CALIFORNIA
STATE
PERSONNEL
BOARD

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Governor Edmund G. Brown Jr.

A R v. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION Appeal from Dismissal	Case No. 04-2391A **RESOLUTION**

Non-precedential

WHEREAS, Government Code section 3304, subdivision (d), provides:

> (1) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed discipline by a Letter of Intent or Notice of Adverse Action articulating the discipline that year, except as provided in paragraph (2). The public agency shall not be required to impose the discipline within that one-year period.
>
> (2) (A) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

WHEREAS, on November 1, 2005, the State Personnel Board (SPB or Board) issued a precedential decision in the matter of the appeal by *A R v. California Department of Corrections and Rehabilitation*, SPB Dec. No. 05-03, in which it determined that the tolling provisions set forth in Government Code section 3304, subdivision (d)(2)(a), concerning criminal investigations did not apply to a criminal investigation conducted by the appointing power, rather than by an independent law enforcement agency.

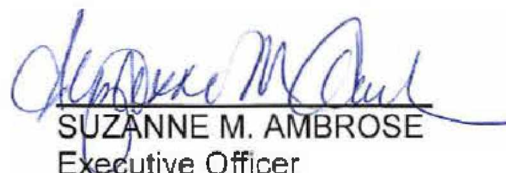
WHEREAS, on May 24, 2016, the Court of Appeal for the State of California, Third Appellate District, issued a published decision in *California Department of Corrections and Rehabilitation v. State Personnel Board* (*Iqbal*) (2016) 247 Cal.App.4th 700, rejecting the Board's analysis in *A R* and holding that a criminal investigation, whether conducted by the appointing authority or an external agency, tolls the one-year statute of limitations under Government Code section 3304, subdivision (d).

WHEREAS, pursuant to Government Code section 19582.5, the Board has the authority to designate certain of its decisions as precedents and to reconsider a previously issued decision to determine whether or not it shall be designated as a precedent decision.

NOW, THEREFORE, IT IS RESOLVED that:

In light of the court's ruling in *Iqbal*, the Board decision in *A R* shall be no longer designated as precedential and may not be cited or relied on by a party in any action or proceeding.

The foregoing Resolution was made and adopted by the State Personnel Board at its meeting on February 2, 2017, as reflected in the record of the meeting and Board minutes.



SUZANNE M. AMBROSE
Executive Officer

Non-precedential

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by A R From dismissal from the position of Correctional Lieutenant with Sierra Conservation Center at Rainbow Conservation Camp #2, Department of Corrections and Rehabilitation at Rainbow	)))))))))	SPB Case No. 04-2391A **BOARD DECISION** (Precedential) **NO. 05-03** November 1, 2005

APPEARANCES: Michael D. Lackie, Attorney, on behalf of appellant, A R; Stephen Jennings, Senior Staff Counsel, on behalf of respondent, Department of Corrections and Rehabilitation.

BEFORE: William Elkins, President; Maeley Tom, Vice President; Ron Alvarado, Sean Harrigan, and Anne Sheehan, Members.

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DECISION

This case is before the State Personnel Board (Board) after the Board rejected the Proposed Decision of the Administrative Law Judge (ALJ). A R (appellant), was dismissed from the position of Correctional Lieutenant with respondent Sierra Conservation Center at Rainbow Conservation Camp #2, Department of Corrections and Rehabilitation at Rainbow (Department), based upon allegations that on 13 separate instances, he fraudulently signed and approved overtime sheets for 78 hours of overtime work that he did not perform, which resulted in him improperly receiving payment in the amount of $4,157.40.

In this decision, the Board finds that the Department failed to initiate disciplinary proceedings against appellant within the limitations period set forth in Government Code section 3304(d). As a result, the disciplinary action is revoked.

BACKGROUND

Employment History

Appellant was appointed to the position of Correctional Officer with the Department on September 17, 1979. He was promoted to the position of Correctional Sergeant on May 11, 1987, and to the position of Correctional Lieutenant on July 17, 2000. Appellant has no record of prior formal disciplinary action.

Factual Summary

On June 9, 2003, Correctional Officer Julie Angulo (Angulo), notified appellant's supervisor, Correctional Captain Elvin Angel (Angel), that between January 2003 and June 2003, appellant had submitted numerous timesheets in which he fraudulently signed and approved overtime sheets for overtime hours that he did not actually work at Rainbow Conservation Camp #2. On that same date, Angulo also provided written notification of those same allegations to the Office of Investigative Services, Internal-Affairs, Southern Region (OIS-South). On June 17, 2003, Angulo provided written notification to OIS-South, and verbal notification to Angel, of one or more additional instances of appellant fraudulently seeking payment for overtime work that he did not perform.[1]

On July 24, 2003, Angel notified OIS-South of Angulo's allegations against appellant.

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[1] The Department subsequently determined that between February 19 and June 17, 2003, appellant submitted 13 separate fraudulent requests for payment of 78 hours of overtime services that he did not perform, resulting in an overpayment of $4,157.40 to appellant.

On August 8, 2004, Chief Deputy Warden Kathy Prosper (Prosper) formally requested that an Internal Affairs investigation be conducted concerning appellant.

Gerald Jansen (Jansen), an OIS-South Special Agent, was assigned to investigate the allegations during August 2003. On August 18, 2003, Jansen's supervisor provided written notification to appellant regarding the investigation.

On December 20, 2003, OIS-South Special Agent in Charge Steve Mihalyi (Mihalyi) informed appellant that OIS-South's "criminal" investigation had been completed. That same day, Jansen referred his investigative results to the Office of the District Attorney for the County of San Diego for its consideration for possible criminal prosecution.

On January 7, 2004, Deputy District Attorney Allan Craig Rooten (Rooten), informed Jansen that the Department had provided the District Attorney's Office with insufficient information to prosecute appellant. Rooten asked Jansen to conduct a supplemental investigation to obtain additional information, and told Jansen that the criminal prosecution referral would he "held" until Jansen submitted the additional information. Jansen thereafter conducted a supplemental investigation and submitted the Department's additional investigative findings to the District Attorney's Office on March 25, 2004.

On April 15, 2005, Rooten informed Jansen that the District Attorney's Office would not file criminal charges against appellant, "since insufficient evidence exists to prove beyond a reasonable doubt that [appellant] did not work on any particular date for which he claimed overtime."

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Procedural Summary

On September 17, 2004, the Department mailed a Notice of Adverse Action to appellant, dismissing him from state service, effective October 1, 2004. As legal cause for discipline, the Department alleged that appellant's actions constituted legal cause for discipline pursuant to the provisions of Government Code section 19572, subdivisions (d) inexcusable neglect of duty, (f) dishonesty, (p) misuse of state property, 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.

Appellant filed an appeal of the disciplinary action with the Board, and a hearing on the matter was subsequently conducted before an Administrative Law Judge (ALJ), who issued a Proposed Decision revoking the dismissal. The Board rejected the Proposed Decision in order to consider the issue set forth below.

ISSUE

Whether the one-year limitations period under Government Code section 3304(d) was tolled during the time that the Department conducted a criminal investigation concerning the alleged misconduct, and/or when the Department referred its investigative findings to the District Attorney's Office for review and possible criminal prosecution?

DISCUSSION

Ordinarily, an appointing power must initiate disciplinary proceedings against a state civil service employee within three years of the date of the alleged misconduct.[2] As a peace officer, however, appellant is entitled to the protections provided under the Public Safety Officers Procedural Bill of Rights Act (the Act), as set forth in Government

[2] Gov't Code § 19635.

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Code sections 3300-3311. The Act provides for a one-year limitations period for initiating disciplinary proceedings against peace officer employees. More specifically, Section 3304(d) provides, in pertinent part:

> Except as provided in this subdivision and subdivision (g),[3] no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:
>
> (1) <u>If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.</u> (Emphasis added.)

Here, the Department asserts that the disciplinary action was timely served on appellant, because the one-year limitations period set for in Section 3304(a) was tolled while the Department and the District Attorney's Office were conducting criminal investigations into appellant's alleged misconduct. Appellant asserts that the tolling provisions of Section 3304(d)(1) are not applicable, because the investigation was conducted by the Department, and not by an outside, independent entity, and because the District Attorney's Office never investigated the allegations or prosecuted the case.

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[3] The provisions of subdivision (g) are not applicable to the instant case.

The Board is not aware of any case law specifically interpreting the tolling provisions of Section 3304(d)(1) for criminal investigations or prosecutions. *California Correctional Peace Officers Assn. v. State of California*,[4] (hereinafter *CCPOA*), however, does address a substantially similar issue.

CCPOA concerned a situation wherein investigators with the Department of Justice, acting in conjunction with the Department of Corrections, conducted an investigation into alleged criminal misconduct by correctional officers. The plaintiffs challenged the validity of the interrogations they were subjected to by Department of Justice investigators, on the grounds that the interrogations violated numerous provisions of the protections afforded peace officers under Section 3303.[5] In that case,

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[4] (2000) 82 Cal.App.4th 294.

[5] The full text of Section 3303 is as follows:
When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her

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the Department asserted that, pursuant to the provisions of Section 3303(i), which provides that, "…nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities," the protections afforded to peace officers under

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express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

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Section 3303 were not applicable to the interrogations conducted in that case, because an outside entity – the Department of Justice – not the Department, had conducted the interrogations, and because a criminal investigation was being conducted.

In rejecting the Department's contention, the court first determined that the interest and actions of the Department of Justice were so inexorably intertwined with the interests and actions of the Department, that the two entities must be considered to have been acting in concert.[6] More importantly, for purposes of this discussion, the court also rejected the Department's contention that the provisions of Section 3303 were not applicable because a criminal investigation was being conducted into the plaintiffs' alleged misconduct.

In so deciding, the court noted that:

> No authority has been cited or found interpreting the exception in subdivision (i) for 'an investigation concerned solely and directly with alleged criminal activities' or the corollary provision authorizing the employer to require cooperation with other agencies involved in criminal investigations. (§§ 3303, subd. (i), 3304, subd. (a)[7].)[8]

In concluding that the Department had violated certain provisions of Section 3303 and that the criminal investigation had not been conducted by an outside, independent

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[6] *CCPOA*, 82 Cal.App.4th at 307.

[7] Section 3304(a) provides that: "No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure. ¶ Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination."

entity for purposes of that Section, the court specifically held that:

> If these provisions [Sections 3303(i) and 3304(a)] are not limited to investigations conducted by outside agencies that are substantially independent of the employer ... they would effectively defeat the entire purpose of the Act .... Almost every administrative investigation of alleged misconduct could be recast as a criminal investigation to avoid the requirements of the Act. Thus, we agree that the criminal investigations referred to in subdivision (i) of section 3303 and subdivision (a) of section 3304 must be ones conducted primarily by outside agencies without significant active involvement or assistance by the employer.[9]

In this case, the Department asserts that the rationale set forth in *CCPOA* that defines the phrase "criminal investigation" as one conducted by an outside, independent entity, is not applicable to the facts presented here, as *CCPOA* concerned itself with an analysis of criminal investigations under Section 3303(i), whereas this case requires an analysis of criminal investigations under Section 3304(d)(1). According to the Department, because those two statutory sections serve different purposes (i.e., Section 3303(i) is related to the type of interrogation that a peace officer can be subjected to, whereas Section 3304(d)(1) is related to the time period for taking punitive action against a peace officer), the analysis underlying *CCPOA* is not pertinent to the issues presented here.

We find the Department's argument unpersuasive. As an initial matter, we note that *CCPOA* addressed not only criminal investigations referenced under Section 3303(i), but also criminal investigations referenced under Section 3304(a). Nor does

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[8] *Ibid.*

[9] *Id.* at pp. 308-309.

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the language within the Act itself indicate a fundamental difference is intended between the type of criminal investigation referenced in Sections 3303(i) and 3304(a), and the type of criminal investigation referenced in Section 3304(d)(1).

More importantly, we find that the rationale set forth by the court in *CCPOA* defining a criminal investigation referenced in Section 3303(i) as one conducted by an outside, independent entity, applies with equal force and effect to those criminal investigations referenced in Section 3304(d)(1). To paraphrase *CCPOA*, if the provisions of Section 3304(d)(1) "...are not limited to investigations conducted by outside agencies that are substantially independent of the employer ... they would effectively defeat the entire purpose of the Act .... Almost every administrative investigation of alleged misconduct could be recast as a criminal investigation to avoid" the one-year limitations period set forth in Section 3304(d)(1).

In short, were the Board to accept the Department's argument, then any agency employing peace officers could avoid the one-year limitations period present in Section 3304(d)(1) by simply designating any investigation it conducts into alleged misconduct by a peace officer a "criminal" investigation. Such a determination would certainly, "effectively defeat the entire purpose of the Act."

The Board finds, therefore, that the "criminal investigation" tolling provision of the one-year limitations period set forth in Section 3304(d) applies only where the criminal investigation is conducted by an outside, independent investigative entity. Because the instant case involves a "criminal" investigation conducted by the employing agency, the tolling provisions set forth in Section 3304(d)(1) were not applicable during the time period that the Department was conducting its investigation.

(Tolling Pending Review by the District Attorney)

With respect to the period of time during which the matter was being considered by the District Attorney's Office, we find that the tolling provisions of Section 3304(d)(1) were applicable. Once the Department referred its investigative findings to the District Attorney's Office for review and possible criminal prosecution, the case was out of the Department's control. Because the Department no longer had any control as to whether the case would be prosecuted, or how long it would take the District Attorney's Office to independently investigate or otherwise reach a decision regarding whether to criminally prosecute the matter, the Board concludes that the limitations period for initiating disciplinary action against the appellant was tolled during the time the case was in the hands of the District Attorney's Office. Such an interpretation is reasonable and consistent with both the language and intent of Section 3304(d)(1), and averts the danger noted by the court in *CCPOA* – that the employing agency could circumvent the protections provided to peace officers under the Act by merely designating its own investigation as "criminal."

The Board is not, however, persuaded by the Department's argument that the limitations period remained tolled during the time period that the District Attorney's Office remanded the case back to the Department for further investigation. Under those circumstances, the supplemental investigation was clearly conducted by the Department, not an independent, outside entity. Although the Department may have been acting at the behest of the District Attorney's Office, it is obvious that it was the employing agency, not an outside, independent entity, that conducted the supplemental investigation. The Board finds, therefore, that the one-year limitations period set forth in

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Section 3304(d)(1) was not tolled during the time period that the Department conducted a supplemental investigation at the request of the District Attorney.

Given the foregoing, we find that the one-year limitations period for initiating punitive action proceedings against appellant was tolled from December 29, 2003, when the Department first referred the case to the District Attorney's Office for review and prosecution, until January 7, 2004, when the District Attorney's Office returned the case to the Department with a request that the Department conduct a supplemental investigation. The one-year limitations period was thereafter once again tolled from March 25, 2004, when the Department re-submitted its investigative findings to the District Attorney's Office for review and prosecution, until April 15, 2004, when the District Attorney's Office notified the Department that it would not file criminal charges against appellant.

(When the One-Year Limitations Period Commenced)

As set forth *supra*, Section 3304(d) provides, in pertinent part:

> ...no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery <u>by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct.</u> This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year... (Emphasis added.)

The evidence established that on June 9 and 17, 2003, Angulo provided appellant's supervisor, Angel, with written allegations that appellant had been falsifying

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time sheets. On July 24, 2003, Angel informed OIS-South of the allegations.[10] Thereafter, on August 8, 2003, Prosper requested that an internal affairs investigation be conducted concerning the allegations. [11]

The Department argues that because, as the Chief Deputy Warden, Prosper was the only individual with sufficient authority to initiate an investigation into the alleged misconduct, the one-year limitations period did not commence until August 8, 2003, when she requested the internal affairs investigation regarding appellant. The Department further argues that because it mailed a copy of the Notice of Adverse Action to appellant on September 17, 2004, and because the one year limitations period was tolled between December 29, 2003 and April 15, 2004, while the case was pending review by the District Attorney's Office, appellant was notified of the disciplinary action well within the one-year limitations period prescribed by Section 3304(d). We disagree.

For those reasons discussed above, the Board finds that the limitations period was only tolled from December 29, 2003 through January 7, 2004, and again from March 25, 2004 through April 14, 2004, for a total of 30 calendar days. Assuming, *arguendo*, that the one year limitations period commenced on August 8, 2003, when Prosper requested an internal affairs investigation, the simple fact remains that the Department was thereafter required to notify appellant of its intent to initiate disciplinary proceedings against him within 395 days of that referral, or no later than September 7,

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[10] It is unclear from the record why Angel delayed informing OIS-South about the allegations for over one month.

[11] It is unclear from the record on what specific date Prosper was informed of the alleged misconduct, though it is evident she was informed sometime between July 24, 2003, when Angel reported the matter to OIS-South, and August 8, 2003, when she requested the investigation.

2004.[12] Here, the Department did not mail the Notice of Adverse Action to appellant until September 17, 2004. As a result, service of the Notice of Adverse Action was not timely under Section 3304(d)(1).

Because we find that the Department did not provide timely notice to appellant of its intent to initiate disciplinary proceedings against him, even after giving the Department the benefit of the doubt as to when "a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct" was informed of the misconduct, we need not reach the issue of whether the one-year limitations period actually commenced on June 9, 2003, when Angulo notified Angel of her allegations against appellant, or on July 24, 2004, when Angel informed OIS-South of those same allegations.[13]

CONCLUSION

The Department was required to notify appellant of its intent to initiate disciplinary proceedings against him within one-year of the date that a person authorized to initiate an investigation into the alleged misconduct learned of the allegations. Here, however, the Department failed to do so. Because the criminal investigation at issue was conducted by the employer, and not by an outside, independent investigative entity, the

[12] Pursuant to Section 3304(d), the Department had 365 days, plus an additional 30 days while the matter was pending review by the District Attorney's Office, to initiate disciplinary proceedings against appellant.

[13] We note, however, that in *H___ M___ & L___ S___* ((2003) SPB Dec. No. 03-07), this Board concluded that in order to be considered as "a person authorized to initiate an investigation," under Section 3304(a), the person "…must be affirmatively vested with some authority to conduct or supervise an investigation into the alleged misconduct and to either take disciplinary action or to report the investigatory findings to one who can act upon them." (*Id.* at pp. 8-9.) We further found, however, that, "…we do not believe that the statute of limitations necessarily begins to run only when the Warden initiates on investigation of employee misconduct…" (*Id.* at p. 9, *citing Haney v. City of Los Angeles* (2003) 109 Cal.App.4th 1 (finding that the one-year limitations period began to run when the Sergeant in charge of the facility learned of possible officer misconduct while investigating an incident).)[13]

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one-year limitations period set forth in Section 3304(d) was only tolled during the 30 day period that the District Attorney's Office was reviewing the Department's investigative report for possible criminal prosecution. Since the Department did not thereafter initiate disciplinary proceedings against appellant in a timely manner, the Board must, necessarily, revoke the disciplinary action taken against appellant.

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 dismissal of A[redacted] R[redacted] from the position of Correctional Lieutenant is revoked;

(2) Pursuant to Government Code section 19584, the Department of Corrections and Rehabilitation shall pay to A[redacted] R[redacted] all back pay, interest, and benefits, if any, that would have accrued to him had he not been dismissed from his position; and

(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.

STATE PERSONNEL BOARD

William Elkins, President
Maeley Tom, Vice President
Ron Alvarado, Member
Sean Harrigan, Member
Anne Sheehan, Member

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I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on November 1, 2005.

Floyd Shimomura
Executive Officer
State Personnel Board

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