BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by **G[redacted] M[redacted]** From demotion from the position of Facility Captain to the position of Correctional Lieutenant with High Desert State Prison, Department of Corrections at Susanville	SPB Case No. 99-1549 **BOARD DECISION** (Precedential) **No. 03-06** December 2, 2003

APPEARANCES: Mark R. Kruger, attorney, on behalf of appellant, G[redacted] M[redacted]; Kenneth R. Hulse, Labor Relations Counsel, Department of Personnel Administration, on behalf of respondent, Department of Corrections.

BEFORE: William Elkins, President; Sean Harrigan and Maeley Tom, Members.

DECISION

This case is before the State Personnel Board (SPB or Board) after the Lassen County Superior Court (Superior Court) granted the petition for writ of mandate filed by the respondent, Department of Corrections (CDC or Department) and remanded this matter to the Board for further consideration. In this Decision, the Board: (1) vacates its precedential decision in SPB Dec. No. 00-05 issued on May 2, 2000; (2) affirms its determination in that prior decision that the Board has jurisdiction to determine whether the Department violated the Public Safety Officers Procedural Bill of Rights Act (POBOR); and (3) concludes that the Department failed to prove legal cause for discipline against G[redacted] M[redacted] (appellant) by a preponderance of the evidence. The Board, therefore, revokes appellant's demotion.

BACKGROUND[1]

(Employment History)

Appellant was first employed by the Department as a Correctional Officer at San Quentin State Prison on June 5, 1978. She promoted to the position of Correctional Sergeant at the Correctional Training Facility, Soledad, on January 9, 1984. She promoted to the position of Associate Governmental Program Analyst on October 22, 1984. She promoted to the position of Parole Agent I on December 1, 1985, to the position of Parole Agent II on May 1, 1990, and to the position of Parole Agent III on December 1, 1990. On April 4, 1996, she promoted to the position of Facility Captain at HDSP where she remained until her demotion, except for a brief period of time from July 1 to November 3, 1997, when she served as a Correctional Captain.

(Prior Disciplinary Actions)

Appellant received a Letter of Instruction (LOI) on April 27, 1998, for inappropriate and unprofessional comments to an African-American staff member at HDSP. She received another LOI on August 21, 1998, for providing confidential "unlock" information to the inmate population, thereby jeopardizing an intended search for weapons and contraband. Appellant has received no prior formal adverse actions.

[1] The findings of fact are taken substantially from the Proposed Decision.

Factual Summary

(Limited Release of Caucasian Inmates from Lockdown Status)

During the early part of 1998, appellant was assigned as the Facility Captain of Facility B at HDSP. The Caucasian inmates were on lockdown status as a result of racial violence.[2] In light of the lockdown status, Warden Susan Yearwood (Yearwood) instituted a daily lockdown meeting with executive staff, including captains. During the executive staff meetings, Yearwood or Chief Deputy Warden Charles Knowles (Knowles) would discuss the progress made to allow a gradual return to normal programming for the inmates. Also discussed during these meetings were plans to reduce tensions between Caucasian and African-American inmates, activities to get inmates to talk with one another, and proposals as to what to do next. To avoid misunderstandings and to ensure that proposed plans were well thought out in advance, Yearwood instructed the meeting participants to submit any proposals for changes to the lockdown status in writing.

While they were on lockdown status, the Caucasian inmates were fed in their cells rather than in the dining hall. At the daily executive staff meeting on April 6, 1998, appellant stated that the perpetrators of an attack on a child molester had been identified, the leaders of the attack had been moved to the administrative segregation unit, and it was now safe to allow the Caucasian inmates to eat in the dining hall. Appellant proposed returning the Caucasian inmates to the dining hall starting with the

[2] HDSP is a Level 3 and 4 institution (Maximum security). On March 26, 1998, a Caucasian inmate attacked an African-American inmate, resulting in serious injuries. A correctional officer shot and killed an inmate in order to quell the disturbance.

breakfast meal on April 7, when more staff were present, instead of the evening meal on April 6.

Yearwood testified that she thought that the release of the Caucasian inmates was premature. Pursuant to her policy of approving only written proposals, Yearwood asked appellant to put her proposal in writing. Yearwood believed that appellant's proposal was only that, a proposal, and that appellant still needed Yearwood's written approval prior to implementing the proposal. Appellant, on the other hand, understood that, during the meeting, Yearwood had approved releasing the Caucasian inmates to eat in the dining hall, and that a written memorandum was merely for the purpose of documenting the change in lockdown status.

Appellant testified that she considered the type of controlled dining hall release that she was proposing for the Caucasian inmates to be a program change and that, unlike a proposal to significantly modify a lockdown, she had never before been asked to put in writing a proposal to make a program change. Instead, proposals for program changes had generally been approved by Knowles during the executive staff meetings without the requirement that they first had to be put in writing. Because she had never drafted a proposal for a program change before, appellant contacted Associate Warden Sal Mennuti (Mennuti) to ask for guidance in drafting the written proposal. Mennuti gave appellant recommendations as to how her proposal should be drafted.

Appellant intended to put the proposal in writing that day, but she was not able to complete it. She telephoned Mennuti at approximately 4:30 p.m. and asked him whether he wanted her to stay late to complete it. Mennuti stated that she did not have to stay late to complete it, but, instead, could put it in writing later. Mennuti testified that,

in so stating, he did not intend to give appellant approval to begin feeding the Caucasian inmates in the dining hall before she had submitted a written proposal to the warden. Instead, Mennuti thought that appellant would first prepare the proposal and obtain Yearwood's approval prior to implementing the proposed change. Appellant, however, understood Mennuti's response to her question to mean that she could authorize the release of the Caucasian inmates for the next morning's breakfast feeding, and that she could submit the written proposal documenting that release at a later date. Appellant, therefore, left orders for the lieutenant to release the Caucasian inmates to the dining hall for the next morning's breakfast feeding.

On April 7, 1998, as the result of appellant's orders, the Caucasian inmates were released from lockdown status and permitted to eat in the dining hall. The release that appellant ordered was a controlled feeding and the Caucasian inmates were fed separately from the African-American inmates.[3] When Mennuti learned that Caucasian inmates were being fed in the dining hall, he immediately instructed the Correctional Lieutenant in charge to terminate the dining hall feeding, and ordered the Caucasian inmates fed in their cells. No incident occurred as a result of the release of the Caucasian inmates to the dining hall.

That same day, Mennuti wrote a memorandum to Yearwood describing appellant's actions and Yearwood directed Mennuti to begin an investigation into appellant's actions.

[3] Normally, while not under lockdown, Caucasian inmates are fed separately from African-American inmates.

(Weapons Search)

Just prior to April 24, 1998, metal stock (valve handles) capable of being converted into weapons were discovered missing from the vocational yard at Facility B. No inventory had previously been taken of the valve handles, and an undetermined number of them were missing. Knowles met with appellant the following day, a Friday afternoon, and ordered her to conduct a complete search of Facility B. Appellant said that she would do it and did not indicate any expected problems with conducting the search over the weekend. She understood the search to include all common areas, the vocational area, the program areas, 500 cells, and the 1,200 inmates – in short, the entire Facility. Appellant had conducted approximately 20 similar searches in her career and knew how to do them. Knowles did not give her a deadline to complete the search. Such a search can take up to one week to complete because it is a very involved, tedious process.

Appellant instructed her staff to begin a search of the common areas immediately after the Friday evening meal, after the inmates had been placed in their cells.

On Saturday, the inmates were being tested for tuberculosis and were locked down in their cells. This testing procedure requires needles to be used. Appellant did not have sufficient staff to both continue the search and monitor the tuberculosis testing; consequently she postponed the search until all needles were accounted for and removed from the Facility at approximately 1:30 p.m. At approximately 7:00 p.m., appellant was informed that the inmates who had been locked down had not had the opportunity for showers. Affording the inmates an opportunity to shower is a legal requirement, and appellant again postponed the search until the showers had been

completed, since she did not have sufficient staff to monitor both activities simultaneously.

Appellant had completed searching all of the common areas, except for a part of the vocational area, by Sunday. She intended to have her staff finish searching the vocational area when vocational staff returned from the weekend,[4] and then begin a search of the cells.

When Mennuti arrived on Monday morning, he learned that the search had not been completed and demanded to know why that was the case. Appellant informed him that it was impossible to complete the search over one weekend.

If appellant had hired 20 permanent intermittent employees (PIEs), she could have completed the search in one day. She did not request to hire PIEs because Knowles had informed her after a March 1998 search that budget constraints would prevent the use of PIEs to conduct searches. Appellant completed the search on April 29, 1998, five days after she had been instructed to perform the search.

(Inefficient Use of State Resources)[5]

In August 1998, appellant was assigned to head an administrative team to interview inmates that had been transferred from HDSP. On August 25, appellant erroneously assumed that two inmates had been transferred from HDSP to PBSP. Appellant traveled to PBSP in her own vehicle to interview those inmates. She intended to go on vacation the following day. Captain McClure (McClure) and Lieutenant Kirsh

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[4] Vocational staff possess "take home" keys, which meant that appellant did not have access to certain portions of the vocational area until these staff members returned on Monday.

[5] The parties stipulated to the findings set forth in this count.

(Kirsh), who were to assist appellant in interviewing the inmates, traveled to PBSP in a state vehicle. It takes at least six hours to drive from HDSP to PBSP.

Upon arrival at PBSP, appellant learned that the two inmates had not, in fact, been transferred from HDSP. Appellant left PBSP at approximately 4:30 p.m. McClure and Kirsh remained to complete other pre-assigned duties.

Appellant did not request per diem, meal allowance, or mileage, despite the fact that August 25 was a workday for appellant. No state resources were wasted as a result of the trip.

Procedural Summary

Effective May 1, 1999, the Department demoted appellant from the position of Facility Captain to the position of Correctional Lieutenant, alleging that her conduct constituted cause for discipline under Government Code section 19572, subdivisions (c) inefficiency, (d) inexcusable neglect of duty, (m) discourteous treatment of the public or other employees, (o) willful disobedience, 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.

HDSP Employee Relations Officer (ERO), Bryan Kingston (Kingston), signed a proof of service stating that on April 6, 1999, he placed the original Notice of Adverse Action (NAA), together with discovery materials and seven audio cassette tapes, in a sealed envelope addressed to appellant, "and depositing said receipt requested and fully prepaid postage envelope at Susanville, California" [Sic]. The envelopes[6] mailed to

[6] Two envelopes were mailed. One with audio tapes, and one without audio tapes.

appellant were not mailed on April 6, 1999, as stated, but rather on April 7, 1999. Instead of bearing postage prepaid, they were franked with HDSP's postal meter dated April 7, 1999. Appellant did not receive the NAA until April 17, 1999, when she checked her Post Office box.

Appellant appealed her demotion to the Board. At its meeting on May 2, 2000, the Board issued a precedential decision, SPB Dec. No. 00-05, (Precedential Decision), which revoked appellant's demotion. The Precedential Decision dismissed the charge that appellant had released Caucasian inmates from the lockdown without the warden's prior approval, finding that CDC had failed to serve the NAA upon appellant within one year after it began its investigation, as required by Government Code section 3304 of POBOR. The Precedential Decision dismissed the other two charges on the merits, finding that CDC had failed to prove cause for formal disciplinary action by a preponderance of the evidence.

CDC filed a Petition for Writ of Administrative Mandamus in the Superior Court, Case No. 34909, to challenge the Board's Precedential Decision. On or about October 18, 2001, the Superior Court issued a Decision on Petition for Writ of Administrative Mandamus, which concluded, among other things, that CDC had, in accordance with POBOR, timely served upon appellant the charge with respect to the release of Caucasian inmates from the lockdown. On or about January 28, 2002, the Superior Court issued a Peremptory Writ of Mandamus (Writ), which remanded this matter to the Board, ordered the Board to set aside its Precedential Decision, and ordered the Board to consider whether the allegations set forth in the charge regarding appellant's release of inmates

from the lockdown, "if proven, establish misconduct sufficient to merit disciplinary action and, if so, what level of discipline shall be imposed."

On or about March 22, 2002, CDC filed an appeal with the Court of Appeal, Third Appellate District (Case No. C040762) from the Superior Court's decision. On or about November 18, 2002, the Court of Appeal dismissed CDC's appeal. On or about October 2, 2003, CDC served upon SPB the Superior Court's Writ.

The Board has carefully reviewed the record in this matter, including the transcript, exhibits and written arguments of the parties and now issues the following decision.

ISSUES

The following issues are before the Board for consideration:

(1) Does the Board have jurisdiction to determine whether the Department violated POBOR?

(2) Did the Department prove legal cause for discipline by a preponderance of the evidence?

DISCUSSION

(Jurisdiction)

POBOR sets forth specific due process protections afforded peace officers suspected or accused of misconduct. Government Code section 3304 provides, in pertinent part:

> …no punitive action … shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct … In the event that the public

> agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year ...[7]

The Act further provides:

> (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed them by this chapter.
>
> (b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.
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> (c) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.[8]

The legislative history of section 3309.5 shows it was specifically designed to allow an officer to pursue a remedy immediately in the courts for POBOR violations, without first requiring the officer to wait for judicial review after sometimes lengthy administrative consideration of the alleged violations.[9] Case law has confirmed that an officer is not required to first exhaust his or her administrative remedies concerning the alleged violation prior to seeking relief from the superior court, and may in fact pursue an administrative and judicial remedy simultaneously.[10] Furthermore, an officer may

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[7] Gov't Code § 3304(d).

[8] Gov't Code § 3309.5.

[9] Mounger v. Gates (1987) 193 Cal.App.3d 1248, 1256.

[10] Id., at 1256-57. See also Gales v. Superior Court (1996) 47 Cal.App.4th 1596.

bring an action pursuant to the provisions of Section 3309.5 after a final administrative decision has been rendered concerning the alleged officer misconduct.[11]

What neither the Act's legislative history nor case law has made clear, however, is whether the grant of initial jurisdiction to the superior court precludes an administrative agency from considering alleged POBOR violations in those cases where the officer voluntarily submits the matter to the administrative agency, as opposed to the superior court, for initial consideration of the alleged violation.

The only published decision even touching the issue is that of Zazueta v. County of San Benito[12] which involved a peace officer who elected to submit his dismissal to arbitration. During the course of the arbitration, the officer contended that, because certain evidence used to support his dismissal had been obtained in violation of his rights under POBOR, that the evidence should have been excluded. The arbitrator denied the officer's motion to exclude the evidence and upheld the dismissal.

Thereafter, the officer filed a petition for writ of mandate seeking judicial review pursuant to both Code of Civil Procedure section 1094.5, and Government Code section 3309.5. The officer argued that the arbitration award conflicted with public policy because it did not address the alleged POBOR violations. The court ruled that the officer waived his right to judicial review of the alleged POBOR violation by participating in the arbitration and by never seeking judicial review until after the arbitrator had ruled against him. In so ruling, the court found that having chosen to arbitrate the issue, the

[11] Gales, 47 Cal.App.4th at 1603.

[12] (1995) 38 Cal.App.4th 106.

court could only review the issue in the same manner that it reviews all arbitration claims.

While not directly dispositive of the issue before the Board, Zazueta certainly implies that it was permissible for the arbitrator to consider the issue of whether the officer's POBOR rights had been violated. This implicit ruling is consistent with the legislative intent underlying POBOR – that public safety officers be afforded the *option* of seeking *immediate* relief in the superior court for alleged POBOR violations, without first seeking administrative review of the issue. Nothing in the language of the statute, the legislative history, or the case precludes our conclusion that in those cases where the officer declines to seek immediate review by the superior court, and chooses instead to submit the matter to administrative review, the officer should be permitted to do so. In short, while the legislative history underlying Section 3309.5 appears to indicate that the public safety officer has the option of seeking immediate superior court review of alleged POBOR violations, it does not compel a conclusion that he or she is required to exercise that option.

It also appears, however, that should the officer choose to litigate the POBOR issue before an administrative agency, once the agency renders a decision, the officer will be deemed to have waived his or her right to seek independent judicial review of the alleged POBOR violation, and will be limited to seeking review of the administrative agency's decision.

(POBOR Claim)

Because the Department initiated its investigation into appellant's release of Caucasian inmates from the lockdown on April 7, 1998, pursuant to Government Code section 3304(d), it was required to notify appellant of the proposed disciplinary action within one year after that date. The NAA was placed in the mail on April 6, 1999, although it was not post-marked until April 7, 1999. Government Code section 6800 provides that, "The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded." Relying upon this provision, the Superior Court found that, as a matter of law, the NAA was timely served within the one-year time period established by Government Code section 3304(d).

(Release of Caucasian Inmates from Lockdown Status)

In order to show that appellant's conduct constituted "inexcusable neglect of duty," the Department must prove that appellant had a known official duty that she failed to exercise due diligence in performing.[13] In order to show that appellant engaged in "willful disobedience," the Department must prove that appellant was given a direct command that she knowingly and intentionally violated.[14]

The evidence shows that appellant's order to release the Caucasian inmates from lockdown status for the breakfast feeding on April 7, 1998 occurred as a result of a

[13] Merle E. Betz, Jr. (1996) SPB Dec. No. 96-10 at pp. 15-16..

[14] Coomes v. State Personnel Board (1963) 215 Cal.App.2d 770.

misunderstanding as to her instructions. While appellant recognized that Yearwood expected her to submit her proposal in writing before the inmates were released for the next morning's breakfast, she thought that Yearwood had already approved her proposal in principle. Appellant believed that Mennuti's statement that she did not have to stay late to complete her written memorandum but, instead, could submit her written memorandum later meant that he was authorizing her to order the release of the Caucasian inmates to the dining hall before she submitted her written memorandum, and that she could document the inmates' release after the fact. Given that appellant had never before been required to document what she considered to be a program change before such a change to the lockdown was implemented, appellant was understandably confused by Mennuti's instructions about when she was required to submit a written memorandum supporting her recommendation that the Caucasian inmates should be released to the dining hall. In light of the confusion in the instructions given to appellant, the Department did not prove by a preponderance of the evidence that appellant had a known official duty to submit a written memorandum before she ordered the release of the Caucasian inmates or that she knowingly and intentionally violated a direct command when she engaged in the conduct the Department has alleged. Appellant's conduct did not, therefore, constitute inexcusable neglect of duty under Government Code section 19572, subdivision (d), or willful disobedience under Government Code section 19572, subdivision (o). For the same reasons, it also did not constitute cause for discipline under any of the other subdivisions of Government Code section 19572 alleged in the NAA.

(Failure to Conduct Timely Weapons Search)

The Board has defined "inefficiency" as either a continuous failure by an employee to meet a level of productivity set by other employees in the same or a similar position, or as a failure to produce an intended result with a minimum of waste, expense, or unnecessary effort.[15] In addition, when assessing whether conduct constitutes "inexcusable neglect of duty," the Board reviews whether an employee's conduct constitutes "simple negligence" or "gross negligence" by examining the degree of seriousness of the harm that could result to the public as a result of the employee's negligence.[16]

Since appellant had previously been informed by Knowles that it would not be permissible to hire PIEs for the purpose of conducting facility searches, appellant had good reason not to hire additional employees to conduct the weapons search in a more timely manner. The evidence also demonstrates that the search was impeded by several circumstances beyond appellant's control. More specifically, appellant was required to monitor tuberculosis tests of the inmates and to permit the locked down inmates to shower on Saturday. In addition, vocational staff had the only keys to certain areas, and they were not at the institution during the weekend. Consequently, the Board finds that appellant was neither inefficient nor negligent in the performance of her duties concerning the weapons search.

[15] R[redacted] B[redacted] (1993) SPB Dec. No. 93-21.

[16] J[redacted] A[redacted] and M[redacted] L[redacted] (1996) SPB Dec. No. 96-17.

When assessing whether an employee's conduct constitutes willful disobedience, the Board looks for evidence demonstrating that a specific command or prohibition was directed at the employee by his or her employer, which was disobeyed.[17]

In this case, no evidence was presented demonstrating that appellant was ordered to complete the weapons search over the course of the weekend. Appellant had previous experience conducting such extensive facility-wide searches, some of which took up to one week to complete. Given this lack of clear direction concerning the time period in which the search was to be completed, and appellant's otherwise reasonable belief that the search could be conducted over a several day period, the Board finds that appellant's conduct does not constitute willful disobedience.

Discourteous treatment of the public or other employees generally involves conduct where a person displays hostility towards others, speaks in an abrasive tone of voice, and has a brusque demeanor.[18] Other failure of good behavior requires misconduct that must bear a rational relationship to the employment and be of such a character that it can easily result in the impairment or disruption of the public service.[19]

There was no evidence presented demonstrating that appellant acted in a less than professional manner concerning the conduct of the weapons search, or that she was otherwise discourteous to Department employees, inmates, or members of the public concerning the weapons search. Therefore, the Board finds that appellant did not engage in discourteous behavior with regard to the weapons search.

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[17] R[redacted] H[redacted] (1993) SPB Dec. No. 93-22.

[18] Walker v. State Personnel Board (1971) 16 Cal.App.3d 550.

[19] Yancey v. State Personnel Board (1993) 167 Cal.App.3d 478.

Likewise, the Board finds that given the circumstances presented, appellant's failure to complete the weapons search over the weekend did not disrupt or impair the public service. Consequently, her conduct does not constitute other failure of good behavior.

(Waste of State Resources)

There is no dispute that it would have been prudent for appellant to have ascertained whether the inmates in question had been transferred to PBSP prior to making the approximately six-hour journey to that institution to interview them. However, the fact remains that the two other employees who also made the trip were able to attend to other scheduled matters while at PBSP. Moreover, appellant did not charge the state for mileage or seek compensation for her meals as a result of the trip. While appellant did fail to produce the intended result of the trip, the only wasted effort was essentially six hours of her own time spent in traveling to PBSP. This one-time failure on appellant's part does not constitute inefficiency. Similarly, appellant's conduct amounted to simple negligence at best and does not constitute inexcusable neglect of duty.

There was no evidence presented indicating that appellant was directed to ascertain whether the inmates in question had, in fact, been transferred to PBSP prior to traveling to that institution. The Board finds, therefore, that while appellant may have been negligent, she did not willfully disobey a direct order or instruction. As a result, her actions do not constitute willful disobedience.

Finally, appellant's simple negligence in failing to correctly ascertain the location of the inmates in question does constitute discourtesy toward either McClure or Kirsh.

Moreover, such simple negligence is not the type of conduct that can easily result in the impairment or disruption of the public service. Consequently, the Board finds that appellant's actions in this regard do not constitute other failure of good behavior.

CONCLUSION

The Board affirms its prior decision in this matter that the Board may rule on alleged POBOR violations even if an employee has not filed a complaint challenging the alleged violations in the superior court. The Board finds, however, that, in this case, the Department, within the time limits specified in POBOR, timely notified appellant of the allegations with respect to the release of Caucasian inmates from lockdown status.

After reviewing the record in this matter, the Board concludes that the Department failed to prove, by a preponderance of the evidence, that appellant engaged in misconduct warranting disciplinary action when she ordered the release of Caucasian inmates to the dining hall. In addition, the Board reaffirms its previous finding that, given the circumstances presented, appellant completed the weapons search in a reasonable period of time. The Board further reaffirms its prior conclusion that, while appellant should have ascertained the location of certain inmates prior to traveling to PBSP, her actions caused only a de minimis expenditure of additional state resources. The Board, therefore, dismisses all the charges against appellant set forth in the NAA and revokes her demotion.

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 Board's Precedential Decision, SPB Dec. No. 00-05, is set aside and de-published as a precedential decision under Government Code section 19582.5.
2. The demotion of G[redacted] M[redacted] from the position of Facility Captain to the position of Correctional Lieutenant is revoked;
3. Pursuant to Government Code section 19584, the Department of Corrections shall pay to G[redacted] M[redacted] all back pay, interest, and benefits, if any, that would have accrued to her had she not been demoted from the position of Facility Captain to the position of Correctional Lieutenant;
4. This matter is referred to the Chief Administrative Law Judge and shall be set for hearing on the written request of either party in the event the parties are unable to agree as to the back pay, interest and benefits due appellant.
5. This decision is certified for publication as a Precedential Decision pursuant to Government Code section 19582.5.

STATE PERSONNEL BOARD[20]

William Elkins, President
Sean Harrigan, 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 December 2, 2003.

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Walter Vaughn
Executive Officer
State Personnel Board

[M[redacted]-dec]

[20] Vice President Ron Alvarado and Member Anne Sheehan did not participate in this decision.