

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeals by) SPB Case Nos. 29827
) and 30245
)
) **LEAH KORMAN**)
) **BOARD DECISION**
) (Precedential)
)
) **NO. 91-04**
)
) December 3, 1991

Before Vice-President Stoner, Burgener, Ward, and Carpenter,
Members:

DECISION AND ORDER

These cases are before the State Personnel Board (SPB or Board) for consideration after having been heard and decided by an SPB Administrative Law Judge (ALJ).

We have reviewed the ALJ's Proposed Decision revoking the 10 working days suspension and dismissal. Since the failure of departments to give reasonable and specific notice of the charges against an employee in their notices of adverse action is a recurrent problem, and since an employee's right to be notified of the disciplinary charges against him or her is a critical element in due process of law, the Board has decided to adopt the attached Proposed Decision as a Precedential Decision of the Board, pursuant to Government Code section 19582.5.

The findings of fact and Proposed Decision of the

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Administrative Law Judge in said matters are hereby adopted by the State Personnel Board as its Precedential Decision.

THE STATE PERSONNEL BOARD*

Alice Stoner, Vice-President
Clair Burgener, Member
Lorrie Ward, Member
Richard Carpenter, Member

*President Richard Chavez did not participate in this decision.

* * * * *

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order, and I further certify that the attached is a true copy of the Administrative Law Judge's Proposed Decision adopted as a Precedential Decision by the State Personnel Board at its meeting on December 3, 1991.

GLORIA HARMON
Gloria Harmon, Executive Officer
State Personnel Board

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BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

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|----------------------------------|---|-----------------|
| In the Matter of the Appeals by |) | |
| |) | |
| LEAH KORMAN |) | Case Nos. 29827 |
| |) | and 30245 |
| From 10 working days' suspension |) | |
| and dismissal from the positions |) | |
| of Office Assistant II, Depart- |) | |
| ment of Transportation at |) | |
| San Francisco |) | |

PROPOSED DECISION

These matters came on regularly for hearing before Ruth M. Friedman, Administrative Law Judge, State Personnel Board, on October 20, 1991 at San Francisco, California.

The appellant, Leah Korman, was present and was represented by Mel Dayley, Attorney, California State Employees Association.

The respondent was represented by Janet Y. Wong, Attorney, Department of Transportation.

Evidence having been received and duly considered, the Administrative Law Judge makes the following findings of fact and Proposed Decision:

I

The above 10 working days' suspension effective June 6, 1991 and the dismissal effective August 26, 1991 do not comply with the procedural requirements of the State Civil Service Act.

II

Appellant first came to work for the State in May 1987 and for the Department of Transportation in January 1988. She has a previous adverse action, a three working day suspension, sustained by the Board on September 11 and 12, 1990, on findings that appellant continually became embroiled in disputes with her co-workers and supervisors and refused to follow her supervisors' instructions.

III

In the 10 day suspension, appellant is charged with inexcusable neglect of duty, insubordination, discourteous treatment of the public or other employees and willful disobedience. The Notice of Adverse Action states that the

charges were based on the following acts or omissions:

"A. During the period between May 14, 1990 and March 12, 1991, you had six (6) instances when your quality of work was not acceptable or you requested information which did not relate to your job.

"B. During the period between April 9, 1990 and April 2, 1991, you had thirteen (13) instances when you were insubordinate, challenged the authority of your supervisor, and refused to comply with given instructions.

"C. During the period between April 9, 1990 and March 12, 1991, you had seven (7) instances when you upset your co-workers by harassing them or intruded in their personal conversations."

IV

In the dismissal, appellant is charged with inefficiency inexcusable neglect of duty, insubordination, discourteous treatment of the public or other employees and willful disobedience and other failure of good behavior either during

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or outside of duty hours which is of such nature that it causes discredit to the appointing authority or the person's employment.

The Notice of Adverse Action states that the charges were based on the following acts or omissions:

"A. During the period between April 18, 1991 and July 23, 1991, you had seven (7) instances when your quality of work was not acceptable or you requested information which did not relate to your job.

"B. During the period between May 10, 1991 and August 1, 1991, you had twenty-seven (27) instances when you were insubordinate, challenged the authority of your supervisor, and refused to comply with given instructions.

"C. During the period between May 21, 1991 and July 31, 1991, you had ten (10) instances when you upset your co-workers by harassing them or intruding in their personal conversations."

V

The Department supplied appellant with copies of documents associated with the adverse actions. However, the documents did not indicate the actions with which appellant was being charged. For example, the documents did not specify what acts were considered to reflect unacceptable quality of work or insubordination.

VI

At the beginning of the hearing, appellant moved to dismiss both adverse actions for failure to notify her of the basis of each of the actions. Because of the disposition of the motion, no testimony was heard. The Department was prepared to proceed with 14 witnesses. Appellant had eight witnesses under subpoena.

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PURSUANT TO THE FOREGOING FINDINGS OF FACT THE
ADMINISTRATIVE LAW JUDGE MAKES THE FOLLOWING DETERMINATION OF ISSUES:

Government Code Section 19574 provides in relevant part that the notice of adverse action "shall include. . . (a) a statement of the nature of the adverse action; (b) the effective date of the action; [and] (c) a statement of the reasons therefor in ordinary language. . ."

The Notices of Adverse Action at issue specified that appellant committed certain acts that were being punished, but failed to specify what those acts were. If appellant is not told what acts were being punished, she is hampered in her ability to prepare a defense. In addition, without clear charges, the Administrative Law Judge at hearing is unable to determine what evidence is relevant to the reasons for the adverse action. The right to be notified of the charges is a critical element in due process of law. The Department failed to fulfill the requirement to give reasonable notice of the charges.

Respondent is entitled to file new Notices of Adverse Action that clearly specify the reasons the action is being taken.

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WHEREFORE IT IS DETERMINED that the 10 workings days' suspension taken by respondent against Leah Korman effective June 6, 1991 is hereby revoked.

WHEREFORE IT IS DETERMINED that the dismissal taken by respondent against Leah Korman effective August 26, 1991 is hereby revoked.

Said matters are hereby referred to the 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, if any, plus interest, due appellant under the provisions of Government Code Section 19584.

* * * * *

I hereby certify that the foregoing constitutes my Proposed Decision in the above-entitled matter and I recommend its adoption by the State Personnel Board as its decision in the cases.

DATED: November 26, 1991

RUTH M. FRIEDMAN
Ruth M. Friedman, Administrative Law
Judge, State Personnel Board