

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by) Case No. 27820
)
 A [REDACTED] . G [REDACTED]) **BOARD DECISION**
) (Precedential)
From 1 step reduction in salary for)
6 months as a Correctional Officer with) **NO. 92-06**
the California Rehabilitation Center,)
Department of Corrections at Norco) April 7, 1992

Appearances: Felipe D. Rubio, Representative, representing
appellant A [REDACTED] . G [REDACTED]; Robert W. Thompson, Attorney for
respondent, Department of Corrections.

Before Chavez, President; Stoner, Vice-President; Burgener, Ward
and Carpenter, Members.

DECISION

This case is before the State Personnel Board (SPB or Board)
for determination after the Board rejected the Proposed Decision of
the Administrative Law Judge (ALJ) in the appeal of Correctional
Officer A [REDACTED] . G [REDACTED] (appellant or G [REDACTED]) from a 1 step
reduction in salary for six months. G [REDACTED] was charged with
dishonesty, violation of Board rule 172,¹ and "other failure of
good behavior either during or outside of duty hours which is of
such a nature that it causes discredit to your appointing authority
or your employment." [See Government Code section 19572 (f), (g),
(t)].

¹Board Rule 172, contained in Article 8 "Examinations" of Title
2, California Code of Regulations sets forth the general
qualifications which are deemed to be part of the personal
characteristics of the minimum qualifications of each class
specification in the state civil service. Those characteristics
include, among others, integrity, honesty, sobriety, dependability,
industry, thoroughness, accuracy, good judgment, initiative,
resourcefulness, courtesy, ability to work cooperatively with
others, etc.

(G [REDACTED] continued)

The charges of "failure of good behavior" were based upon allegations that on December 7, 1989, G [REDACTED] had been involved in an altercation at a restaurant, was extremely intoxicated and was manipulative and belligerent when being questioned by a local sheriff's office. The charge of dishonesty was based on an allegation that G [REDACTED] was less than honest in an interview with his employer concerning the December 7 incident.

While finding that the charge that G [REDACTED] had failed to cooperate with local police was not established, the ALJ sustained the adverse action on the basis that: (1) G [REDACTED]'s conduct was outrageous and discrediting to his employment and his employer; and, (2) G [REDACTED] was dishonest when he denied to his supervisors the events of that evening.

The Board rejected the ALJ's Proposed Decision and determined to decide the case itself, based upon the record and the written arguments.² After review of the entire record, including the transcripts and written arguments submitted by the parties, the Board overturns the salary reduction for the reasons set forth below.

FACTUAL SUMMARY

The facts as established by the record evidence are as follows. On December 7, 1989, three members of the San Bernardino County Sheriff's Department were dispatched to a restaurant and bar

²The parties did not request or present oral argument.

(G [REDACTED] continued)

to respond to a disturbing the peace call. Richard Cerda (Cerda), the manager of the restaurant and bar, testified that on the night in question the bar was crowded with over a hundred people who had come to watch the Duran/Leonard boxing match. Appellant was part of a group of patrons at the bar that night. When he noticed some friction developing between appellant's group and another group, he escorted appellant's group into the patio area. He observed appellant vomiting on the carpet. He also observed a woman going over to appellant and putting her arms around him, and saw appellant, who had just regurgitated on the carpet, reach up, turn, and, perhaps unintentionally, strike the woman. He further testified that he felt the woman thereafter made more fuss than necessary. When she observed her husband arguing with two other men, she got hysterical and the security guard then called the sheriff.

Deputy Sheriff Dennis Shaffer (Shaffer), the only other witness to testify at the hearing, testified that when he arrived at the scene the fight was over. He observed one of the other officers standing near appellant who appeared to be bent over vomiting. Shaffer observed that G [REDACTED] smelled of alcohol, had red watery eyes, and appeared to be under the influence of alcohol. Shaffer interviewed a woman at the scene who informed him that she was a registered nurse and was attempting to assist G [REDACTED], who appeared to be passing out, when he swung his arm around and struck her across the face. Shaffer also interviewed the woman's husband

(G [REDACTED] continued)

who stated that a fight thereafter ensued between the husband and another gentleman.³

DISCUSSION

The evidence presented at the hearing is insufficient to establish appellant's involvement in the altercation that occurred at the restaurant/bar. While the evidence establishes that the appellant struck a woman who was attempting to assist him while he was ill, the testimony and circumstances suggest that the contact was accidental.

At most, the evidence supports a finding that appellant became intoxicated at a bar where a fight broke out. The record evidence does not support a finding that appellant was involved in a physical fight, that he was uncooperative with local police, or that he was dishonest at his investigatory interview.⁴

The mere fact that appellant was intoxicated at a bar is insufficient to establish a violation of Government Code section 19572(t), "failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment." To establish

³The gentleman to which the husband was referring was not identified in Shaffer's testimony but is identified in the police report, which was admitted into evidence, as a correctional officer other than G [REDACTED].

⁴Notably, no one from the Department testified about the investigatory interview.

(G [REDACTED] continued)

a violation under subsection (t) of Government Code section 19572, there must be a nexus between off-duty conduct and the employment setting. In the case of Yancey v. State Personnel Board (1985) 167 Cal. App.3d 478, the court set forth the test for determining whether the requisite nexus exists:

There must be more than a failure of good behavior before the Board may discipline an employee under section 19572, subdivision (t). The misconduct must be of such a nature as to reflect upon the employee's job. In other words, the 'misconduct must bear some rational relationship to his employment and must be of such character that it can easily result in the impairment or disruption of the public service. [Citations.] The legislative purpose behind subdivision (t) was to discipline conduct which can be detrimental to the state service. (emphasis omitted) [Citations.] (emphasis in original) It is apparent that the Legislature was concerned with punishing behavior which had potentially destructive consequences.' (emphasis omitted) [Citation.] The Legislature did not intend '... to dismiss any employee whose personal, private conduct incurred its disapproval.' [Citations.] 167 Cal.App.3d at 483. (emphasis added.)

Although there was evidence that one of the other correctional officers at the bar flashed his badge, there was no evidence sufficient to support a conclusion that appellant identified himself as a correctional officer while at the bar. The mere fact that appellant had too much to drink in a public place is insufficient to establish a violation of Government Code section 19572(t). The remaining charges were not proven by the evidence. The discipline cannot stand.

(G [REDACTED] continued)

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to Government Code section 19584, it is hereby ORDERED that:

1. The above-referenced adverse action of a 1 step reduction in salary for six months is revoked;

2. The California Department of Corrections and its representatives shall pay to appellant all back pay and benefits that would have accrued to him had he not received a 1 step salary reduction for six months; and

3. This matter is hereby referred to the Administrative Law Judge and shall be set for hearing on written request of either party in the event the parties are unable to agree to salary and benefits due appellant.

4. This opinion is certified for publication as a Precedential Decision (Government Code section 19582.5).

STATE PERSONNEL BOARD

Richard Chavez, President
Alice Stoner, Vice-President
Clair Burgener, Member
Lorrie Ward, Member
Richard Carpenter, Member

* * * * *

(G [REDACTED] continued)

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on April 7, 1992.

GLORIA HARMON
Gloria Harmon, Executive Officer
State Personnel Board