

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

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| In the Matter of the Appeal By |) | SPB Case No. 30141 |
| |) | |
| GEORGE LANNES |) | BOARD DECISION |
| |) | (Precedential) |
| From non-punitive termination from |) | |
| the position of Structural Steel |) | NO. 92-10 |
| Painter, Department of Transpor- |) | |
| tation in San Francisco |) | July 13, 1992 |

Appearances: David Rosenfeld, Attorney, Van Bourg, Weinberg, Roger & Rosenfeld, representing appellant, George Lannes; Janet Y. Wong, Attorney, representing respondent, Department of Transportation.

Before Carpenter, President; Stoner, vice-President, Burgener and Ward, Members.

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 George Lannes (appellant or Lannes) , a Structural Steel Painter who had been terminated without fault from his position with the Department of Transportation (herein Department) pursuant to Government Code section 19585(a) for his failure to maintain a valid driver's license.

The ALJ reduced the non-punitive termination to a four-month suspension without pay, reasoning that: (1) the Department was not required to terminate appellant; (2) the appellant had the right to apply to other positions within the Department that did not require driving; and (3) since the Department had openings in other classifications, and had no reason to terminate appellant, it acted

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arbitrarily in terminating appellant rather than finding him another job in his former position or some other position.

The Board determined to decide the case itself, based upon the record and additional arguments submitted both in writing and orally. Neither party requested oral argument. Only the Department submitted a written brief.¹ After review of the entire record, including the transcript and the written brief submitted on behalf of the Department, the Board sustains the original termination without fault for the reasons set forth below.

STATEMENT OF THE FACTS

The facts are undisputed and are accurately set forth by the ALJ in the Proposed Decision. The appellant began work with the Department in 1970. He became a Structural Steel Painter in April 1974. The minimum qualifications for the position of Structural Steel Painter include possession of a valid California Class 1 driver's license.

Appellant's driver's license was suspended for one year beginning February 25, 1991 after two convictions of driving under the influence of alcohol. For the three years preceding

¹On December 3, 1991, a letter was sent to the parties and their representatives, together with the transcript, setting a deadline of January 3, 1992 for the parties to file written briefs and request oral arguments. No party having timely requested oral argument, this case was considered by the Board and submitted for decision on February 4, 1992. On March 17, 1992, appellant's attorney requested leave to file a written brief and participate in oral arguments. We deny the request as untimely.

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appellant's termination, he was assigned to work rebuilding air staging equipment and safety equipment in a shop near the Toll Plaza at the Oakland-San Francisco Bay Bridge. This work did not require that he drive. Even though his supervisor knew that his license had been suspended, he continued to work without getting special consideration on his assignments until his termination without fault on July 15, 1991. The evidence established that appellant could have continued to work at the same position, without doing any driving and without causing any inconvenience to his supervisor or other employees, until his driver's license was restored (February 1992). The evidence also established that appellant was willing to work at other jobs within the Department that do not require possession of a valid driver's license.

ISSUE

What are the rights and obligations of the parties when an employee is terminated without fault pursuant to Government Code section 19585?

DISCUSSION

Government Code section 19585, subdivision (b), provides that an appointing power may terminate, demote, or transfer an employee who fails to meet the requirements for continuing employment prescribed by the SPB in the specification for the class to which the employee is appointed. Subdivision (d) defines requirements for continuing employment to include acquisition and retention of

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specified licenses. A valid driver's license may be required in positions in which the employee may be expected to operate a motor vehicle. Subdivision (g) provides that when the requirements for continuing employment have been regained, terminated, demoted or transferred employees may be reinstated pursuant to Government Code section 19140.²

As noted above, the facts in the instant case are not in dispute. The specification for appellant's position required that he have a valid driver's license for continuing employment, his driver's license was suspended, and the Department terminated him for failing to have a valid license.

Appellant argued at hearing, and the ALJ found, that the Department should have accommodated him by allowing him to continue to work in his former position without driving, or by finding him another position within the Department that did not require the possession of a driver's license. We can certainly understand why the ALJ questioned the Department's exercise of discretion in terminating a state employee with 21 years of state service and no

²Government Code section 19140 provides:

... [A]n employee who was separated from his or her position under Section 19585 shall have permissive reinstatement eligibility to that position when he or she again meets the requirements for continuing employment in that position, and shall have permissive reinstatement eligibility for any other position as provided by this section.

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adverse actions when the record reflected no compelling reason for the Department to do so. A sense of fair play and justice would appear to favor accommodation over termination.

Nevertheless, we must conclude that the Department was clearly within its statutory rights in terminating appellant without fault under Government Code section 19585. The Department has the choice to transfer or demote an employee rather than terminate him or her, but the Department has no statutory obligation to justify its decision to terminate an employee so long as the statutory prerequisites for a non-punitive termination are satisfied. Appellant's rights in this situation are limited to seeking permissive reinstatement once his driver's license is restored.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to Government Code section 19585, it is hereby ORDERED that:

1. The above-referenced termination without fault is sustained;

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

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STATE PERSONNEL BOARD*

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

*Member Richard Chavez 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 July 13, 1992.

GLORIA HARMON
Gloria Harmon, Executive Officer
State Personnel Board