

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by)	SPB Case No. 00-4038
)	
ROSELLER FRASER)	DECISION
)	ON ORDER TO SHOW CAUSE
From rejection during probationary period from the position of Information Systems Technician with the Department of Rehabilitation at Sacramento)	BOARD DECISION (Precedential)
)	
)	NO. 02-04
)	
)	February 7-8, 2002
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)	
)	

WHEREAS, on or about November 20, 2000, appellant Roseller Fraser (appellant), was notified that he was being rejected during his probationary period in the position of Information Systems Technician with the Department of Rehabilitation (Department); and

WHEREAS, after being notified of his rejection during probationary period, appellant exercised his mandatory reinstatement rights, pursuant to Government Code section 19140.5, to his former position with the Department of Health Services, effective December 6, 2000, and filed an appeal of his dismissal with the State Personnel Board; and

WHEREAS, during November 2001, appellant and the Department entered into a stipulation for settlement, whereby, among other things, the Department agreed to withdraw the Notice of Rejection During Probationary Period, dated November 20, 2001, and to remove the Notice of Rejection During Probationary Period, together with all documents referencing the rejection during probationary period (including probationary reports prepared by the Department) from appellant's Official Personnel File, and appellant

agreed to withdraw his appeal from the Notice of Rejection During Probationary Period (a copy of the stipulation for settlement is attached herein as Attachment 1); and

WHEREAS, the stipulation for settlement specifically recognized that appellant had reinstated to his former position with the Department of Health Services, and that the State Personnel Board's precedential decision Lisa Folsom (1994) SPB Dec. No. 94-28, clarified that appellant's mandatory reinstatement rights under Government Code section 19140.5 would not be affected by the withdrawal of the Notice of Rejection During Probationary Period; and

WHEREAS, in a Decision dated December 3, 2001, the State Personnel Board approved the stipulation for settlement submitted by appellant and the Department (a copy of the Decision is attached herein as Attachment 2); and

WHEREAS, pursuant to Government Code section 18681, a stipulation for settlement approved by the Board is a final and binding Decision of the Board; and

WHEREAS, the State Personnel Board subsequently received correspondence from the Department of Health Services, dated January 16, 2002, wherein the Department of Health Services indicated that, because the Department withdrew the Notice of Rejection During Probationary Period, appellant's exercise of his mandatory reinstatement rights under Section 19140.5 was no longer valid, and the Department of Health Services would be forced to remove appellant from his position with that agency, unless the stipulation for settlement was rescinded and the Notice of Rejection During Probationary Period reinstated, notwithstanding, the State Personnel Board's decision in Lisa Folsom (a copy of the January 16, 2002, correspondence is attached herein as Attachment 3); and

WHEREAS, on February 4, 2002, the State Personnel Board received a Request for an Order to Show Cause and Definitive Ruling from the Board as to the validity of the Lisa Folsom Decision, wherein appellant requested that the State Personnel Board order the Department of Health Services to comply with the terms of the Decision and remove from appellant's Official Personnel File the Notice of Rejection During Probationary Period and all documents referencing the rejection during probationary period, including appellant's probationary reports prepared by the Department, and that the State Personnel Board make a definitive ruling regarding the validity and parameters of the Lisa Folsom decision; and

WHEREAS, pursuant to Government Code section 18710, the Board has the power to either: (a) issue further findings interpreting or clarifying its previous order or decision, (b) issue further findings as to whether an appointing power or other party has or has not complied with the order or decision, or (c) issue an order to show cause directed to the appointing power concerning why the Board should not file a petition for writ of mandate to compel the appointing power to comply with the order or decision; and

WHEREAS, the State Personnel Board finds that, at the time that appellant exercised his mandatory reinstatement rights to his former position with the Department of Health Services, he had been rejected during his probationary period with the Department and that, as a result, his exercise of those rights was appropriate under Government Code section 19140.5; and

WHEREAS, California courts have long recognized that a strong public policy exists in favor of giving effect to settlement agreements, except in those cases where such settlement agreements conflict with existing law;

WHEREAS, Section 19140.5 does not contemplate what effect, if any, a subsequent settlement agreement will have on an employee's ability to exercise his or her mandatory reinstatement rights pursuant to that Section; and

WHEREAS, the State Personnel Board is required to interpret the statutes within its administrative sphere in such a manner as to harmonize, to the extent possible, seemingly conflicting statutory or public policy requirements; and

WHEREAS, the State Personnel Board finds that the interpretation of Section 19140.5 urged by the Department of Health Services in its January 16, 2002, correspondence unnecessarily conflicts with the public policy in favor of giving effect, when possible, to settlement agreements; and

WHEREAS, the Board finds that a settlement agreement entered into between appellant and the Department, whereby the Notice of Rejection During Probationary Period was withdrawn by the Department, did not serve to nullify appellant's valid exercise of his mandatory reinstatement rights on an earlier date;

THEREFORE, BE IT RESOLVED AND ORDERED that:

(1) Appellant validly exercised his reinstatement rights to his former position with the Department of Health Services, and the Stipulation for Settlement approved by the State Personnel Board on December 3, 2001, did not serve to nullify or otherwise invalidate appellant's mandatory reinstatement rights to his position with the Department of Health Services;

(2) The Department of Health Services shall not be entitled to deny appellant continuing employment in his position with the Department of Health Services on the grounds that the Stipulation for Settlement invalidated or otherwise adversely effected appellant's rights under Government Code section 19140.5; and

(3) Within a reasonable time period, not to exceed 45-days, the Department of Health Services shall make available to representatives of appellant and the Department, appellant's Official Personnel File, so that those representatives may remove those documents set forth in the Stipulation for Settlement, approved by the Board on December 3, 2001.

(4) This decision is certified for publication as a Precedential Decision. (Government Code § 19582.5).

STATE PERSONNEL BOARD

Ron Alvarado, President
William Elkins, Vice President
Florence Bos, Member
Sean Harrigan, Member

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The foregoing Decision was made and adopted by the State Personnel Board in Case No. 00-4038 at its meeting on February 7-8, 2002 as reflected in the record of the meeting and Board minutes.

Walter Vaughn
Executive Officer
State Personnel Board

(Fraser-dec)