4/13/99 – Appeallant has appealed to the Court of Appeal. The Superior Court sustained the Board's decision sustaining the medical demotion.

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by	)	Case No. 36624
	)	
G[redacted] M[redacted]	)	**BOARD DECISION**
	)	(Precedential)
	)	
From medical demotion from the position of	)	
Correctional Officer to the position of Office	)	**NO. 97-05**
Assistant (General) at California State Prison	)	
Department of Corrections at Represa	)	July 1, 1997

Appearances: Kelly Stimpel Rasmussen, Hearing Representative, California Correctional Peace Officers Association, on behalf of appellant, G[redacted] M[redacted]; Sally Y. Kim, Staff Counsel, Department of Corrections, on behalf of Department of Corrections.

Before: Lorrie Ward, President; Floss Bos, Vice President; Ron Alvarado, Richard Carpenter and Alice Stoner, Members.

Appellant G[redacted] M[redacted] has multiple sclerosis and can no longer work as a Correctional Officer for the Department of Corrections (Department). Government Code section 19253.5 requires the Department to attempt to transfer or demote an employee who can no longer perform the duties of his or her position to another position he or she can perform. The Department considered demoting appellant, pursuant to Government Code section 19253.5, to a Correctional Case Records Specialist (CCRS) position, but decided not to do so because it believed the position was too stressful and physically demanding for him. Therefore, the Department medically demoted appellant to the position of Office Assistant II (OA II).

Although the Department based its initial decision not to consider appellant for the CCRS position on unsubstantiated concerns about his medical condition, the Department

subsequently defended its choice of positions on the ground that appellant does not meet the minimum experience requirements for a CCRS. In this decision, the Board finds that the Department was not required to waive the minimum qualifications for the CCRS position and demote appellant to it. Therefore, the Board concludes that the Department met its obligations under Government Code section 19253.5 by demoting appellant to the position of OA II.

BACKGROUND

Procedural Summary

Appellant timely appealed his medical demotion to the Board. Appellant did not contest the Department's determination that he was unable to perform the duties of a Correctional Officer. He appealed the Department's decision to demote him to the position of Office Assistant, however, on the ground that the Department improperly failed to consider him for the higher-paying position of CCRS. An SPB Administrative Law Judge (ALJ) concluded that the Department's action was proper in that appellant failed to prove that there was a vacancy in the CCRS class within a reasonable amount of time and failed to prove that appellant met the minimum qualifications for the position. The Board rejected the Proposed Decision of the ALJ.

After reconsideration of the entire record, including the transcripts, exhibits, and the written and oral arguments of the parties, the Board sustains appellant's medical demotion to the position of Office Assistant II (General) for the reasons stated in this decision.

Factual Summary

Appellant was appointed as a Correctional Officer Trainee on November 2, 1987. On December 14, 1987, he was appointed as a Correctional Officer (CO) at Folsom State Prison.[1] In August 1992, appellant was diagnosed with multiple sclerosis (MS). This diagnosis is contained in an August 12, 1992 report from a neurologist, Dr. Steven H. Wiggins, to appellant's personal physician. This report notes that appellant's condition is "highly likely" a mild case of multiple sclerosis and recommends a short course of medication in the event appellant has a flare-up of the condition. The report further states: "Other than that ask him to avoid heat, stress, fatigue, [be] careful not to fall." The report does not contain any specific restrictions on appellant's performance of work as a CO.

In November 1992, appellant suffered a flare up of MS that required two weeks of sick leave. His treating physician, Dr. David S. Seminer, recommended that appellant not be employed "as a prison guard or any other activity which could require excessive physical activity or rapid movements, such as would be required to subdue a prisoner." Upon his return to work, appellant met with Kathy Costner (Costner), CSPS Return to Work Coordinator, and requested modified duty because he was unable to perform his full duties as a CO. Appellant was placed in a special assignment as an Office Assistant in the mailroom. He continued to be paid as a CO. It is undisputed that, since at least November, 1992, appellant has been unable to perform the essential functions of the CO classification,

[1]Appellant subsequently transferred to CSPS in January 1994.

and that no accommodation has been identified which would enable appellant to perform the essential functions of the CO classification with his condition of MS.

On March 10, 1993, appellant filed a formal request for reasonable accommodation with the Department for a change of job class because he was no longer able to perform the essential functions of the CO class. In his request, appellant indicated that he wished to be placed in a classification other than CO. Appellant's request was not approved until March 1, 1994, approximately one year after his initial request.[2]

On February 28, 1994, Costner recommended in writing to the warden that appellant be medically demoted to the class of Office Assistant II (OA II). In her letter, Costner stated: "We had originally looked at other alternatives, including Case Records Specialist. However, it was believed that would be both too stressful and physically demanding for him." Costner's testimony at the hearing before the ALJ confirmed that, prior to making her determination, Costner considered offering appellant reassignment to a CCRS position that, Costner testified, "would have been a good placement in terms of the salary, which was much closer to his original correctional officer's salary."[3] Costner testified that, although a vacancy existed in the position of CCRS at the time of appellant's request for reasonable accommodation, she concluded that the position was too stressful and

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[2]Appellant did not file an appeal with SPB from the failure to timely grant his request.

[3]During the period between appellant's March 1993 request for reasonable accommodation and the Department's formal medical demotion action in December 1994, the Department provided appellant with vocational rehabilitation counseling. On at least one occasion, appellant expressed an interest in the CCRS position.

physically demanding for appellant and did not consider him further for the position. Her analysis was based primarily upon Dr. Wiggins' August 12, 1992 report, which stated that appellant should be asked to avoid heat, stress, and fatigue, and to be careful not to fall, and upon statements of other individuals who work in that unit that the job was very stressful. Costner did not consult a doctor to determine if the CCRS class was in fact too stressful or physically demanding for appellant.

On March 16, 1994, the Department contacted appellant's personal physician, Dr. Jose Ramirez, to inquire whether appellant could perform the essential functions of the OA II class. On March 22, 1994, Dr. Ramirez advised the Department that appellant was medically able to perform the duties of the OA II position. Dr. Ramirez was not asked to determine if appellant could perform the essential functions of any job class other than OA II. On December 21, 1994, the Department formally medically demoted appellant to the class of OA II.

At the hearing before the ALJ, Dr. Ramirez testified that he subsequently reviewed the specifications for the CCRS class and determined that appellant could physically perform its essential functions. Ramirez declared that the CCRS job was neither too stressful nor physically demanding for appellant.

Nothing in the record indicates that Costner considered whether or not appellant met the minimum qualifications for either the CCRS position or the OA II position. Instead, her testimony indicates that her decision to recommend transfer to the OA II position was based solely upon her assessment of appellant’s medical condition.

In fact, appellant does not possess the minimum experience, as set forth in the official SPB job specification, normally required for appointment to the CCRS position. The specification requires:

Either I

Experience: One year of full-time experience in a correctional or mental health setting performing duties in the maintenance, processing and control of records for persons committed to the jurisdiction of local, State, or Federal correctional agencies. (Experience in California state service applied toward this requirement must have been acquired at the level of Office Assistant II.)

and

Education: The equivalent to completion of one year... of college education.

Alternatively, the position requires two years of specialized record-keeping work experience directly related to the courts, legal processes or legal procedures, and the equivalent to completion of one year of college education.

Appellant has the minimum education required for the CCRS job class but does not meet the minimum experience requirement in that he does not possess one year of full-time experience performing duties in the maintenance, processing and control of records for persons committed to the jurisdiction of a correctional agency. Nor does he have two years of specialized record-keeping work experience directly related to the courts, legal processes, or legal procedures. According to his resume, by 1994, appellant was forty units short of completing a Bachelor of Arts degree in social science.

Appellant meets the minimum education and experience requirements of the Office Assistant (General) job class.[4]

DISCUSSION

The only question before the Board is whether the Department fulfilled its obligations under Government Code section 19253.5 by medically demoting appellant to the OA II position.

Government Code Section 19253.5

Government Code section 19253.5 sets forth the basic rights and obligations of an appointing power seeking to medically transfer, demote, terminate or retire an employee who is medically unable to perform the duties of his or her position. Pursuant to Government Code section 19253.5(a), an appointing power may require an employee to submit to a medical examination by a physician designated by the appointing power to evaluate the capacity of the employee to perform the work of his or her position.[5] Government Code section 19253.5(c) further authorizes an appointing power to medically

[4]The minimum requirements for Office Assistant (General) are:

Either I
One year of experience in California state service performing the duties of an Assistant Clerk.
or II
Either equivalent to completion of the twelfth grade; or completion of a business school curriculum; or completion of clerical work experience training program such as those offered through the Welfare Reform Act. (One year of clerical work experience may be substituted for the required education.)

[5]When an employee states in writing that he or she is medically unable to perform the duties of his or her position, the appointing power may rely on that statement and need not obtain an independent medical examination under Government Code section 19253.5(a). (Gov. Code § 19253.5(e).)

demote or transfer an employee who is unable to perform the work of his or her present position, and provides:

> When the appointing power, after considering the conclusions of the medical examination and other pertinent information, concludes that the employee is unable to perform the work of his or her present position, but is able to perform the work of another position including one of less than full time, the appointing power may demote or transfer the employee to such a position.
>
> Except as authorized by the Department of Personnel Administration under Section 19837, the employee demoted or transferred pursuant to this section shall receive the maximum of the salary range of the class to which he or she is demoted or transferred, provided that the salary is not greater than the salary he or she received at the time of his or her demotion or transfer.

The language of section 19253.5(c) providing for the demotion or transfer of employees who are medically unable to continue in their positions appears to be permissive. Pursuant to Government Code section 19253.5(d), however, an appointing power can only terminate an employee for medical reasons if the employee is unable to perform the work of his or her present position or any other position in the agency and the employee is ineligible for or waives the right to disability retirement. The Department bears the burden of proving appellant's inability to perform the work of his position or any other available position before medically terminating an employee.[6] Thus, unless the employee is to be disability retired, the appointing power has an affirmative obligation to attempt to keep an employee working in some position of the agency, assuming the employee wants to continue working. The law, however, gives little guidance as to a department's obligations in choosing an

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[6]Newman v. State Personnel Board (1992) 10 Cal.App.4th 41, 49; Overton v. State Personnel Board (1975) 46 Cal.App.3d 721, 725. (Emphasis added.)

appropriate position for the transfer or demotion of an employee who is medically unable to perform the duties of his or her appointed position.

Salary as a Consideration

While section 19253.5(c) does not expressly require an appointing power to medically demote to the highest-paying position possible, one can infer from the language of that subdivision and subdivision (d) (permitting termination only if the employee is unable to perform any other position in the agency and is ineligible for or waives disability retirement) the Legislature's intent that employees who are medically unable to perform their jobs should be placed in positions that they can perform and that pay a salary as close as possible to what they received in the position they can no longer perform. For one, section 19253.5(c) requires a person who is medically demoted or transferred to be paid at the maximum of the salary range for the position to which he or she is demoted or transferred (up to the employee's salary prior to demotion or transfer). Moreover, once it is determined by the Board that the employee is no longer incapacitated for duty, the employee is entitled to reinstatement to an appropriate vacant position in the same class, in a comparable class, or in a lower related class. If no vacant positions exist, the employee is then entitled to placement on an appropriate reemployment list.[7]

We construe the policy behind section 19253.5 as imposing an affirmative obligation on departments to attempt to minimize the impact of a medical disability on an employee's job

[7]Gov. Code § 19253.5(h).

status. This construction is consistent with the Americans with Disabilities Act (ADA), which specifies reassignment to an "equivalent" position, if possible, in terms of pay, status, geographic location, etc., as a form of reasonable accommodation.[8]

Effect Of Minimum Qualifications

By its express terms, Government Code section 19253.5 does not restrict the appointing power from medically demoting or transferring an employee to a position for which the employee does not meet the minimum experience requirements as stated in the job specification for that position. The statute states only that demotion or transfer may be made to a position that the employee is "able to perform." Given the lack of guidance in the statute itself on the question of whether an appointing power should be obligated to waive minimum qualifications to effect a medical transfer or demotion to a position the employee can perform, the Board turns to its own reasonable accommodation policies as well as ADA and Fair Employment and Housing Act (FEHA) law on reasonable accommodation.

a. SPB Policy and Law

Although the Board considers minimum qualifications to be the minimum education, skills and experience an applicant must have to perform the duties of a position in a state civil service class,[9] we recognize that, with or without retraining, certain employees may be able to perform those duties even if they do not meet all of the specified minimum qualifications. This is particularly true in the case of a minimum experience

[8]42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630(o)(2)(ii), Appendix.

[9]Gov. Code § 18931.

qualification,

which, unlike a licensing qualification, can often be satisfied through appropriate training and guidance while the employee performs the duties of the position. For this reason, state law and policy permit appointing powers to "waive" minimum qualifications in order to transfer current employees in a number of situations.

For example, a department may transfer any employee, without examination, to a class with the same or lower salary range, so long as the employee possesses any licenses, certificates, or registration required in the new class.[10] Alternatively, an employee with a medically verified disability, injury or illness, whether job or nonjob related, may be reassigned to duties outside his or her current classification in order to remain productive by means of a temporary assignment.[11]

Not only do the civil service statutes allow waiver of minimum qualifications, but the Board's own policy guidance on reasonable accommodation encourages departments to utilize this option to effect reasonable accommodation.[12] As stated in The State of California Guide for Implementing Reasonable Accommodation:

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[10]Gov. Code § 19050.4; 2 Cal. Code Reg. § 433. See also Gov. Code § 19050.3 (authorizing transfer of an employee from a position under one appointing power to a position under another appointing power, subject to Board rule).

[11]Gov. Code § 19050.8(c); 2 Cal. Code Reg. § 443(c). See also R[redacted] D[redacted] (1992) SPB Dec. No. 92-05. A temporary assignment may last up to two years and may be used to meet the minimum qualifications of a class. (Gov. Code § 19050.8.) Temporary assignments for training and development ("T&D assignments") are also authorized under 2 Cal.Code Reg. § 438.

[12]Gov. Code § 19230(c) provides: "It is the policy of this state that a department, agency, or commission shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee who is an individual with a disability, unless the hiring authority can demonstrate that the accommodation would impose an undue hardship on the operation of its program. A department shall not deny any employment opportunity to a qualified applicant or employee who is an individual with a disability if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the applicant or employee."

> The employee's work experience and education may indicate that he/she can perform satisfactorily in another position in the same or a different class or can be retrained for another job. ...If the employee is eligible and can qualify for higher level employment through a promotion or a training and development assignment, this should also be considered. This would only be appropriate, however, if he/she can perform the essential functions of the higher level position.

The goal of reasonable accommodation thus allows fr some flexibility in applying minimum qualifications in order to reassign a current employee who can no longer perform his or her present position. Utilizing the procedures described above, an appointing power may, under appropriate circumstances, reassign such an individual to a position for which he or she does not meet the minimum qualifications, where training is available to enable the employee to perform the job.[13]

The Board's policy is that departments may waive minimum qualifications to accommodate by transfer or demotion employees who are unable to perform the duties of their current positions, and should at least consider doing so in cases where the individual is physically able to perform in another position job and can reasonably be retrained to perform it. Nonetheless, we turn to ADA and FEHA law for further guidance as to whether we should require that appointing powers waive minimum qualifications to effect a medical demotion or transfer to an "equivalent" position that the employee can perform.

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[13]As noted below, the ADA makes reassignment or retraining available only to current employees, not applicants.

b. Reasonable Accommodation Under the ADA and the FEHA

Both the ADA and the FEHA provide protection from employment discrimination on the basis of disability. A "disability"under the ADA is defined as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual."[14] Under the ADA, an employer is required to reasonably accommodate a "qualified individual with a disability," defined as one who "satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position."[15]

One such accommodation may include reassignment to a vacant position in which the individual can perform, with or without reasonable accommodation.[16] Reassignment is only available to current employees who cannot perform the essential functions of their original positions, even with reasonable accommodation.[17] According to "Interpretive Guidance" provided by the U.S. Equal Employment Opportunity Commission (EEOC), employers utilizing reassignment as a means of reasonable accommodation "should reassign the individual to an equivalent position, in terms of pay, status, etc., if the

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[14]42 U.S.C. § 12102(2)(A); A "disability" also includes having a "record of" such an impairment or being "regarded as" having such an impairment. (42 U.S.C. § 12102(2)(B),(C).) See also Govt. Code § 12926(k), defining physical disability under the FEHA.

[15]42 U.S.C. §§ 12112(b)(5)(A), 12111(8); 29 C.F.R. § 1630(m).

[16]42 U.S.C. §§ 12111(9)(B); 29 C.F.R. § 1630.2(o)(2)(ii).

[17]29 C.F.R. § 1630.2(o), Appendix.

individual is qualified, and if the position is vacant within a reasonable amount of time." [18] Thus, the ADA does not require reassignment of an employee to a position for which he or she is unqualified.[19]

Where an employer offers assistance to accommodate an employee with a disability, it may still hold the employee to the same qualification standards as required of other employees. For example, in Lucero v. Hart,[20] the court concluded that, under the Federal Rehabilitation Act,[21] the employer attempted reasonably to accommodate the employee's disability by giving her numerous opportunities to pass its typing test and by offering her other positions. Nonetheless, the employer lawfully rejected her for the position when, even after providing these opportunities, the employee was still unable to meet the employer's minimum typing standard.

Although the ADA requires reassignment only to positions for which an employee is qualified, it also prohibits "using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria ... is shown to be job-related for the position in question and is consistent with business

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[18] 29 C.F.R. § 1630.2(o), Appendix.

[19] Id.; Appendix; Riley v. Weyerhaeuser Paper Co. (W.D.N.C. 1995) 898 F.Supp. 324.

[20] (9th Cir. 1990) 915 F.2d 1367.

[21] 29 U.S.C. § 701, et seq.

necessity."[22] Interpreting this provision, the EEOC has stated:

> Selection criteria that exclude, or tend to exclude, an individual with a disability or a class of individuals with disabilities because of their disability but do not concern an essential function of the job would not be consistent with business necessity.[23]

Thus, where an employee's failure to meet a minimum qualification is due to a disability, further analysis may be required to determine whether the ADA would require an employer to waive that qualification either to meet its reasonable accommodation obligation or to assure any employment action taken against the employee is non-discriminatory. For example, the Board has previously held that, where an employee loses a necessary license because of the employee's disability, the employee may be protected against non-punitive termination[24] if he or she can establish that, despite the license restrictions, the employee can perform the essential functions of the position, either with or without reasonable accommodation.[25] In such cases, the focus of the inquiry is whether the appellant could perform the essential functions of the position notwithstanding the license restrictions, rather than whether he met the minimum qualifications of the classification.[26]

In this case, appellant's failure to meet the minimum experience qualification for the CCRS position is not due to his medical condition. Therefore, because the qualification

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[22]42 U.S.C. § 12112(c)(6); 29 C.F.R. § 1630.10.

[23]29 C.F.R. § 1630.10, Appendix.

[24]Gov. Code § 19585.

[25]S[redacted] M[redacted] (1994) SPB Dec. No. 94-14 (adopting ALJ decision, at pp. 11-12).

[26]M[redacted], at p. 11, note 6 (citing Pandazides v. Virginia Bd. of Educ. (4th Cir. 1991) 946 F.2d 345, 349).

does not tend to screen out individuals with disabilities, the Department's refusal to reassign him based on his failure to meet that qualification would not offend the policies behind the ADA.

The FEHA similarly makes it unlawful for a covered employer to fail to make reasonable accommodation to the known physical or mental disability of an applicant or employee, unless to do so would constitute an undue hardship, and lists reassignment to a vacant position as an example of reasonable accommodation.[27] The FEHA has been construed as imposing a broad obligation on employers to be flexible in accommodating disabled employees.[28]

Moreover, under both the ADA and the FEHA, "an employer who knows of the disability of an employee has an affirmative duty to make known to the employee other suitable job opportunities with the employer and to determine whether the employee is interested in, and qualified for, those positions, if the employer can do so without undue hardship or if the employer offers similar assistance or benefit to other disabled or nondisabled employees or has a policy of offering such assistance or benefit to any other employees."[29]

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[27]Gov. Code §§ 12940(k), 12926(m)(2); 2 Cal. Code Reg. §§ 7293.9, 7293.9(a)(2).

[28]See, e.g., Sargent v. Litton Systems, Inc. (N.D. Calif. 1994) 841 F.Supp. 956 (reasonable accommodation requirement may include providing transportation to employees, major job restructuring, and restructuring employer's way of doing business); Prilliman v. United Air Lines, Inc. (1997) 53 Cal.App.4th 935, 948.

[29]Prilliman v. United Air Lines, supra, at 950-951.

In summary, our review of the ADA and the FEHA leads us to conclude that we should not interpret Government Code section 19253.5 to require an appointing power to waive minimum qualifications to effect a medical demotion or transfer, where the is employee's failure to meet minimum qualifications is unrelated to his or medical condition.[30]

The Department's Decision Not to Offer Appellant the CCRS Position

In this case, the parties agree that appellant was medically unable to perform the duties of the CO position. The record also establishes that the Department initially considered appellant for a vacant[31] CCRS position but failed to offer it to him, not because he was not qualified for it, but solely because, in the lay opinion of the return-to-work coordinator, the job would be "too stressful" and physically demanding for appellant. Although the Department obtained medical verification that appellant could perform the duties of the OA II position offered to him, it did not seek any medical opinion as to whether appellant could perform the duties of the CCRS position within the limitations of his physical condition.

Based upon the entire record before us, we conclude that the Department erred in failing to investigate whether appellant could physically perform the essential functions of the higher paying CCRS position before rejecting him from consideration for

[30]As discussed above, further analysis may be required in cases where the employee's medical condition affects his or her ability to meet the minimum qualifications.

[31]We need not address the issue, initially raised in our resolution rejecting the ALJ's proposed decision, of which party had the burden of proving the existence of a vacancy in the CCRS class, as the record reflects that a vacancy did exist at the time Costner made her determination that appellant would be unable to perform the position.

that position.

The nonspecific medical recommendation contained in the 1992 neurologist's report to appellant's physician, that appellant "avoid heat, stress, and fatigue," is insufficient to support the Department's determination that appellant was medically unable to perform the essential functions of the CCRS position, with or without reasonable accommodation. Faced with such a vague reference to appellant's limitations, the Department should have obtained a medical evaluation of appellant's ability to perform the specific functions of the CCRS position before determining that his medical condition precluded him from performing them.

We note that, in this case, the Department did, in fact, consider appellant for the CCRS position and acknowledged that such a reassignment would be a "good fit" in terms of salary. While we do not doubt that the Department's decision was based on its sincere belief that appellant's medical condition precluded demotion to the CCRS position, the Department's good faith cannot substitute for competent medical support of its decision. Dr. Ramirez testified to appellant's medical ability to perform in the CCRS position. Assuming appellant was qualified for the CCRS position, the Department's refusal to place him in that position solely because of its unsubstantiated medical concerns was inappropriate.

Although we find that the Department's original reason for refusing to consider appellant for the CCRS position was improper, we must still determine whether the Department was obligated to place him in a position for which he did not meet minimum qualifications. As discussed below, we conclude that it was not.

Whether a medical demotion in a given case satisfies the department's obligations under Government Code section 19253.5 must be decided on a case-by-case basis. In evaluating a department's decision to demote to a lower-paying classification, the Board will consider the department's effort to consider less financially onerous alternatives, the availability of other positions that the employee can perform and that the employee is qualified to perform, with or without reasonable accommodation, as well as the medical and other evidence supporting the department's decision. No single factor is determinative, and the Board will evaluate the overall reasonableness of the department's efforts to find a suitable position for the employee. Ideally, of course, the appropriate reasonable accommodation "is best determined through a flexible, interactive process" that involves both the employer and the employee. [32]

In engaging in such a process, the department would, ideally, meet with the affected individual to determine all available positions within his or her medical limitations. If the employee believes he or she is medically able to perform a position, with or without reasonable accommodation, that position should not be rejected from consideration without competent medical evidence. If there is no available position at the employee's current salary level for which the employee meets the minimum qualifications and is medically able to perform, the department should consider the feasibility of waiving minimum qualifications by means of a transfer or temporary assignment. While we believe it good public policy for

[32] 29 C.F.R. §§ 1630.2, 1630.9, Appendix.

a department to waive minimum qualifications in appropriate cases in order to reassign state civil service employees who for medical reasons can no longer perform their positions to positions that they can perform, we will not require that a department do so.[33] In the final analysis, therefore, we leave the decision as to whether a waiver of minimum qualifications is appropriate in a given case to the sound discretion of the department and will not second-guess an appointing power's decision in this regard.

In this case, we conclude that, regardless of whether appellant was medically able to perform the CCRS position, the Department was not required to waive the minimum qualifications to place him in it. Therefore, we conclude that the Department satisfied its obligations under Government Code section 19253.5 by demoting appellant to the OA II position.

CONCLUSION

The Board strongly supports the state's commitment to the employment of employees with disabilities who want to remain productive members of the state workforce. We will leave it to the sound discretion of the departments, however, to determine whether to waive minimum qualifications when deciding on an appropriate reassignment for employees who are unable to perform their current positions. Accordingly, because the record establishes that appellant was unable to perform the job of CO but was able to

[33]Of course, the department should ensure that the minimum qualification upon which it relies does not tend to screen out individuals with disabilities, unless required by business necessity.

perform the job of OA II, and did not meet the minimum qualifications of the higher-paying CCRS position, the demotion to the position of OA II is sustained.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to Government Code section 19253.5, it is hereby ORDERED that:

1. The medical demotion of G[redacted] M[redacted] from the position of Correctional Officer to the position of Office Assistant II (General) is sustained;

2. The Board's decision in G[redacted] M[redacted] (1996) SPB Dec. No. 96-15 is hereby vacated.

3. This decision is certified for publication as a Precedential Decision pursuant to Government Code section 19582.5.

THE STATE PERSONNEL BOARD

Lorrie Ward, President
Floss Bos, Vice President
Ron Alvarado, Member
Richard Carpenter, Member
Alice Stoner, Member

* * * * *

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on July 1, 1997.

_____
C. Lance Barnett, Ph.D.
Executive Officer

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