

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by)	SPB Case No. 30211
)	
CAROL STROGEN)	BOARD DECISION
)	(Precedential)
From a dismissal from the position of)	
Motor Vehicle Field Representative)	NO. 93-16
with the Department of Motor Vehicle)	
at Winnetka.)	June 1, 1993

Appearances: Edmund A. Hernandez, Labor Relations Representative, California State Employees Association, representing appellant, Carol Strogon; Randal E. Bates, Senior Staff Counsel, Department of Motor Vehicles, representing the Department of Motor Vehicles, respondent.

Before Carpenter, President; Stoner, Vice President; and Ward, Member.

DECISION

This case is before the State Personnel Board (SPB or Board) for determination after the Board rejected the Proposed Decision of an Administrative Law Judge (ALJ) in the appeal of Carol Strogon (appellant), from dismissal from the position of Motor Vehicle Field Representative with the Department of Motor Vehicles (DMV or Department) at Winnetka. The appellant was charged with numerous violations of Government Code section 19572 based upon her poor record of attendance, tardies, and two incidents of dishonest behavior while on duty. The ALJ who heard the case modified the dismissal to a one-year suspension on the grounds that appellant's

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poor attendance was attributable to unfortunate circumstances in her personal life.

The Board rejected the ALJ's Proposed Decision and determined to decide the case itself, based upon the record, the written argument submitted by the Department¹, and the oral arguments presented by the parties. Based upon the record, the Board sustains the original penalty of dismissal.

FACTUAL SUMMARY

Appellant has worked as a Motor Vehicles Field Representative since her appointment on March 2, 1989. She has no prior adverse actions. On October 18, 1990, the appellant submitted court certification to her supervisor which stated that she was present in court for jury duty on September 4, 1990 for 1/2 day. Appellant's supervisor was suspicious that appellant had really not attended court on September 4, and told appellant she was going to call the court. Appellant then told her supervisor that although she did attend court on that date, she herself had added the date of September 4 to the certificate, not the court. She explained that for some reason, the court claimed to have no record of her in attendance on September 4. Appellant's supervisor followed up by calling the court and was told that they had no record of the appellant being in court that day for jury duty.

¹ The appellant did not submit a written brief to the Board.

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On June 6, 1991, appellant completed a DMV registration transaction for a fellow employee in the office. In performing the transaction, appellant purposely altered the date in the computer that the registration fee was paid. Appellant inputted the date of January 31, 1991 into the computer as though that were the date that the registration fees were paid, even though the fees were not fully paid until June 6, 1991. The result was that the computer did not assess any penalty for the co-worker's late registration as it should have done. If appellant had inputted the proper date of June 6 into the computer, the co-worker would have owed \$51.00 to the Department.

The evidence revealed that it is a well-known rule of the Department that co-workers are not allowed to do transactions for one another unless they get a supervisor involved and obtain that supervisor's approval. In addition, the evidence revealed that penalties for late vehicle registration may not be waived by a Department employee, nor may a Department employee back-date payment of registration fees. Appellant contends that in both instances, she was merely attempting to follow what she perceived to be the Department's rules. The ALJ did not credit her assertions in his findings of fact, and the Board finds ample evidence in the record to support the ALJ's findings that appellant was dishonest in these acts.

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In addition to reflecting these two incidents, the record reveals that appellant had extremely poor job attendance. Between January 1990 and May 1991, the appellant used 291 hours of unscheduled leave. The record further reveals that appellant had serious personal problems during this time, as she was the victim of ongoing physical abuse by her then-husband.

On a number of other occasions, appellant would report to work late or be late returning from scheduled breaks or lunch. On April 21, 1991, appellant requested to take the day off only 15 minutes before she was scheduled to report to work. Appellant's supervisor denied the request. Thereafter, 10 minutes later, appellant called her supervisor again and stated that she knew she would be "written up" so she wanted to take the day off for sickness. Appellant was told that she would need a doctor's note if she was going to take the day off as "sick". Appellant eventually showed up at work, 30 minutes late, and was docked for that time.

The record further reveals that appellant was repeatedly counseled for her poor attendance and tardies. On August 5, 1991, appellant was charged with violations of Government Code section 19572, subdivisions (d) inexcusable neglect of duty, (e) insubordination, (f) dishonesty, (j) inexcusable absence without leave, (o) willful disobedience, and (q) violation of this part or Board Rule 172.

ISSUE

What is the appropriate penalty under the circumstances?

DISCUSSION

The ALJ found sufficient evidence to support the charges of dishonesty, inexcusable neglect of duty, insubordination, inexcusable absence without leave, and violation of this part or Board Rule 172.² However, the ALJ modified the dismissal to a one-year suspension on the grounds that the evidence indicated that the poor attendance was the primary allegation, and that appellant's attendance problems were not likely to recur because appellant had since left her former husband, whose beatings were responsible for those problems.

The Board agrees that the circumstances surrounding appellant's poor attendance serve to mitigate that misconduct. The Department's imposition of the penalty of dismissal, would not be warranted for the attendance problems alone, particularly as this is appellant's first adverse action. The two incidents of dishonest behavior, however, are, in and of themselves, sufficiently serious to merit the penalty of dismissal.

When performing its constitutional responsibility to review disciplinary actions [Cal. Const. Art. VII, section 3(a)], the

² In D ██████ M ██████ (1993) SPB Dec. No. 93-06, the Board expressed its opinion that Board Rule 172 does not constitute a separate grounds for discipline under Government Code section 19572, and therefore this charge will not be considered by the Board in this case.

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Board is charged with rendering a decision which, in its judgment is "just and proper". Government Code section 19582. One aspect of rendering a "just and proper" decision involves assuring that the discipline imposed is "just and proper." In determining what is a "just and proper" penalty for a particular offense, under a given set of circumstances, the Board has broad discretion. (See Wylie v. State Personnel Board (1949) 93 Cal.App.2d 838.) The Board's discretion, however, is not unlimited. In the seminal case of Skelly v. State Personnel Board (Skelly) (1975) 15 Cal.3d 194, the California Supreme Court noted:

While the administrative body has a broad discretion in respect to the imposition of a penalty or discipline, it does not have absolute and unlimited power. It is bound to exercise legal discretion which is, in the circumstances, judicial discretion. (Citations) 15 Cal.3d at 217-218.

In exercising its judicial discretion in such a way as to render a decision that is "just and proper," the Board considers a number of factors it deems relevant in assessing the propriety of the imposed discipline. Among the factors the Board considers are those specifically identified by the Court in Skelly as follows:

...[W]e note that the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated 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.)

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In this case, serious harm to the public service was incurred as a result of appellant's dishonest actions. Appellant falsified an attendance form and brought the falsification to the attention of her supervisor only after her supervisor told her she was suspicious and was going to contact the court to verify her attendance on September 4. Months later, appellant ignored the Department's established rules and performed a transaction for a co-worker without advising a supervisor. More importantly, she performed the transaction so as to manipulate the date on which the registration fees were paid to the Department, helping the co-worker evade payment of \$51 in penalties for late registration.

As noted by the courts, "honesty is not considered an isolated or transient behavioral act; it is more of a continuing trait of character." Gee v. State Personnel Board (1970) 5 Cal.App.3d. 713, 719. Appellant demonstrated a propensity to be dishonest on not one, but two separate occasions. The Department was entitled to treat appellant's dishonesty as extremely serious misconduct. DMV field representatives work with the public every day, and have complete access to the computer system and to Department funds. Persons holding such positions must therefore be scrupulously honest. The Department must be able to place its complete trust in its workers and know that all Department rules will be followed, particularly those rules governing the performance of monetary transactions. The harm to the public service flowing from

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appellant's dishonesty is sufficiently egregious to warrant appellant's dismissal in this instance.

Examining the Skelly factors, the Board finds the incidents of dishonesty to be serious and quite harmful to the public service. Moreover, the fact that appellant committed two acts of job-related dishonesty in the same year indicates that the dishonest actions may be likely to recur. Significantly, appellant has only a short tenure with the Department, and both incidents of dishonesty occurred within the first two years of appellant's employment. The Department should not have to take further chances on appellant. While the Board agrees that the instances of physical abuse suffered by the appellant mitigate appellant's poor attendance, that abuse does not excuse, correlate with, or mitigate the incidents of dishonest behavior. Under the circumstances, the Board sustains appellant's dismissal.

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 dismissal is sustained;
2. This opinion is certified for publication as a Precedential Decision (Government Code section 19582.5).

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THE STATE PERSONNEL BOARD*

Richard Carpenter, President
Alice Stoner, Vice President
Lorrie Ward, Member

*Members Floss Bos and Alfred R. Villalobos were not on the Board when this case was originally considered.

* * * * *

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on June 1, 1993.

GLORIA HARMON
Gloria Harmon, Executive Officer
State Personnel Board