BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by	)	SPB Case No. 35789
	)	
ELIETTE SANDOVAL	)	**BOARD DECISION**
	)	(Precedential)
	)	
From five percent reduction in salary for 12 months as a Motor Vehicle Field Representative with the Department of Motor Vehicles at Bell Gardens	)	**NO. 95-15**
	)	November 1-2, 1995

Appearances: Victoria A. Halliday, Legal Counsel, California State Employees Association on behalf of appellant, Eliette Sandoval; Larry M. Starn, Staff Counsel, Department of Motor Vehicles on behalf of respondent, Department of Motor Vehicles at Bell Gardens.

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

DECISION

This case is before the State Personnel Board (SPB or Board) after the Board rejected the Proposed Decision of the Administrative Law Judge (ALJ) in the appeal of Eliette Sandoval (appellant) which sustained appellant's five percent reduction in salary for twelve months as a Motor Vehicle Field Representative with the Department of Motor Vehicles (Department). Appellant's salary was reduced for intentionally using the DMV's computer to perform a transaction which involved a client of her personal business, a transaction expressly prohibited by the Department's rules as well as by a written agreement signed by the appellant.

Although the ALJ's Proposed Decision sustained appellant's salary reduction, finding cause for discipline under Government

Code section 19572, subdivisions (d) inexcusable neglect of duty, (m) discourteous treatment of the public or other employees, (o) willful disobedience, (r) violation of the provisions set forth in accordance with section 19990 (incompatible activities), and (t) failure of good behavior, the ALJ did not find cause for discipline under subdivisions (f) dishonesty or (p) misuse of state property. The Board rejected the ALJ's Proposed Decision and asked the parties to specifically address whether cause for discipline was established for dishonesty and/or misuse of state property.

After a review of the entire record, including the transcript, exhibits, and the written and oral arguments of the parties, the Board agrees with the findings of fact in the attached Proposed Decision and adopts these findings as its own. The Board also concurs with the conclusions of law set forth in the Proposed Decision and adopts them to the extent they are consistent with the discussion below.

ISSUES

Did the Department establish misuse of state property and/or dishonesty as cause for discipline?

DISCUSSION

The Board has previously defined misuse of state property as:

> [implying] either the theft of state property or the intentional use of state property or state time for an improper or non-state purpose often, but not always, involving personal gain... [it] may also connote improper

> or incorrect use, or mistreatment or abuse of state property. Robert Boobar (1993) SPB Dec. No. 93-21, pages 11-12.

In this case, we agree with the ALJ that a preponderance of evidence exists that appellant had to have viewed all three documents (the certificate of title, bill of sale and registration application) in order to generate the fee screen for the Jaguar as she did on January 27, 1994. She therefore must have known that she was generating a transaction on the DMV's computer in which Fast and Fair, a client of her family's business, Vehicle Registration Service, was listed as one of the parties to the transaction. Thus, in processing this transaction, appellant did not merely make a mistake in the way in which she used the computer, but rather intentionally used the DMV's computer for an improper purpose: using the DMV's computer to generate information for a transaction in which a client of her personal business was involved.

This situation is distinguishable from that in Walter J. Morton Jr. (1994) SPB Dec. No. 94-26 in which a highway patrol officer used his gun to shoot out the tires from a fleeing vehicle, an act which violated the department's rules. Although in Morton, the appellant was found to have intended to shoot out the tires of the fleeing vehicle and did not necessarily act "in the heat of the moment," the Board found, on the whole, that the shooting incident was an error in judgment and not an intentional act on his part to

use state property in an improper way. The Board held that using state property for the purpose for which it is intended is not misuse of state property, even if there is some other error attached to the use of the property.

In this case, however, we find that appellant intentionally used the computer to perform a transaction in which she had a personal interest, a situation which is hard to distinguish from one using state equipment for their own private gain. We believe that appellant's actions therefore constitute improper use of state property, and therefore, misuse of state property.

In addition, we find appellant's actions also constitute dishonesty. Black's Law Dictionary, Special Deluxe Fifth Edition, 1979, defines dishonesty as:

> Disposition to lie, cheat or defraud; untrustworthiness, lack of integrity

Webster's New World Dictionary, 2nd College Edition, 1982, defines dishonesty as:

> impl[ying] the act or practice of telling a lie or of cheating, deceiving, stealing, etc.

Appellant knowingly performed a transaction on the DMV computer which she was repeatedly instructed, both in writing and orally, not to do. More importantly, this transaction involved a party in which she had a personal, financial interest. We believe that knowingly performing a transaction in which one has a personal, financial interest, contrary to specific instructions from one's supervisors, and not disclosing that transaction to

one's supervisors, constitutes deceitful and untrustworthy behavior. We therefore conclude that appellant's conduct constituted cause for discipline under Government Code section 19572(f), dishonesty.

ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, it is hereby ORDERED that:

1. The ALJ's attached Proposed Decision is adopted to the extent it is consistent with this decision.

2. The action of the Department of Motor Vehicles to reduce Eliette Sandoval's salary by five percent for twelve months is sustained;

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

STATE PERSONNEL BOARD

Lorrie Ward, President
Floss Bos, Vice President
Richard Carpenter, Member
Alice Stoner, Member
Ron Alvarado, 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 November 1-2, 1995.

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C. Lance Barnett, Ph.D.
Executive Officer
State Personnel Board

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal By	)	
	)	
ELIETTE SANDOVAL	)	Case No. 35789
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From five percent reduction in salary for 12 months as a Motor Vehicle Field Representative with the Department of Motor Vehicles at Bell Gardens	)	

PROPOSED DECISION

This matter came on regularly for hearing before Ronald S. Marks, Administrative Law Judge, State Personnel Board, on January 23, 1995, at Los Angeles, California, and was submitted on that date.

The appellant, Eliette Sandoval, was present and was represented by Victoria A. Halliday, Legal Counsel, California State Employees Association.

The respondent was represented by Larry M. Starn, Staff Counsel, Department of Motor Vehicles.

Evidence having been received and duly considered, the Administrative Law Judge makes the following findings of fact and Proposed Decision:

I

The above reduction in salary effective July 15, 1994, and appellant's appeal therefrom, comply with the procedural requirements of the State Civil Service Act.

II

Appellant has been employed as a Motor Vehicle Field Representative since April 8, 1985. She has had no prior adverse actions.

III

The adverse action was based upon appellant's use of her position as a Department of Motor Vehicles (DMV) employee to assist a private company with whom she was employed, and discourteous treatment of other employees. Legal cause for discipline was based upon violation of Government Code section 19572, subdivisions (d) inexcusable neglect of duty, (f) dishonesty, (m) discourteous treatment of the public or other employees, (o) willful disobedience, (p) misuse of state property, (r) violation of the provisions set forth in accordance with section 19990 (incompatible activities), and
(t) other failure of good behavior on or off duty, causing discredit to the agency.

IV

In addition to her employment with DMV, appellant also works for a business known as "Vehicle Registration Services" (VRS). This business is owned by appellant's stepdaughter. Appellant's husband is also employed by the business. Appellant's duties for VRS include collecting DMV paperwork at car dealerships which are clients of VRS, reviewing the forms for accuracy, taking the forms to a DMV office for processing, and bringing the vehicle plates and stickers back to the dealership.

V

DMV was aware of appellant's employment with VRS and did not object to it so long as appellant did not process VRS paperwork at the Bell Gardens office where she was employed, did not access the DMV data base for the benefit of VRS or personally process any paperwork for VRS.

On September 17, 1993, appellant signed and acknowledged a document entitled "Statement of Incompatible Activities." On September 22, 1993, appellant signed a memorandum (memo) from her supervisor which set forth generally and specifically prohibited activities in connection with her employment with VRS. On or about January 18, 1990, and January 20, 1994, appellant signed and acknowledged respondent's Security and Disclosure Certification which set forth the prohibition against accessing or using information from DMV databases for personal reasons.

VI

On January 27, 1994, while at work at the Bell Gardens office, appellant accessed the DMV database to obtain a printout of registration fees for a VRS client known as "Fast N Fair Auto Sales" in connection with the client's purchase of a 1982 Jaguar automobile.

VII

On February 15, 1994, appellant's husband, Luis Sandoval (Sandoval), submitted an application for an original registration for the 1982 Jaguar to Jo Melendrez (Melendrez), a Motor Vehicle Field Representative at the Montebello DMV office. Melendrez rejected the application since

documentation regarding the vehicle's chain of title was missing. Sandoval became upset with Melendrez, and insisted that the application was complete because his wife worked for DMV and had reviewed the application. Despite Sandoval's protests, Melendrez refused to accept the application.

VIII

On February 16, 1994, appellant went to the Montebello DMV office after an appointment with her attorney.[1] She asked for the manager, Pat O'Neill (O'Neill), and complained that her husband had been unable to file an application for an original registration on the previous day, even though appellant had reviewed the application and believed it to be complete. O'Neill summoned Melendrez who explained why she had rejected the application.

Appellant became angry at O'Neill and Melendrez. She told them: "I know you hate DMV Services and that's why you gave my husband a hard time. DMV is in the business to help people, and if you can clear an application, you should do it. You should have told my husband whose name to print on the back of the title since he did not know. My office does not require that information and it is not necessary."

IX

On March 17, 1994, while transacting business for VRS at the Montebello DMV office, appellant again became angry at O'Neill as a result of an application for a VRS client that was rejected when presented by appellant's stepdaughter.

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[1]Appellant had received authorization to be absent from work from 8:30 a.m. until 10:30 a.m. for the appointment.

Appellant's stepdaughter wanted to post registration fees for a vehicle so there would not be a penalty.[2] The application was rejected because a smog certificate was not presented with the application. Appellant insisted that a smog certificate was not needed in order to post fees.

Appellant angrily stated to O'Neill that the technicians in the office should go back to registration school, and, that the employees have the supervisors brainwashed. Appellant also stated to O'Neill that she should apologize when she does something wrong.

X

Following the meeting with O'Neill, on March 17, 1994, appellant returned to work at the Bell Gardens DMV office. She arrived at 11:20 a.m. and took only a few minutes for her lunch break. Appellant testified that she used her time at the Montebello DMV office in lieu of her lunch hour and that this practice had been generally permitted by her supervisors in the past.

* * * * *

PURSUANT TO THE FOREGOING FINDINGS OF FACT, THE ADMINISTRATIVE LAW JUDGE MAKES THE FOLLOWING DETERMINATION OF ISSUES:

Appellant conceded that she accessed the DMV database to ascertain registration fees for the 1982 Jaguar but contended that she did not do so for her VRS client "Fast N Fair Auto Sales." Persuasive evidence was presented by respondent,

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[2]A dealer has 20 days to post registration fees, and incurs a penalty if the fees are not posted within that time.

however, that appellant could not have accessed the database in order to determine registration fees unless she had been presented documentation which contained the name of the applicant.[3]

By accessing the database for one of her customers, appellant knowingly violated the prohibition against incompatible activities, as well as the prohibition against using DMV information for personal reasons. Her conduct thus violated Government Code section 19572 (r). It also constituted willful disobedience in violation of Government Code section 19572 (o) since she had been given clear instructions by her supervisor that such activity was prohibited. Coomes v. State Personnel Board (1963) 215 Cal.App.2d 770, 775; Fortunato Jose (1993) SPB Dec. No. 93-34. Appellant did not misuse state property, however, since she used the database in connection with a legitimate DMV transaction. Walter H. Morton, Jr. (1994) SPB Dec. No. 94-26.

Appellant denied making the statements on March 17, 1994 attributed to her by O'Neill. However, applying the factors contained in evidence Code section 780, O'Neill's testimony was very credible. Appellant presented no evidence of bias on the part of O'Neill or motive that would have caused her to fabricate the substance of her conversation with appellant.

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[3]Respondent introduced into evidence the application documents which reflected the name of the purchaser to be "Fast N Fair Auto Sales."

Appellant further contends that when she visited the Montebello DMV office, it was to register a complaint as a DMV customer and not as a DMV employee. In fact, however, appellant went to the Montebello DMV office in a dual capacity. She complained about the refusal to allow her husband to submit an application for a VRS customer, and also expressed her anger as a DMV employee that the Montebello office was handling applications improperly and contrary to the way they were handled in the Bell Gardens office. She was on DMV time and past her two hours of authorized leave. Were she not a DMV employee, it is doubtful that appellant would have had such ready access to the manager of the Montebello office to voice her complaints.

Appellant's anger and intimidation was directed toward a manager and field representative in another DMV office, and constituted discourteous treatment of other employees within the meaning of Government Code section 19572 (m). Christine M. Corral (1994) SPB Dec. No. 94-02.

Respondent presented insufficient evidence of inexcusable neglect of duty within the meaning of Government Code section 19572 (d). Appellant utilized her lunch time to visit the Montebello DMV office and her testimony that this was an acceptable practice in the past was not rebutted.

Respondent neither alleged acts in the Notice of Adverse Action as grounds for dishonesty nor advanced any such theory at the hearing. In the absence of any evidence of acts of dishonesty, this allegation is dismissed.

Appellant contended at the hearing that a violation of Government Code section 19572 (t) could not be established since that section can only be used as a "catchall" when the conduct is not prohibited by any other legal cause for discipline, citing Vieleher v. State Personnel Board (1973) 32 Cal.App.3d 187. Appellant's reliance on Vieleher is misplaced. Vieleher involved a dismissal of a state tax representative trainee under subdivision (t) for conviction of possession of marijuana during off duty hours. In setting aside the dismissal due to a lack of nexus, the court held that subdivision (t) was intended to prohibit conduct that involved "situations and acts which do not easily fit into the [then] 19 specific causes [contained in Government Code Section 19572]." Nowhere in the decision does the court hold that subdivision (t) is only applicable when there are no other specific causes that would prohibit the alleged conduct.

In the instant case, appellant's violation of directives prohibiting use of DMV databases for her private business, and her verbal assault on employees in another DMV office when her client's paperwork was not approved constituted other failure of good behavior within the meaning of subdivision (t) since such conduct could result in the impairment or disruption of the public service. Warren v. State Personnel Board (1979) 94 Cal.App.3d 95, 104.

The gravamen of appellant's conduct involved an area of great sensitivity to respondent. Appellant was placed on adequate notice that her personal business dealings must be kept completely separate and apart from her obligations and

duties as a DMV employee. Given the seriousness of appellant's conduct, the discipline imposed is just and proper.

* * * * *

WHEREFORE IT IS DETERMINED that the adverse action of five percent reduction in salary for 12 months of appellant Eliette Sandoval effective July 15, 1994 is hereby sustained without modification.

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I hereby certify that the foregoing constitutes my Proposed Decision in the above-entitled matter and I recommend its adoption by the State Personnel Board as its decision in the case.

DATED: April 1, 1995.

RONALD S. MARKS

Ronald S. Marks,
Administrative Law Judge,
State Personnel Board.