BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by [redacted] From dismissal from the position of [redacted] with Folsom State Prison, Department of Corrections and Rehabilitation at Represa	)))))))))	SPB Case No. 07-3421 **BOARD DECISION** (Precedential) **No. 08-02** July 8, 2008

BEFORE: Sean Harrigan, President; Richard Costigan, Vice-President; Patricia Clarey and Maeley Tom, Members.

DECISION

This case is before the State Personnel Board (SPB or Board) for consideration after having been heard and decided by an SPB Administrative Law Judge (ALJ).

We have reviewed the ALJ's Proposed Decision revoking [redacted] (appellant) dismissal and conclude that the ALJ correctly determined when the one-year limitations period for commencing disciplinary proceedings against a peace officer, as set forth in Government Code section 3304, subdivision (d), began to run against appellant. In so doing, we have also reviewed our prior precedential decisions in *Harry Miller/Lawrence Schaefer* ((2003) SPB Dec. No. 03-07) and *Timothy Bobitt* ((2004) SPB Dec. No. 04-01) and have determined that those decisions require clarification concerning who constitutes a "person authorized to initiate an investigation" into alleged misconduct by a peace officer pursuant to Government Code section 3304, subdivision (d).

In deciding the question of who constitutes a person authorized to initiate an investigation into alleged misconduct by a peace officer under Section 3304(d), the Board had previously determined:

> We conclude that, for the limitations period set forth in section 3304, subdivision (d), to come into play, and in the absence of any specific identification or authorization by the Department, the 'person authorized to initiate an investigation' must be affirmatively vested with some authority to conduct or supervise an investigation into the alleged misconduct and to either take disciplinary action or to report the investigatory findings to one who can act upon them. We will not presume that a mere witness to possible misconduct who has no such authority is vested with such authority *per se*, notwithstanding any obligation he or she may have to report the misconduct.[1] (Emphasis added.)

Having had the opportunity to reconsider the matter, we find that the above definition requiring the individual to be affirmatively vested with some authority to conduct or supervise an investigation and to either take disciplinary action or to report the investigatory findings to one who can act on them is unduly restrictive. Instead, we find that a more correct definition concerning who constitutes a person authorized to initiate an investigation into peace officer misconduct pursuant to Section 3304(d) is as follows:

> Absent any specific identification or authorization by the appointing power, the 'person authorized to initiate an investigation' must be at a supervisory level or higher, have been a witness to or otherwise have knowledge of the underlying alleged misconduct, and not have participated in the underlying alleged misconduct.

To the extent that *Harry Miller/Lawrence Schaefer* and *Timothy Bobitt* can be construed as imposing a more restrictive definition concerning who constitutes a person authorized to initiate an investigation into alleged peace officer misconduct under

[1] *Harry Miller/Lawrence Schaefer*, Dec. No. 03-07, at pp. 8-9; *Timothy Bobitt*, Dec. No. 04-01, at pp. 8-9.

Government Code section 3304, subdivision (d), than the definition set forth above, those portions of the decisions are disapproved.

The Proposed Decision containing the findings of fact and conclusions of law issued by the ALJ on June 16, 2008, in SPB Case No. 07-3421 are hereby adopted by the State Personnel Board as its Decision in this matter.

ORDER

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

The dismissal of [redacted] from the position of [redacted] is revoked.

STATE PERSONNEL BOARD[2]

Sean Harrigan, President
Richard Costigan, Vice President
Patricia Clarey, Member
Maeley Tom, 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 July 8, 2008.

Suzanne M. Ambrose
Executive Officer
State Personnel Board

[2] Member Anne Sheehan did not participate in this Decision.