BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by	)	Case No. 28840
	)	
D[redacted]. G[redacted]	)	**BOARD DECISION**
	)	(Precedential)
From dismissal from the position of	)	
State Traffic Officer with the	)	**NO. 92-08**
Department of California Highway	)	
Patrol in Altadena	)	May 5, 1992

Appearances: Anthony Santana, attorney, California Association of Highway Patrolmen, representing appellant, D[redacted]. G[redacted]; Allen Sumner, Deputy Attorney General, Office of the Attorney General, representing respondent, California Highway Patrol.

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 a Proposed Decision of an Administrative Law Judge (ALJ) in an appeal by D[redacted]. G[redacted] (appellant or G[redacted]), a State Traffic Officer who had been dismissed from his position with the Department of California Highway Patrol (Department).

Although the ALJ found that the majority of the charges against appellant had been established by the weight of the evidence, he reduced the penalty of dismissal to a six-month suspension. In reducing the penalty, the ALJ relied upon the fact that the appellant had cooperated with the Department's investigators to the extent that he provided more than the six months of traffic citations that he was asked to provide; and that had appellant not given more information to the investigators than

was required, the allegations against him would have been limited to one incident. Finally, the ALJ concluded that appellant was remorseful for his conduct and that the likelihood of appellant's repeating his wrongful conduct was minimal.

The Board determined to decide the case itself, based upon the record and additional arguments submitted both in writing and orally. After review of the entire record, including the transcript and briefs submitted by the parties, and after having listened to oral argument, the Board rejects the Proposed Decision of the ALJ and sustains the original penalty of dismissal for the reasons that follow.

STATEMENT OF FACTS

The appellant has worked as a State Traffic Officer Cadet and a State Traffic Officer since his appointment on August 13, 1979. He has no prior adverse actions. The adverse action was based on a series of incidents in which appellant used inappropriate traffic citation procedures with female motorists.

The Ramirez Incident

On January 16, 1989, the appellant issued a traffic citation to Ms. M. Ramirez (Ramirez) for several violations of the Vehicle Code. After issuing the citation, he advised her that he would tell the court he did not remember the circumstances of the traffic citation.

On March 21, 1989, the appellant appeared in the Pasadena Municipal Court and told court personnel that he did not recall the incident involving Ramirez. The case against Ramirez was subsequently dismissed. When questioned by the Department, the appellant indicated that he did recall the circumstances involved in the traffic citation. When asked why he told the court that he did not remember the incident, the appellant stated, "It was a deal I had made with Ms. Ramirez not to remember." The appellant admitted the above allegations concerning Ramirez.

The adverse action also charged that, immediately prior to Ramirez' court appearance on this matter, appellant telephoned her to confirm their agreement. The adverse action further charged that once appellant's conduct was being investigated by the Department, appellant contacted Ramirez and told her not to say anything about the arrangement that had been made. The appellant denied making these calls. The ALJ determined, and we agree, that the weight of the evidence failed to establish that the appellant made these contacts with Ramirez.

The Roukis Incident

On December 11, 1988, the appellant issued a traffic citation to Ms. A. Roukis (Roukis). After issuing the citation, appellant accompanied Roukis to a gas station, and then to a convenience store. He told her that if she went to court, he would tell the

judge that he could not remember the circumstances surrounding the issuance of the citation, and that the case would be dismissed.

Roukis appeared in the Burbank Municipal Court on March 1, 1989. Court records indicate that the appellant told the court that he had no recollection of the incident, and that the case against Ms. Roukis was subsequently dismissed.

March 1, 1989 was a regular day off for the appellant. After appearing in court with Roukis, he met her in a park while in uniform and operating a departmental motorcycle. He met with her for about an hour.

The appellant admitted the above facts.

The Evans Incident

On March 23, 1989, the appellant issued a traffic citation to Ms. L. Evans (Evans). During his administrative interrogation on the matter, he stated that he made no arrangements with her to circumvent the judicial process. He also stated that he had taken it upon himself without notifying her that if he was subpoenaed to go to court he was not going to remember the citation.

The Dequina Incident

On June 15, 1989, the appellant issued a traffic citation to Ms. H. Dequina (Dequina). The Department alleged that during the course of issuing the citation, appellant told Dequina she could go to court and that he might not show up. The Department also alleged that appellant told her that his failure to appear in court

would result in the case against her being dismissed. Dequina did not wish to be bothered by going to court and requested attendance at traffic school. The ALJ found, and we agree, that the weight of the evidence did not establish the alleged statements by Dequina about the appellant.

The Danheiser Incident

On June 18, 1990, the appellant issued a traffic citation to Ms. S. Danheiser (Danheiser). While issuing this citation, appellant spoke with Danheiser for about two hours.

On August 29, 1989, the appellant appeared in the Ventura County Municipal Court and told the court that he could not remember the circumstances involved in the issuance of the citation. When leaving the courtroom, Danheiser asked the appellant, "Isn't that fibbing?" The appellant stated, "No, because I really tried to keep it out of my mind, and to me it's actually true because I was tired." The appellant told the court commissioner that he could not remember the circumstances surrounding the issuance of the citation to Danheiser. The case against Danheiser was dismissed. After the court hearing, appellant had breakfast with Danheiser and, at that time, inscribed the word "NOLO" on the back of his copy of the traffic citation he had issued to her.

On February 16, 1990, a citizen's complaint was filed against the appellant by Mr. W. Danheiser. He alleged that the appellant

had developed a relationship with his wife, Ms. S. Danheiser. It was this citizen's complaint that precipitated the investigation that led to the instant adverse action.

The Investigation

In the course of the investigation of the Danheiser complaint, the Department asked appellant to provide his copy of the Danheiser citation. The citation contained the word "NOLO" handwritten on the back. Appellant explained he had written "NOLO" after he had appeared in court to note he did not remember the circumstances surrounding the stop. The Department subsequently asked appellant to provide copies of other traffic citations he had issued. Although State Traffic Officers are required to retain their copies of citations for six months only, appellant provided approximately one year's worth of citations. A review of the 2,200 citations issued by the appellant between October 1988 through February 1990 indicated that five citations out of 2,200 provided (those issued to Ramirez, Roukis, Evans, Dequina and Danheiser) contained the word "NOLO" on the back of the citations. During a second administrative interrogation and at the hearing, the appellant stated that, with the exception of the Danheiser citation, "NOLO" meant that he would not be able to recall the circumstances involved in the issuance of the citation.

ISSUE

Is dismissal the appropriate penalty for the conduct charged and proven and/or admitted at the hearing?

DISCUSSION

The Misconduct

Appellant admitted at his hearing that he had made arrangements with both Roukis and Ramirez to feign a loss of memory as to the circumstances underlying the issuance of traffic citations to them. With respect to Danheiser, appellant admitted that he spoke to her for two hours the evening he gave her her ticket, had breakfast with her immediately following her court hearing, and saw her socially at least ten times thereafter. He contended, on the stand, however, that he did not recall enough details of the Danheiser citation to testify in court. Circumstantial evidence establishes that appellant feigned memory loss as to the basis for the citation he issued to Danheiser. Appellant also admitted at his administrative interrogation that he decided to not to remember the circumstances of the Evans citation should that case have gone to court.

Appellant's course of conduct with respect to his determination to falsely represent to the courts that he did not recall the circumstances under which he issued citations to these female offenders constitutes dishonesty, inexcusable neglect of duty, and other failure of good behavior either during or outside

of duty hours which is of such a nature that it causes discredit to the Department and appellant's employment in violation of subsections (d), (f) and (t) of the Government Code.

Appellant's use of a departmental motorcycle to conduct personal business on state time in a public place also constitutes a misuse of state property. [Government Code sections 19572(p),(r), and 19990].

Penalty

Having found the evidence supports the findings of fact and conclusions of law set forth above, the only question left for determination is the appropriate level of penalty.

When performing its constitutional responsibility to "review disciplinary actions" [Cal. Const. Art. VII, section 3 (a)], the 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, 843) 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.)

Harm to the Public Service

In this case, the appellant admitted that he told three different female motorists (Ramirez, Roukis and Evans), that he would lie to the court and state that he did not recall the circumstances of the citation he had issued to them. He followed through on his promises to two of these motorists by informing court personnel that he did not recall the incidents involving these motorists; the cases against them were, as a result, dismissed. In another case (Danheiser), this Board finds that appellant similarly made a conscious decision in advance of a court date that he would misrepresent to the court that he did not recall the circumstances that formed the basis for the citation he had issued.

The incidents noted above establish a pattern and practice on the part of appellant of: (1) promising some female motorists that he will lie in court on their behalf to assure the dismissal of the traffic citations he issued to them; and (2) following through on those promises by untruthfully representing to judicial officers that he does not recall the circumstances under which he issued the citations. On at least one occasion, appellant used state time and state property, his motorcycle, to meet a motorist he had ticketed in a public park. By his misconduct, appellant has proven himself to be dishonest and untrustworthy.

The harm to the public service resulting from appellant's dishonesty, and potential harm to the public service should such misconduct be repeated, is obvious and serious. Dishonesty by law enforcement personnel has been treated with due harshness by our courts. (See e.g., Pauline v. Civil Service Com. (1985) 175 Cal.App.3d 962; Warren v. State Personnel Bd. (1979) 94 Cal.App.3d 95.)

In the case of Ackerman v. State Personnel Board (1983) 145 Cal.App.3d 395, the court, quoting earlier cases, stressed the seriousness with which dishonesty in law enforcement is viewed:

> 'The CHP as a law enforcement agency charged with the public safety and welfare must be above reproach.' [Citation]....
>
> ...CHP officers are held to the highest standard of behavior: the credibility and honesty of an officer are

> the essence of the function; his duties include frequent testifying in court proceedings....
>
> ...The position of a CHP officer by its nature is such that very little direct supervision over the performance can be maintained. The CHP necessarily must totally rely on the accuracy and honesty of the oral and written reports of its officers as to their use of state time and equipment. 'Any breach of trust must therefore be looked upon with deep concern. Dishonesty in such matters of public trust is intolerable.' (emphasis in original) [Citation]...

Appellant argues that the instances of misconduct with which he was charged were isolated. To the contrary, as noted above, the instances taken together establish a pattern of misconduct. Appellant was not only dishonest in his dealings with the courts, he was also dishonest in his use of state time. Furthermore, 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.

Circumstances Surrounding the Misconduct

The circumstances surrounding appellant's misconduct simply do not mitigate its seriousness. Appellant offered two explanations for his misconduct. He testified that the reason he promised to lie for the female motorists was, essentially, that he felt sorry for them. With respect to Ramirez, he testified:

> I felt a certain amount of remorse for her situation, given the fact that she was following another person and attempting to help out a friend or family member. And I felt that she was placed in a position to where she was

> helping somebody out and just got caught up in making a bad drive. I felt that she seemed to be extremely distraught. And I felt that I did not want to add to any problems that I perceived her to have.

In the case of Roukis, appellant stated:

> Again, I was advised of some problems that she was experiencing in her life. And I again felt a certain remorse for having added to those problems by issuing the citation.

The fact that appellant felt sorry for the female motorists he stopped does not excuse his dishonest behavior. Recognizing that he could not justifiably void the citations he had written, appellant accomplished the result he sought through dishonest means.

Appellant also testified that he was going through a difficult period in his marriage when the charged incidents occurred and that his personal problems clouded his judgment. We are unconvinced by the record in this case that appellant's poor judgment and dishonesty on the job can be attributed to or should be mitigated by the fact that he was having marital problems at home.

Appellant strongly emphasizes the fact that had appellant provided only six months of citations rather than one year's worth of citations during the internal investigation, the Department would never have learned of the majority of the incidents eventually charged against him. Appellant thus argues that he is a victim of his own cooperation and honesty. Appellant misses the point. Appellant is expected to be cooperative and honest

during an internal investigation. In producing one year's worth of citations, appellant was taking a calculated risk that the additional citations produced would help his case: the risk was not well taken. The means by which the Department discovered appellant's misconduct in this case is irrelevant to the primary issue of appellant's continued fitness to perform the duties of his position: the Department can not be expected to ignore relevant, legally obtained evidence that demonstrates the propensity of one of its traffic officers to engage in dishonest behavior. The circumstances surrounding the discovery of the charged incidents do not mitigate the severity of the misconduct.

Likelihood of Recurrence

Appellant argues that the likelihood of future recurrence of the type of misconduct charged and proven here is minimal. Indeed, appellant testified that he is now aware that what he did was wrong and that it would not happen again. We are not convinced.

Even an isolated incident of dishonesty of the type charged and proven in this case would raise concerns about the character of a State Traffic Officer. In this case, however, we must consider not an isolated incident, but a series of incidents that call into question appellant's character for honesty and trustworthiness. In addition, the Department's concern that future lapses of the sort at issue here are likely to go undetected and therefore unstopped by the Department are well-founded. The women who are receiving

favors from appellant in the form of dismissed traffic citations are highly unlikely to report his misconduct.[1] The Department is therefore limited in its ability to monitor appellant's future behavior. We cannot conclude that the likelihood of recurrence of appellant's misconduct is minimal.

CONCLUSION

The course of conduct engaged in by appellant establishes inexcusable neglect of duty, dishonesty, misuse of state property, and 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 and appellant's employment. The potential harm to the public service of employing a State Traffic Officer whose courtroom testimony cannot be trusted is serious. Appellant failed to establish any compelling, mitigating circumstances surrounding the proven misconduct, nor did appellant establish that such misconduct is unlikely to recur. The penalty of dismissal is appropriate.

ORDER

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

[1]Indeed, appellant's misconduct in this case was discovered quite by accident: When the husband of one of the female motorists became suspicious of appellant's relationship with his wife, he filed the citizen's complaint that led to the Department's discovery of appellant's dishonest citation procedures.

(G[redacted] continued - Page 15)

1. The above-referenced adverse action of dismissal taken against D[redacted] G[redacted] is sustained;

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

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.

* * * * *

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