



CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall • Sacramento, CA 95814

March 28 2003

ERRATA

In the Matter of the Appeal by

L [REDACTED] . G [REDACTED]

From a 10 percent reduction in salary for nine pay periods in the position of Fire Captain with the Department of Forestry and Fire Protection at Quail Valley.

SPB Case No. 02-1166

BOARD DECISION

(Precedential)

NO. 03-01

March 4, 2003

The Board decision (Precedential) No. 03-01 in the above matter approved by the State Personnel Board on March 4, 2003, is corrected to read as follows:

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reduced to a five percent reduction in salary for six pay periods because the unproven allegations concerning misuse of state subsistence were dismissed.

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by)
)
 L [REDACTED] [REDACTED]. G [REDACTED])
)
 From a 10 percent reduction in salary for)
 nine pay periods in the position of Fire)
 Captain with the Department of Forestry)
 and Fire Protection at Quail Valley.)
)
 _____)

SPB Case No. 02-1166

BOARD DECISION

(Precedential)

NO. 03-01

March 4, 2003

APPEARANCES: L [REDACTED] [REDACTED]. G [REDACTED], in pro per, on behalf of appellant, L [REDACTED] [REDACTED]. G [REDACTED]; Timothy G. Cronin and Bruce Crane, Staff Counsel, Department of Forestry and Fire Protection, on behalf of respondent, Department of Forestry and Fire Protection.

BEFORE: William Elkins, President; Ron Alvarado, Vice President; and Sean Harrigan, Member.

DECISION

This case is before the State Personnel Board (Board or SPB) after the Board rejected the SPB Administrative Law Judge's (ALJ's) proposed decision dismissing appellant's appeal for failure to establish good cause for filing a late appeal with the SPB. Appellant filed his appeal with the SPB after executing a written waiver of his right to appeal to the SPB and pursuing remedies set forth in the memorandum of understanding for State Bargaining Unit 8 for the adjudication of disciplinary actions. In this decision, the Board finds that appellant has established good cause for filing a late appeal with the SPB, and accepts the appeal. The Board further finds that an official reprimand is a just and proper penalty for the proven misconduct, and modifies the penalty accordingly.

Factual Summary

Appellant has over thirteen years of service with the Department of Forestry and Fire Protection (Department); ten of those years have been in the position of Fire Captain. He has no history of disciplinary action. As cause for the ten percent reduction in salary for nine pay periods, the Department alleged that “From approximately July 1999 until September 2000, [appellant was] involved in an inappropriate relationship with” a volunteer firefighter, while on duty. The Department alleged that this relationship created “an uncomfortable working environment for the other employees.” The Department also alleged that appellant submitted an inaccurate document concerning family members who consumed state food while at the fire station.

The Department alleged that these acts constituted cause for discipline under Government Code section 19572, subdivisions (c) inefficiency, (d) inexcusable neglect of duty, (l) immorality, (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.¹

Motion to Dismiss

The Department moved to dismiss the appeal on the ground that it was untimely and on the ground that appellant waived his right to appeal to the Board. Appellant was served with the notice of adverse action on July 17, 2001. Appellant’s appeal was filed

¹ The causes of inefficiency and immorality were stricken during the hearing.

with the State Personnel Board on March 15, 2002. Appellant asserts that the late appeal should be excused for good cause.

Appellant is covered by a Memorandum of Understanding (MOU) entered into between the CDF Firefighters and the State of California with respect to employees in State Bargaining Unit 8. Article 19 of that MOU sets forth a process for the review of disciplinary actions by a "Board of Adjustment" (BOA) or arbitrator if the employee waives the right to appeal to the SPB. On September 20, 2001, appellant signed a "Bargaining Unit 8 Discipline Grievance Acknowledgement and Waiver." That document states that appellant has elected to file a grievance concerning his adverse action pursuant to the collective bargaining agreement between the CDF Firefighters and the State of California. The agreement further states that appellant freely and voluntarily agreed to be bound by the following terms:

1. I understand that my decision to file a grievance cannot be changed at any time or for any reason.
2. I understand that the State Personnel Board is empowered to review adverse (disciplinary) actions based on the constitution and laws of the State of California.
3. I understand that I have the right to appeal my adverse action directly to the State Personnel Board.
4. I hereby waive my right to appeal directly to the State Personnel Board.

I understand that by waiving this right I will not receive an evidentiary hearing by the State Personnel Board, or members of its staff, regardless of the outcome at any step of the grievance procedure.

5. I understand that Step 1 of the grievance procedure means my adverse action grievance will be reviewed by a Board of Adjustment (BOA) comprised of two individuals selected by management and two individuals selected by the union.

6. I further understand that the Board of Adjustment may not conduct an evidentiary hearing. Rather, the Board of Adjustment will use the procedures contained in the Unit 8 MOU (and such other procedures as it adopts by majority vote) for purposes of reviewing and deciding my adverse action grievance, which means, for example, that I might not be permitted to do such things as subpoena, examine or cross-examine witnesses.
7. I understand that the Board of Adjustment may, by majority vote, recommend settlement of my grievance. If I agree to enter into the recommended settlement, my grievance shall pursuant to *Larson v. State Personnel Board* (28 Cal.App.4th 265) be deemed withdrawn thereby ending any/all disputes regarding the disciplinary action. If I refuse to enter into the recommended settlement, then I understand that (a) the BOA's decision shall be of no effect; (b) the disciplinary action will remain in effect unless and until modified or rescinded by an arbitrator; (c) my union will not represent me at arbitration; and (d) I will be responsible for paying for one-half of the arbitrator's fees and expenses, and one-half of the cost for transcribing the proceedings.
8. I understand that my adverse action grievance will only proceed to arbitration at no cost to me if there is a tie vote by the Board of Adjustment *and* the union elects to proceed to arbitration. If the union elects not to request arbitration, I understand that (a) the BOA's decision shall be of no effect; (b) the disciplinary action will remain in effect unless and until modified or rescinded by an arbitrator; (c) my union will not represent me at arbitration; and (d) I will be responsible for paying for one-half of the arbitrator's fees and expenses, and one-half of the cost for transcribing the proceedings.
9. I understand that by grieving rather than appealing directly to the State Personnel Board, the State Personnel Board may only review my adverse [sic] if it is not settled following a decision by the Board of Adjustment. I further understand that any review conducted by the State Personnel Board shall only be for purposes of determining whether the adverse action taken against me is inimical to merit principles (e.g., for purposes of a spoils system or political patronage). Finally, I understand that the State Personnel Board's review will be limited to the record created in arbitration and will not include an evidentiary hearing.
10. I hereby certify that I have been given a copy of Article 19 of Bargaining Unit 8 MOU.
11. I hereby certify that I have read and understood Article 19.

12. I certify that in signing this acknowledgement and waiver form, I have done the following:
 - a. Relied upon advice from an attorney and/or have independently and knowingly chosen not to rely on the advice of an attorney; and,
 - b. Read each of the terms and conditions contained in this agreement.
13. I certify that I have read and understood the above terms.
14. I freely and voluntarily agree to be bound by said terms.

The matter was subsequently submitted to and heard by the Board of Adjustment pursuant to the Bargaining Unit 8 MOU.² Appellant testified that, while he signed the waiver voluntarily, the BOA did not abide by the terms of the MOU and he was not given a fair hearing in that he was denied the opportunity to present relevant evidence.

By letter dated February 28, 2002, which the parties agreed appellant received on March 4, 2002, the CDF Firefighters advised appellant that the Board of Adjustment had decided to uphold the adverse action without modification and further stated that a copy of the "Board of Adjustment Decision" was enclosed. The letter also asked appellant to sign and return the Decision to the Sacramento headquarters. The document enclosed with that letter is entitled "Settlement and Release" and recites that the adverse action is sustained without modification and that appellant "agrees to withdraw his grievance regarding the Notice of Adverse Action with prejudice, and waives any right of appeal to arbitration and/or the State Personnel Board in relation to

² The ALJ found that the matter was heard by the BOA at its meeting of November 13 - November 16, 2001. On rehearing before the Board, however, appellant submitted documentation indicating that the BOA hearing was held on February 13 and 14, 2002. The parties have not explained this discrepancy, and the Board is unable to determine from the record before it exactly when the BOA hearing occurred.

the action as originally taken and as amended by this stipulation.” Insofar as appears from the record, appellant did not sign the BOA decision. Instead, on March 15, 2002, he filed an appeal with the Board requesting that the adverse action be dismissed.

Merits of the Adverse Action

The Board substantially adopts the ALJ's findings of fact concerning the merits of the adverse action appeal, as set forth below.

Appellant and volunteer Firefighter Jenny Anderson were good friends. During the period July 1999 through September 2000, Anderson would visit appellant at his work station – the Sage Forest Fire Station. Anderson was employed, but would visit the station either before or after her work nearly everyday appellant was at the station.

The station usually was staffed by a supervisor and two crew members. When appellant was present, he was in charge of the station. Anderson was under his authority for fire suppression activities. The station was a five acre compound and it was not unusual for appellant and Anderson to be alone, either on hiking trails, in the office, or in the dayroom.

Appellant testified that his relationship with Anderson was professional. They did physical training together (hiking), paperwork, and training.

In 2000, Beverly Bell was a seasonal Firefighter at Sage Fire Station. In September 2000 she observed appellant and Anderson on a couch in the dayroom. Anderson was wearing risqué see through pajamas. Appellant was fully dressed. They held hands.

Bell testified that “a few times” she observed Anderson go into appellant’s bedroom and remain there for five minutes. She once observed appellant and Anderson in the compound large garage for five hours.

Bell knew that appellant was married, and appellant’s contact with Anderson made Bell feel uncomfortable. When appellant’s wife called, Bell felt that she had to guard her words.

In 2000, Scott Odam was a seasonal Firefighter at Sage Fire Station. He saw appellant and Anderson hold hands on a hiking trail. He observed them together in the office, in appellant’s private quarters and on the hiking trail. On occasion, Anderson brought her children to the station. Anderson would stay at the station until after 11:00 p.m.

Appellant’s relationship with Anderson caused discomfort to Odam. He testified that Anderson was not present at the station for training or business, but was there to visit with appellant. She was known as his “Sage wife.”

From May 1999 to February 14, 2000, Richard Tovar was a seasonal Firefighter at Sage Fire Station. He observed Anderson at the station about a third of the days he worked. She would stay as late as midnight. She appeared to be “hanging out.” He heard Anderson described as appellant’s “Sage wife.” He mentioned that to appellant, who “denied it.”

During July and August 2000, Richard Cordova was a seasonal Firefighter at Sage Fire Station. He observed “playful touching” between appellant and Anderson. They seemed like more than just friends. Their conduct made him feel uncomfortable. He heard Anderson referred to as appellant’s “Sage wife.”

Division Chief Bradley Harris testified that at 9:00 p.m. or 10:00 p.m. on September 18, 2000, he and Chief Winder went to the Sage Fire Station. Harris observed the sound of a vehicle door in the upper parking lot, which was dark. He observed appellant and Anderson get out of a school bus. Anderson walked toward some construction equipment. Harris told Winder to light the area with their vehicle's lights. Winder complied. Winder told appellant to tell Anderson to come out from behind the equipment. Appellant initially denied that anyone was there. He did tell her to come out. Harris did not observe Anderson or appellant to have a flashlight.

Appellant testified that while walking Anderson to her car at approximately 10:00 p.m. on September 18, 2000, he went to the school bus to check the bus. They checked the seats and discussed safety exits. He denied that he tried to hide Anderson's presence, but agreed that Winder directed her to come out from behind the equipment.

Appellant was familiar with the Department's policy which provided that "Interpersonal relationships during work and standby time are expected to conform to accepted standards of professional conduct free from sexual harassment or displays of affection."

Appellant's on duty relationship with Anderson was, at times, inappropriate. While some training may have occurred, and while hiking is an appropriate activity, it is clear that the majority of the time appellant spent with Anderson was socializing. Especially noteworthy was the incident on September 18, 2000, where appellant asserted that he was inspecting a school bus with Anderson at 10:00 p.m. in a dark

parking lot. He had, however, no flashlight. Appellant's initial denial that Anderson was present is especially telling.

Appellant continued this socializing despite having been told that Anderson was called his "Sage wife." He should have realized that his relationship was a cause of concern to his subordinates.

Appellant was observed holding hands with Anderson on at least two occasions.

Appellant credibly refuted the allegation that he misused state food on August 16, 2001. He testified, and produced documentary evidence, that he followed common practice by noting on a form that he was to be charged for meals consumed by family members. This allegation is dismissed.

The Department initially alleged "a relationship" with Anderson, then amended to allege "an inappropriate sexual relationship." Finally, respondent struck "sexual." It did not strike an allegation that after Anderson put her children to sleep in the dayroom, she and appellant went to his private bedroom and shut the door. That allegation was not proven.

On September 18, 2000, appellant was first notified by a supervisor of his excessive socializing with Anderson. The adverse action was served ten months later. There was, apparently, no repetition of excessive socializing after September 18, 2000.

Procedural Summary

In his Proposed Decision, the ALJ determined that appellant had not established good cause for a late appeal before the Board, and granted the Department's motion to dismiss the appeal as untimely filed. Due to the age of the case and the allegations, and because the parties were prepared to try the case, the ALJ determined that

evidence would be received on the merits, and a decision would be rendered thereon, to avoid the necessity of a remand should the Board apply a broader interpretation of good cause for a late appeal. In his Proposed Decision, the ALJ concluded that, but for the ruling on the motion to dismiss, he would have determined that appellant's conduct constituted cause for discipline under Government Code section 19572, subdivisions (m) discourteous treatment of other employees (appellant's subordinates) and (t) other failure of good behavior. The ALJ further concluded that the discipline should be reduced to a five percent reduction in salary for six pay periods because the proven allegations concerning misuse of state subsistence were dismissed.

At its meeting on September 11-12, 2002, the SPB rejected the ALJ's Proposed Decision to consider whether appellant's waiver of his right to appeal to the SPB was valid and whether appellant established good cause for the SPB to accept his late appeal.

DISCUSSION

Good Cause for Late-Filed Appeal

As set forth in its precedential decision Antonio Archuleta,³ the Board has taken the position in litigation that the grievance and arbitration processes set forth in an MOU (or otherwise) that provide for the adjudication of disciplinary actions by an reviewing entity, BOA, other than the SPB are unconstitutional in that they deprive the Board of the ability to perform its constitutionally mandated review function under Article VII,

³ (2002) SPB Dec. No. 02-01.

Section 3(a) of the California Constitution. On December 22, 1999, the Honorable Lloyd G. Connolly, Jr., of the Sacramento Superior Court issued an order declaring the process set forth in the State Bargaining Unit 8 MOU unconstitutional on the ground that it precluded the Board from conducting an ultimate and meaningful review of disputed disciplinary actions, as required by Article VII, section 3(a) of the California Constitution.⁴ That decision is currently pending on appeal before the Third District Court of Appeal.⁵

In Archuleta, the Board held that, in cases where an employee covered by an MOU containing a grievance and arbitration process that conflicts with the Board's constitutional mandate to review disciplinary actions seeks SPB approval of a settlement agreement, the Board will not approve such a settlement without written assurances that the matter has not been subject to, submitted to, or settled by any process for review other than that provided by the Board, including but not limited to, any Board of Adjustment, arbitrator, or any other similar process outside of the Board that has not been sanctioned by the Board as consistent with its constitutional review function. As further set forth in Archuleta, where an employee had the opportunity to file an appeal with the Board, but elected to utilize the MOU procedures, the Board will consider accepting late-filed appeals on a case-by-case basis, for good cause shown.

⁴ Association of California State Attorneys and Administrative Law Judges v. Department of Personnel Administration, et al ("ACSA v. DPA"), Sacramento Superior Court Case No. 99CS000260, Ruling on Submitted Matter dated December 22, 1999. See also State Personnel Board v. Department of Personnel Administration, et al., Sacramento Superior court Case No. 01CS00109, in which the Honorable Gail Ohanesian of the Sacramento Superior Court ruled substantially similar provisions contained in the MOUs for State Bargaining Units 11, 12 and 13 unconstitutional on similar grounds.

⁵ Docket No. C034943. The case has been consolidated on appeal with the appeal from the Judge Ohanesian's decision involving Bargaining Units 11, 12 and 13.

In general, statutes of limitations on the filing of administrative appeals have been strictly construed, requiring dismissal of late-filed actions.⁶ Courts have, however, permitted late-filed administrative appeals in certain instances where a statute contains an express provision for the late-filing of appeals for good cause,⁷ where there has been a policy of flexibility in place or an established rule of liberal construction,⁸ or where the appeal has involved a fundamental and vested right, such as continuation of civil service employment.⁹

Notwithstanding the express statutory time limitation, the Board's rules do contain an express provision for the late-filing of appeals for good cause. Pursuant to SPB Rule 51.2, subdivision (e)(3),¹⁰ upon good cause being shown, the Executive Officer of the Board may allow an appeal to be filed within 30 days after the end of the period in which the appeal should have been filed. Furthermore, as determined in Gonzales v. State Personnel Board¹¹ due process considerations may require the Board to accept a late-filed appeal in disciplinary cases where the delay is short, there is no prejudice to the department, and good cause exists for the delay.¹² In Gonzales, a state civil service employee filed an appeal from dismissal six days late because of a

⁶ Howell v. County of San Bernardino (1983) 149 Cal.App.3d 200 (late-filed appeal of reassignment from job denied; no fundamental right to a particular job assignment); Bidwell v. State of California Ex Rel Department of Youth Authority (1985) 164 Cal.App.3d 213 (no late-filed appeal from denial of request to set aside a resignation).

⁷ Gibson v. Unemployment Insurance Appeals Board (1973) 9 Cal.3d 494.

⁸ Faulkner v. Public Employees' Retirement System (1975) 47 Cal.App.3d 731

⁹ Gonzales v. State Personnel Board (1977) 76 Cal.App.3d 364; Civil Service Commission v. Velez (1993) 14 Cal.App.4th 115

¹⁰ Cal. Code Regs., tit. 2, § 51.2(e)(3).

¹¹ Supra.

¹² Id., at p. 367.

breakdown in communication between the employee and his attorney and the fact that both were laboring under the strain of major criminal proceedings. The court found the attorney's failure to timely file the appeal due to the breakdown in communication was sufficient "good cause" to excuse the late filing. The court further determined that since there was only a short delay in filing the appeal and there was no prejudice to the department resulting from the delay, the Board should accept the late filing.

Similarly, in Civil Service Commission v. Velez,¹³ the court allowed a late-filed appeal of a civil service termination as the appeal involved the denial of a fundamental and vested right and because the five day delay in filing the appeal from termination was determined to be attributable to "good cause": a miscommunication between the appellant and her union representative concerning the date that the termination was served. The court in Civil Service Commission again espoused the principles established in Gonzales v. State Personnel Board:

Even where late filing of appeals from administrative decisions is not expressly permitted by regulation or statute, discretionary extensions of time for appeal for good cause are required where the employee has a fundamental and vested right of employment.¹⁴

In this case, the appeal was filed with the Board approximately 6 1/2 months after the effective date of the adverse action, and was thus clearly beyond the 30 days specified by SPB Rule 51.2(e)(3) for accepting late-filed appeals. Our inquiry does not end there, however, since the policies articulated in Gonzales and Civil Service Commission v. Velez permit a finding of good cause even in the absence of specific

¹³ (1993) 14 Cal.App.4th 115.

¹⁴ Civil Service Commission v. Velez (1993) 14 Cal.App.4th 115, 12.

statutory or regulatory authority, where, as here, a fundamental vested right is at stake. Unlike those cases, this case involved not an inadvertent failure to file a timely appeal, but a deliberate decision not to do so in order to pursue an alternative review process apparently sanctioned by an MOU entered into between the employees' exclusive representative and the Department of Personnel Administration, the governor's representative for collective bargaining purposes. There is no evidence that appellant had any knowledge that the validity of the BOA process was the subject of legal proceedings or that, in fact, a writ of mandate ordering his collective bargaining representative to cease utilizing that process had issued over a year before he was asked to waive his right to appeal to the SPB. Appellant acted promptly in filing his appeal from disciplinary action with the SPB 11 days after he received the BOA's decision. The Department has not established any prejudice arising out of the delay. Moreover, appellant has asserted that the BOA process deprived him of the right to a fair hearing, and has not signed the BOA decision. Indeed, according to the terms of the waiver, his failure to sign the decision renders the BOA decision of no effect. Under these circumstances, appellant has established good cause for the Board to accept his late-filed appeal.

Merits of the Adverse Action Appeal

The Board finds that appellant's conduct constituted cause for discipline under Government Code section 19572, subdivisions (m) discourteous treatment of other employees and (t) other failure of good behavior. Appellant's continued on-duty socializing with a volunteer, known throughout the unit as appellant's "Sage wife," was inappropriate and caused discomfort among his subordinates. On one occasion,

appellant attempted to cover up his activities by asserting that he was inspecting a school bus at 10:00 in a dark parking lot with no flashlight, while denying that Anderson was also present. Appellant has not been charged with unlawful discrimination in the form of sexual harassment under Government Code section 19572, subdivision (w), nor is it likely that his maintenance of an inappropriate relationship that caused discomfort to co-workers would support that charge.¹⁵ The Board has, however, held that conduct that fails to rise to the level of sexual harassment may nonetheless constitute discourteous treatment within the meaning of Government Code section 19572(m).¹⁶ We conclude that appellant's inappropriate on-duty behavior with Anderson that caused his subordinates discomfort constituted discourteous treatment of other employees under section 19572, subdivision (m) and also other failure of good behavior that caused discredit to the appointing power and appellant's appointment under section 19572, subdivision (t).

For the reasons set forth below, the board determines that the penalty should be modified further to an official reprimand.

Penalty

When performing its constitutional responsibility to review disciplinary actions,¹⁷ the Board is charged with rendering a decision that is "just and proper."¹⁸ The Board

¹⁵ See, e.g., Mackey v. Department of Corrections (2003) Third District Court of Appeal Case No. C040262 (supervisor's preferential treatment of paramours did not constitute sexual harassment of co-workers).

¹⁶ See, e.g., C [REDACTED] C [REDACTED] (1994) SPB Dec. No. 94-21; Jose L. Flores, Jr. (1994) SPB Dec. No. 94-24.

¹⁷ Cal. Const. Art. VII, section 3(a).

¹⁸ Government Code section 19582.

has broad discretion to determine a “just and proper” penalty for a particular offense, under a given set of circumstances.¹⁹ The Board’s discretion, however, is not unlimited.

In the seminal case of Skelly v. State Personnel Board (Skelly),²⁰ 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)²¹

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 relevant factors to assess the propriety of the discipline imposed by the appointing power. 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.²²

The Board’s statutory authority to modify or revoke an adverse action is specified in Government Code section 19583, which provides, in relevant part:

The adverse action taken by the appointing power shall stand unless modified or revoked by the board. If the board finds that the cause or causes for which the adverse action was imposed were insufficient or not sustained, or that the employee was justified in the course of conduct upon which the causes were based, it may modify or revoke the adverse action....

¹⁹ See Wylie v. State Personnel Board (1949) 93 Cal.App.2d 838.

²⁰ (1975) 15 Cal.3d 194.

²¹ 15 Cal.3d at 217-218.

²² *Id.*

While appellant's relationship with a volunteer firefighter caused discomfort in the workplace among his subordinates and demonstrated a lack of good judgment, the harm to the public service is minimal and there is little likelihood of recurrence. Appellant ceased his excessive socializing with Anderson when he was first asked to do so by his supervisor. Furthermore, the proven allegations were less serious than those alleged: the Department amended the allegation that appellant engaged in an "inappropriate sexual" relationship" to simply an "inappropriate relationship," and did not prove the allegation that, after Anderson put her children to sleep in the dayroom, she and appellant went to into his private bedroom and shut the door. Additionally, the allegations concerning misuse of state subsistence were dismissed. Under all the circumstances an official reprimand is a just and proper penalty to remind appellant of his obligation to refrain from conducting his personal affairs in an inappropriate manner in the workplace.

CONCLUSION

Appellant has established good cause for the Board to accept his late-filed appeal on the ground that, at the time he first participated in the grievance process, that process had already been declared unconstitutional by the superior court in that it interferes with the Board's constitutional mandate to review disciplinary actions. The Board adopts the ALJ's findings of fact and determination of issues with respect to the merits of the appeal, but finds that an official reprimand is the just and proper penalty under all the circumstances.

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 10% reduction in salary for nine pay periods of L [REDACTED] G [REDACTED] is modified to an official reprimand.
2. The Department shall pay to L [REDACTED] G [REDACTED] all back pay and benefits, if any, that would have accrued to him had his salary not been reduced, plus interest at the rate of 7 percent per annum.
3. This matter is hereby referred to the Chief Administrative Law Judge and shall be set for hearing on written request of either party in the event the parties are unable to agree as to the salary and benefits due appellant.
4. This decision is certified for publication as a Precedential Decision.

STATE PERSONNEL BOARD²³

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

* * * * *

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on March 4, 2003.

Walter Vaughn
Executive Officer
State Personnel Board

[G [REDACTED]-dec]

²³ Member Maeley Tom did not participate in this decision.