

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by) SPB Case No. 31009
)
 LEONA S. PATTESON) **BOARD DECISION**
) (Precedential)
 From dismissal from the position)
 of Public Safety Dispatcher with) **No. 93-15**
 the California State University,)
 San Diego) June 1, 1993
)

Appearances: Dennis J. Hayes, Attorney, representing appellant, Leona S. Patteson; Carlos Cordova, Attorney, California State University, representing the California State University, San Diego, respondent.

Before Carpenter, President; Stoner, Vice President; and Ward, member.

DECISION

This case is before the State Personnel Board (SPB or Board) for determination after the Board rejected the proposed decision of an Administrative Law Judge (ALJ) in an appeal by Leona S. Patteson (appellant) from dismissal from the position of Public Safety Dispatcher from California State University at San Diego (University). The ALJ found that appellant had failed in her duty to assure the safety of a student when she did not adequately respond to the student's request for an escort to take her to her parked car. Despite this failure of duty, the ALJ modified the dismissal to a one-day suspension, citing the presence of several mitigating factors.

The Board rejected the proposed decision of the ALJ and determined to decide the case itself, based upon the record and

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additional arguments submitted in writing.¹ After a review of the entire record, the Board modifies the penalty imposed upon appellant to a thirty-day suspension.

FACTUAL SUMMARY

Appellant is a Public Safety Dispatcher at the University. She is certified as a peace officer under the laws of the State of California. Her duties as a Public Safety Dispatcher include providing security for the students attending the University. The appellant had been a Public Safety Dispatcher for approximately eight years at the time of her dismissal and had no record of prior formal discipline.

On the night of October 13, 1991, appellant was working graveyard shift in the Public Safety Office. At approximately one o'clock in the morning, a female student arrived at the office and told appellant that she had locked her keys in her car, and that her car was parked a few blocks away. The student, dressed in shorts and a sleeveless shirt, asked that appellant dispatch a public safety officer to help her get her keys out of the car. After determining where the car was parked, the appellant told the student that the public safety officers do not unlock cars parked off-campus. The appellant handed the student the telephone and suggested that the student call an automobile club for help.

The student told appellant that she did not have the number

¹ Neither party requested oral argument.

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for her automobile club, "AAA." The appellant proceeded to hand the student the telephone book through the office window. The student testified that appellant was rude to her during this time and offered very little assistance to her. Eventually, the student reached the AAA Automobile Club using the telephone at the Office of Public Safety, but was told that her membership had expired and they would not come out to assist her. Appellant then contacted her Watch Commander on the radio and asked for permission to dispatch a public safety officer to unlock appellant's car for her. The Watch Commander gave his approval and appellant radioed for a fellow officer to meet the student at her car to unlock it.

According to the student, she then asked appellant for an escort to her car as she was scared to walk there alone. The Public Safety Office runs a well-publicized service whereby public safety officers will escort students who are alone, either by car or by foot, for safety purposes. The student testified that the appellant responded rudely to her request and refused to provide her with an escort to her car. According to the student, the appellant responded to her request by stating, "Well, don't you think they're doing you a big enough favor just by getting your keys out." The student also claims that she repeated her request to appellant, but was turned down.

According to the appellant's version of events, the student asked her only for a "ride" to her car, not an "escort." The

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appellant contends that there is an important distinction between asking for a ride for convenience, and asking for an escort for safety purposes. As an example, the appellant contends that many students often ask the public safety officers for "rides" to shuttle them around campus, but refuse a walking escort when offered one. The appellant stated at the hearing that she refused appellant's request because she thought the student was only seeking transportation. She claims had she realized that the student was seeking an escort to her car for safety purposes, she would have certainly arranged for one. Appellant further denies making any rude remarks to the student.

During the student's approximately 10- to 15-minute walk to where her car was parked, the student was approached by approximately four males who proceeded to harass her verbally, as well as grab at her buttocks. The student managed to run from the four men and eventually made it safely to her car where she met the public safety officer. Quite understandably, the student was emotionally upset from the experience.

The University dismissed appellant as a result of this incident, charging her with violating Education Code section 89535, subdivisions (b) unprofessional conduct and (f) failure or refusal to perform the normal and reasonable duties of the position.

The appellant admits that she erred in failing to recognize that the student might have been seeking an escort to her car for

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safety purposes. She claims to understand now that under the circumstances present that evening, she should have offered the student an escort. The appellant argues, however, that the penalty of dismissal is not justified under the circumstances.

On the other hand, the Department contends that the appellant's actions were so serious and detrimental to the public service as to warrant appellant's dismissal.

The ALJ who heard the case found appellant failed to use initiative to protect a student, and furthermore, failed to handle the matter in a way so the student felt the appellant was supportive and sympathetic. Nevertheless, the ALJ modified the penalty imposed upon appellant from a dismissal to a one-day suspension. The justification for the modification in penalty was appellant's eight-year clean work record and the fact that the ALJ believed it was unlikely such an incident would ever recur.

ISSUE

What is the appropriate penalty under the circumstances?

DISCUSSION

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

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is a "just and proper" penalty for a particular offense, under a given set of circumstances, the Board has broad discretion. 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:

...[W]hile 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 194, 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:

...we 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.)

In this case, the public service incurred serious harm as a result of appellant's actions. The student involved in the incident suffered unnecessary emotional trauma as a result of being left to walk alone on the campus in the middle of the night.

The student, as well as the University, is very lucky that she managed to get safely away from the men she encountered without

enduring more serious harm. As a Public Safety Dispatcher,
appellant had a

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duty to help ensure the safety of a University student by taking it upon herself to arrange for someone to escort the student to her car.

Even assuming, as the appellant contends, that the student only asked for a "ride" to her car, the appellant still should have asked the student whether she would accept a walking escort to her car in lieu of a ride. The appellant's failure to take any initiative to ensure the safe passage of the student in the middle of the night merits the imposition of a harsh penalty--a penalty more severe than a one-day suspension.

On the other hand, mitigating factors exist as noted by the ALJ in her decision, which must be taken into consideration in assessing the appropriate penalty. Appellant has had no prior adverse actions in eight years, a fact apparently not taken into consideration by the University in imposing the penalty of dismissal. Furthermore, appellant has admitted to the fact that she made a serious error in judgment. Finally, there are no circumstances present in the case to indicate that appellant would repeat such misconduct in the future. Given these mitigating factors, the Board finds appellant's dismissal to be unjustified.

Instead, the Board concludes that the appropriate level penalty is somewhere between the drastic penalty of dismissal imposed by the Department and the very light penalty of a one-day suspension proposed by the ALJ. The Board finds that an

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appropriate penalty to impose upon the appellant under the circumstances is a thirty-day suspension without pay.

ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, and pursuant to Government Code sections 19582 and 19584, it is hereby ORDERED that:

1. The adverse action of dismissal is modified to a thirty (30)-day suspension.

2. California State University, San Diego shall reinstate Leona S. Patteson to the position of Public Safety Dispatcher and pay to her all back pay and benefits that would have accrued to her had she been suspended for thirty days rather than dismissed.

3. This matter is hereby referred to an 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 pursuant to Government Code section 19582.5.

STATE PERSONNEL BOARD*

Richard Carpenter, President
Alice Stoner, Vice President
Lorrie Ward, Member

*Members Floss Bos and Alfred R. Villalobos were not on the Board when this matter was originally considered.

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I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on June 1, 1993.

GLORIA HARMON
Gloria Harmon, Executive Officer
State Personnel Board