BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by	)	SPB Case No. 30846
	)	
MICHAEL PRUDELL	)	**BOARD DECISION**
	)	(Precedential)
From Dismissal from the position of	)	
Motor Vehicles Field Representative	)	**NO. 93-30**
with the Department of Motor	)	
Vehicles at Capitola	)	September 7, 1993

Appearances: Melvin K. Dayley, Attorney, California State Employees Association for appellant, Michael Prudell; Gabor Morocz, Staff Counsel, Department of Motor Vehicles, for respondent, Department of Motor Vehicles.

Before Carpenter, President; Stoner, Vice President; Ward, Bos and Villalobos, Members.

DECISION

This case is before the State Personnel Board (SPB or Board) for determination after the Board granted a Petition For Rehearing filed by appellant Michael Prudell (appellant). In his Petition For Rehearing, appellant asked that the Board reconsider its earlier decision to adopt as a Precedential Decision a Proposed Decision of the Administrative Law Judge (ALJ) which sustained appellant's dismissal from his position of Motor Vehicle Field Representative with the Department of Motor Vehicles (DMV or respondent). In his Petition For Rehearing, appellant asserts that there was no substantial evidence of discourteous treatment of other employees sufficient to justify the decision to dismiss him, and that, in any event, dismissal is too harsh a penalty to impose upon appellant under all of the circumstances.

After a review of the entire record, including the transcript, the exhibits, and the written and oral arguments of the parties, the Board finds substantial evidence of discourteous treatment of the public and other employees sufficient to sustain appellant's adverse action. The Board further finds that dismissal is an appropriate penalty under all of the circumstances.

FACTUAL SUMMARY

Appellant began working for the DMV in 1982 as a Program Technician Trainee. He was promoted to Motor Vehicle Field Representative in 1987.

Appellant has one prior adverse action from January 1990 whereby his salary was reduced by 5% for six months based upon charges that he was discourteous on numerous occasions to members of the public and to his fellow employees.

In the instant adverse action, appellant was charged with violation of Government Code section 19572, subdivisions (e) insubordination, (m) discourteous treatment of the public or other employees, (o) willful disobedience, and (q) violation of this part or Board Rule 172.[1] These charges were based upon several incidents occurring over a period of approximately one and one-half years. The nature of the incidents generally fell into three categories: instances of discourteous behavior towards the public

[1] Pursuant to Board precedent, the Board dismisses the charges brought under Board Rule 172. D[redacted]. M[redacted] (1993) SPB Dec. No. 93-06.

and fellow employees; instances of intentional and/or negligent errors in completing licensing transactions; and instances of misreporting his "break" time to his supervisors.

Discourteous Treatment

Specifically, there was evidence presented in the record of the following acts of discourteous conduct by appellant.[2] On May 3, 1990, appellant reacted in a loud and aggressive manner to a fellow employee who was attempting to assist him with a transaction. Appellant's reaction caused an unnecessary delay in service to the customer and embarrassment to the fellow DMV employee.

On June 26, 1990, appellant was discourteous to a DMV customer in response to a question. The appellant asked the customer if she wore lenses to drive; the customer asked "do you mean glasses", and the appellant retorted, pointing to his eyeglasses, "these are lenses, you use glasses to drink from."

On December 28, 1990, appellant told a customer's wife who was inquiring about the newly-installed automated test machines that they were for playing video games while people were waiting. He later displayed a flippant attitude toward the customer and failed to provide the customer with a complete explanation as to why the customer had failed his driving test.

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[2] The allegations charged in the adverse action which were either withdrawn by the Department or not supported by admissible evidence at the hearing are not discussed in this decision.

On March 14, 1991, appellant was discourteous to a customer who had asked, upon seeing appellant's window was closed, what she should do. Appellant replied, "What do you do when you're in a grocery store and see a closed sign?" The customer became visibly embarrassed and emotionally upset by appellant's comment. An anonymous complaint was sent in concerning this incident by a fellow customer who claimed to have observed the incident and was very upset about it.

On May 13, 1991, appellant encountered a customer who, during the course of their conversation concerning the licensing examination, told the appellant that he or she did not drink and drive. Appellant replied back that people who do not believe in war still must pay taxes. The customer later filed an anonymous complaint against the appellant, upset with what the appellant had said and the manner in which he had said it.

On August 8, 1991, appellant ignored an acting supervisor's repeated request to leave his window for a few minutes so that the supervisor could speak with the appellant about the transaction he was processing for a customer. Appellant claims he felt it was necessary to complete the customer's transaction, and did not realize the supervisor wanted to see him immediately. The supervisor claims appellant purposefully ignored her and refused to follow her instructions.

On August 9, 1991, appellant was discourteous to a fellow employee and to his customers when he raised his voice loudly in protest over the fact that the fellow employee was trying to assist him by taking photographs of licensees at his window while he was busy typing. Appellant refused to let the other employee speak or let her assist him at the window.

The record reveals that appellant has a history of poor relationships with customers and fellow employees. As previously stated, he received a prior adverse action for acts of discourtesy toward customers and fellow DMV workers very similar to those charged in the instant action. In addition, appellant's performance reports of July 1990 and July 1991 both cite the need to improve his relationships with people.[3]

[3] Appellant submitted contrary, hearsay evidence in the form

Errors

As to the charged incidents of intentional or negligent errors, the record reflects the following. On September 17, 1990, according to testimony from a fellow employee, appellant attempted to issue an interim motorcycle driver's license to a customer, without requiring the customer to take the required skill test. Appellant did so by recording in the computer that the customer had taken the test and by putting his manager's identification number in the computer.

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of letters and customer survey cards from the public to establish appellant was well liked.

On August 19, 1991, appellant made several errors in one day. He cleared a "Failure To Appear" (FTA) citation using both the wrong court docket number and the wrong court code. He also failed to input the current conviction date on another FTA citation. Finally, he issued a temporary license to a customer where there was no record of a previous license on the DMV's computer, in violation of DMV rules.

On August 22, 1991, appellant entered a "pass" for an eye vision test for a customer without ever testing the customer's vision. As it turns out, the customer had vision problems which required a medical clearance.

Finally, the DMV charged two incidents where appellant left the DMV office on a break, but later falsified the length of his break time on the DMV's record book. One such incident occurred on August 22, 1991, when appellant was seen leaving at 11:55 a.m., but reported in the record book having left at 12:15 p.m.. On September 19, 1991, appellant returned to work at 4:36 p.m. from his break, but recorded his return time as 4:28 p.m., to stay within the 15 minute allotted break time.

ISSUE

Is there sufficient evidence in the record to support appellant's dismissal?

DISCUSSION

Sufficiency of the Evidence

In his Petition For Rehearing, the appellant alleges that there is no substantial evidence to support the Board's finding, in its earlier-adopted Precedential Decision, that the appellant was guilty of discourtesy based upon "the substantial number of deeply felt complaints from customers that he made them feel bad." Appellant claims that, to the contrary, only a few written complaints from customers were identified as exhibits at the hearing and none were admitted into evidence on grounds that they were hearsay.

While appellant is correct that the complaint cards themselves were not admitted into evidence, the allegations of discourtesy of June 26, 1990, December 28, 1990, and March 14, 1991 upon which the complaints were supposedly based were all incidents which the appellant admitted at the hearing as having occurred in the course of attempting to explain his intentions in making the various statements. Moreover, a review of the entire record reveals that each one of the allegations of discourteous treatment listed above is supported either by the direct testimony of witnesses to the incidents, admissions made by the appellant or other admissible non-hearsay evidence. As a result, the Board has no trouble

finding substantial evidence to support a finding that appellant is

guilty of discourteous treatment to the public and other employees based on the above-cited incidents.

In addition, there was substantial evidence in the record to support a finding that the appellant was guilty of falsifying his break times in the record book. While appellant does not contend otherwise in his Petition For Rehearing, he does make the argument that these charges can not constitute "discourteous treatment of the public and other employees" under subdivision (m)[4] because they are framed in the Notice of Adverse Action as "dishonesty in reporting break time", not discourteous treatment in reporting break time. As the DMV notes, however, in their response to appellant's argument, the charge of violation of subdivision (m) is listed at the beginning of the Notice of Adverse Action and can be applied to any charge thereafter listed in the Notice of Adverse Action if appropriate to that charge. While it is true that these charges may have been more appropriately labeled as "dishonesty", the fact that only discourteous treatment of the public was charged is not fatal in this instance. We find that the conduct of taking additional break time and misreporting may properly be construed as "discourteous treatment of other employees," and that the appellant

[4] The original Precedential Decision adopted by the Board stated that the charges of misreporting break time could not constitute dishonesty as dishonesty was not charged in the Notice of Adverse Action. The charges did, however, constitute discourteous treatment of the public or other employees, which was charged in the Notice of Adverse Action.

had sufficient notice of what was being charged to adequately prepare a defense.

Finally, while the appellant does not raise the issue of the sufficiency of the evidence concerning the charges of appellant's performance errors, we note for the record that there is substantial evidence in the record that appellant made several egregious transactional errors; some of which, such as the errors on September 17, 1990 and August 22, 1991, appear to have been either intentional, or at minimum, grossly negligent on his part.

Appropriateness of Penalty

The appellant also raises the argument in his Petition For Rehearing that the penalty of dismissal is too harsh given the non-criminal nature of the charges and the principles requiring progressive discipline. Appellant contends that this is not the case where people are crying out for appellant's dismissal: there were no angry customers who appeared at the hearing to testify against appellant, and further, the Manager at the DMV's Capitola office originally recommended only a 30-days suspension based upon these charges. The Board is unconvinced by these arguments, however, and concludes that the penalty of dismissal is an appropriate penalty under the circumstances.

When reviewing disciplinary actions, the Board is charged with rendering a decision which is "just and proper" under the circumstances. Government Code section 19582. In the case of

Skelly v. State Personnel Board (Skelly) (1975) 15 Cal. 3d. 194, the Supreme Court sets forth a list of factors to be considered when assessing the appropriateness of the discipline imposed.

> ...[W]e note that the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or is likely to result in [h]arm to the public service. (Citations.) Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence. (Id.)

As we recently noted in Lesbhia F. Morones (1993) SPB Dec. No. 93-23, the DMV is a customer-oriented business. Appellant's job as a Motor Vehicles Field Representative was to serve the public with information, both in person and on the telephone. While at the hearing the appellant defended his various statements as merely attempts at humor, the evidence reveals that he had been warned on several occasions not to attempt to use humor in dealing with the public, and that many customers simply did not understand or appreciate his "humor."

Obviously, appellant's remarks were so offensive to some members of the public, they wrote in to complain about his behavior. Moreover, his occasional spats with his coworkers in the public's view delayed service to the public and brought embarrassment and discredit to the DMV office. Thus, we find the public service incurred serious harm as a result of appellant's repeated instances of discourteous treatment.

While these instances of discourteous treatment may not alone have justified appellant's dismissal, when considered together with the other misconduct charged, the accumulation of incidents supports the ultimate penalty. For example, the serious transactional errors made by appellant, particularly in entering in the DMV computer that customers had met certain requirements, when indeed, the customers had not met those requirements, constitute gross negligence if not egregious intentional misconduct. The harm to the public could have been quite serious had not other DMV employees discovered the fact that one customer's vision had not been cleared and that another customer had not taken a skills test for driving a motorcycle.

Finally, although appellant misreported his break time on only two occasions, and although the misreporting only dealt with a matter of minutes, harm to the public service is nonetheless evident from such behavior. As noted in Lesbhia F. Morones (1993) SPB Dec. No. 93-23:

> The DMV... is in a consumer service business with a number of employees all of whom receive their scheduled lunches and breaks. The fact that one employee is even a couple of minutes late impacts not only customers who must wait to be served, but fellow workers whose own schedule is then disrupted.

Moreover, although dishonesty is neither charged nor found, we note that:

> Dishonest actions in the workplace must be taken seriously. DMV field representatives work with the public everyday, and have complete access to the computer

> system and to money. Thus, there is a great potential for harm to the public service if those field representatives act dishonestly. Carol Strogen (1993) SPB Dec. No. 93-16, p. 6.

Thus, the Board finds that given the totality of appellant's misconduct, the harm to the public service was sufficient to justify appellant's dismissal as a "just and proper" penalty. Moreover, we note that the likelihood of recurrence remains high given the fact that appellant received numerous warnings concerning his behavior, and failed to improve his disposition or performance.

Finally, we reject appellant's argument that the fact that the dismissal was proceeded by only one prior adverse action violates the principles of progressive discipline. Appellant received a substantial adverse action (5% for six months) as recently as January of 1990 based upon very similar charges of repeated instances of discourteous treatment to the public and fellow employees. Obviously, the prior adverse action had little effect upon the appellant, as he continued to exhibit the same type of behavior toward the public and his coworkers that was the subject of that first adverse action. In addition, the record shows that appellant received numerous "warnings" throughout 1990 and 1991 concerning his behavior in the form of incident reports issued by his supervisors. As the Board concluded in Mercedes Manayao (1993) SPB Dec. No. 93-14 at pp. 10-11:

> Progressive discipline does not necessarily require a Department to use every level of informal and formal

discipline to correct a particular performance problem.

> The purpose of progressive discipline is to provide the employee with an opportunity to learn from prior mistakes and to take steps to improve his or her performance on the job, prior to the imposition of harsh discipline.

Appellant was given numerous warnings concerning his behavior, both through formal and informal discipline, and had a sufficient opportunity to improve his performance. Unfortunately, it appears that, particularly in the area of discourteous treatment to customers and other employees, he made little effort to do so. The adverse action of dismissal 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 19582 and 19584, it is hereby ORDERED that:

1. The adverse action of dismissal of Michael Prudell from the position of Motor Vehicles Field Representative with the Department of Motor Vehicles is hereby sustained;

2. This decision is certified for publication as a Precedential Decision pursuant to Government Code section 19582.

THE STATE PERSONNEL BOARD

Richard Carpenter, President
Alice Stoner, Vice-President
Lorrie Ward, Member
Floss Bos, Member
Alfred R. Villalobos, Member

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I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on September 7, 1993.

GLORIA HARMON
Gloria Harmon, Executive Officer
State Personnel Board