remedy I request is: Doing whatever it takes. If my boss has a problem with me personally I wish he would have come to me. If it would be more comfortable for him I would be willing to transfer as soon as there is an opening somewhere else, even to another agency.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Smith". The ink is dark and the handwriting is fluid and legible.

Barbara Smith

THE IDAHO PERSONNEL COMMISSION

Barbara Smith

Appellant,

vs.

State of Idaho

Respondent.

)
) IPC Case No. _____

) LIST OF EXHIBITS AND WITNESSES

)
)
)
)
)
)

APPELLANT, submits its list of exhibits (with exhibits attached), and its list of witnesses as follows:

EXHIBITS

(What you want Hearing Officer to consider as evidence.)

(Include title of exhibit, author, date and number of pages.)

1. Eligibility Determination
2. All Documents Included
- 3.

WITNESSES

(Include name, title, and a brief statement of what they are expected to testify about.)

1. Jani Tucker - Clerk
2. Karen Clumney - Clerk
3. Mike Battlam - Former Clerk

Brief Statement -

Customer Service Skills
House Keeping
Interaction w/ other employees
Eagerness to learn

By: Barbara Smith

(OPTIONAL FORMAT)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of NOV, 2009, I caused to be served a true and correct copy of the foregoing by United States mail to the following:

Name DIVISION OF HUMAN RESOURCES
Address of Interested Party P.O. BOX 83720
BOISE, ID 83720-0060

Name
Address of Interested Party

Barbara Smith
Name of person responsible for mailing document

**ELIGIBILITY DETERMINATION
UNEMPLOYMENT INSURANCE CLAIM**

SSN: 544-82-9452

CLAIMANT:

BARBARA K SMITH
13666 W PRAIRIE AVE
POST FALLS ID 83854-8058

INTERESTED EMPLOYER:

STATE LIQUOR DISPENSARY
1201 E SHERMAN AVE
COEUR D'ALENE ID 83814

DECISION

The claimant is eligible for benefits effective 11/1/2009.

SUMMARY OF FACTS

- The employer discharged the claimant for poor job performance.
- The claimant admitted she had made a mistake.

There is no evidence to prove that the claimant's actions were intentional or willful to the extent of establishing misconduct.

LAW

Section 72-1366(5) of the Idaho Employment Security Law provides that a claimant shall be eligible for benefits provided that unemployment is not due to the fact that the claimant left employment voluntarily without good cause connected with his employment or that he was discharged for misconduct in connection with his employment.

11/23/2009
Date Of Mailing

12/7/2009
Last Day To Protest

PROTEST RIGHTS

If you disagree with this determination, you have FOURTEEN (14) DAYS from the date of mailing to file a protest. A protest must be in writing and signed by an interested party. The protest can be filed in person, faxed or mailed to any local Idaho Department of Labor Office. If the protest is mailed, it must be postmarked no later than the last day to protest. If the protest is faxed, it must be received by the local office or the Appeals Bureau by 5:00 pm (as of the time zone of the office receiving the appeal) no later than the last day to protest. Email protests will not be accepted. **If no protest is filed, this determination will become final and cannot be changed.** If you have any questions about this determination or filing a protest, please contact any Idaho Department of Labor office.

TO CLAIMANT: If you have been allowed benefits and this determination is later reversed, benefits paid are subject to repayment. If this occurs in your claim, a Determination of Overpayment will soon be mailed to you. **If this determination is protested, you should continue to report on your claim as long as you are unemployed.**