

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by ) Case No. 28242  
 )  
 ) **CHARLES MARTINEZ** ) **BOARD DECISION**  
 ) (Precedential)  
 )  
From 5% reduction in salary for )  
1 year as a Materials and Stores ) **NO. 92-09**  
Supervisor I at the Mule Creek State )  
Prison, Department of Corrections ) May 5, 1992  
at Ione )

Appearances: William A. Sokol of Van Bourg, Weinberg, Roger & Rosenfeld, representing appellant, Charles Martinez; Linda R. Dizmon, Counsel for respondent, Department of Corrections.

Before Carpenter, President; Stoner, Vice-President; Burgener, Member.

**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 an appeal by Charles Martinez (appellant or Martinez), a Materials and Stores Supervisor I at the Mule Creek State Prison, Department of Corrections at Ione (Department), from a 5% reduction in salary for 1 year.

The ALJ sustained the pay reduction, finding that appellant's "drunken belligerence to the California Highway Patrol," constituted cause for discipline under Government Code section 19572, subdivision (m) discourteous treatment, and subdivision (t) other failure of good behavior. He found appellant's misconduct had a nexus to his employment based upon the fact that appellant works with inmates and peace officers.

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The Board determined to decide the case itself, based upon the record. After review of the entire record, including the transcript and briefs submitted by the parties, and having heard oral arguments, the Board revokes the discipline for the reasons set forth below.

#### **SUMMARY OF THE FACTS**

Appellant is employed as a Materials and Stores Supervisor I at the Mule Creek State Prison in Ione, California. He has worked for the state since April 24, 1989. As a Materials and Stores Supervisor I, appellant supervises ten inmates in the prison laundry room where he is primarily responsible for providing clothing to inmates and processing clothing to and from the laundry area. He is not a peace officer.

Prior to the incident that is the subject of this adverse action, appellant had received no discipline and had received a commendation for good attendance. His supervisor testified that at the time he prepared appellant's performance evaluation, he fully met expected standards, that he continued to improve in his work performance thereafter and that, to his knowledge, he never violated the employee conduct code while on the job.

On December 5, 1989, appellant was one of two passengers in a van which was stopped by California State Traffic Officer T. Stahr after he viewed the vehicle weaving in traffic. After arresting the driver for driving under the influence of alcohol, the officer

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investigated the other passengers, including appellant. The record evidence established that appellant appeared drunk, was argumentative, and interfered with the arresting officer's performance of his duties. The evidence also established that appellant yelled profanities at the arresting officer and other officers who arrived at the scene, and acted in a verbally and physically threatening manner, resulting in a physical altercation whereby the officers had to take him to the ground to handcuff and arrest him.

Appellant was subsequently convicted in Sacramento Municipal Court for violation of Penal Code Section 415<sup>1</sup> after a plea of nolo contendere. The sentence was suspended.

The Department originally charged appellant with violating Government Code section 19572 subdivisions (f) Dishonesty; (m) Discourteous treatment of the public or other employees; and (t) Other 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. Appellant was also charged with violating California Code of Regulations, Title 15, Section 3391 - Employee Conduct. At the hearing, the ALJ

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<sup>1</sup>Penal Code section 415 provides for imprisonment and/or a fine for any of the following offenses: fighting in a public place, challenging another to fight, wilfully and maliciously disturbing others by loud and unreasonable noise, and using offensive words inherently likely to provoke an immediate violent reaction.

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granted the Department's motion to amend the Notice of Adverse Action to add the charges that the appellant violated Government Code section 19572, subdivisions (c) Inefficiency, (d) Inexcusable neglect of duty; and (o) Disobedience, and to add the fact that appellant plead nolo contendere to a violation of Penal Code section 415.

### **ISSUE**

1. Did the Department establish, by a preponderance of the evidence, the charges of dishonesty, other failure of good behavior outside of duty, and discourteous treatment of the public, by a preponderance of the evidence?<sup>2</sup>

2. Is there a nexus between appellant's off-duty misconduct and his job as a Materials and Stores Supervisor I so as to support a finding of a violation of Government Code section 19572 (t)?

### **DISCUSSION**

#### Failure of Good Behavior Outside of Duty Hours

The ALJ found that the evidence established misconduct on the part of appellant that constituted "other failure of good behavior either during or outside of duty hours which is of such a nature

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<sup>2</sup>The Department presented no evidence to support the amended charges of inefficiency, inexcusable neglect of duty, and disobedience nor any argument before the Board that the facts establish those charges. We therefore limit our discussion to the charges under Government Code section 19572, subdivisions (f), (m) and (t).

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that it causes discredit to the appointing authority or the person's employment," under Government Code section 19572, subdivision (t). We disagree.

To establish a violation under subdivision (t), 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.] 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.

We do not find that appellant's misconduct was of such a nature as to reflect upon his job as a Materials and Stores Supervisor I. Appellant's job entails distributing clothing to inmates, processing inmate clothing through the laundry, and supervising inmates who are performing such tasks. Appellant's off-duty misconduct bears no relationship to his employment whatsoever, nor do we find that such misconduct on the part of

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appellant off duty could result in impairment or disruption of the public service. Whether appellant resisted arrest, was drunk in public, or violated Penal Code section 415 in his off-duty hours, appellant's misconduct bore no relationship whatsoever to his job, nor did it have the potential of disrupting the public service provided by Mule Creek State Prison.

Notably, appellant is not a peace officer. He does not occupy a position of public trust; he is not sworn to uphold the law. Consequently, appellant's off-duty conduct is not subject to the same strict scrutiny with which we view the off-duty behavior of a peace officer who has violated the law. The mere fact that appellant works at a prison and interacts with peace officers and inmates does not subject him to the same high standards imposed upon peace officers. Thus, we find insufficient nexus between appellant's misbehavior and his job to sustain any discipline based on a charge of "failure of good behavior...outside of duty hours...." [Government Code section 19572 (t)]

#### Discourteous Treatment of the Public

Neither can we sustain a conclusion that appellant's misconduct constituted "discourteous treatment of the public and or other employees" within the established meaning of Government Code section 19572, subdivision (m). In Blake v. State Personnel Board (1972) 25 Cal.App.3d 541, 550-551, the court construed subdivision (m) to apply to discourteous treatment of the public or other

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employees outside of working hours only if the discourteous treatment reflected adversely on the public agency. In the instant case, the discourteous conduct ascribed to appellant was unconnected to appellant's job as Materials and Stores Supervisor I and did not reflect adversely on the Department of Corrections. We therefore find that the Department did not establish a violation of subdivision (m).

#### Dishonesty

Appellant was charged with being dishonest at his investigatory interview with the Department's investigating lieutenant, Alfred Stone. Appellant's rendition of the details of the events of the evening of December 5, 1989 differed from the arrest reports and the verbal accounts of the incident by the State Traffic Officers. While appellant admitted that the incident described in the arrest report took place, he disputed some of the particulars. Lieutenant Stone testified that at appellant's investigatory interview, appellant denied using profanity, insisted he had only had two beers, and claimed the officers used excessive force on him. Notably, the ALJ made no factual findings as to the dishonesty charge. We are not convinced that the preponderance of the evidence establishes that appellant intentionally gave false statements at his investigatory interview. The charge of dishonesty is not supported by the weight of the evidence.

**CONCLUSION**

The charges were not established by the preponderance of the evidence. The charges of failure of good behavior outside of duty hours and discourtesy to the public cannot be sustained as there is no nexus between the misconduct and appellant's job. The record evidence does not establish that appellant intentionally gave false statements at his investigatory interview. The 5% pay reduction for 1 year is therefore revoked.

**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 5% reduction in salary for 1 year is revoked;

2. The California Department of Corrections and its representatives shall pay the appellant all back pay and benefits that would have accrued to him had he not received a 5% salary reduction for 1 year; 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).



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STATE PERSONNEL BOARD

Richard Carpenter, President  
Alice Stoner, Vice-President  
Clair Burgener, Member

\*Members Richard Chavez and Lorrie Ward did not participate in this decision.

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I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on May 5, 1992.

GLORIA HARMON  
Gloria Harmon, Executive Officer  
State Personnel Board