

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by) SPB Case No. 28269
)
 M [REDACTED] M [REDACTED]) **BOARD DECISION**
) (Precedential)
 From 10 working days' suspension)
 from the position of Group Supervisor) **NO. 93-11**
 with the Ventura School, Department)
 of the Youth Authority at Camarillo) April 6, 1993

Appearances: Patricia Z. Ostini, Staff Counsel representing the Department of Youth Authority, respondent; no appearance for appellant.

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

DECISION

This case is before the State Personnel Board (Board) for determination after the Board rejected the proposed decision of the Administrative Law Judge (ALJ) in the appeal of M [REDACTED] M [REDACTED] (appellant) from a 10 days' suspension from the position of Group Supervisor at the Ventura School, Department of the Youth Authority (department).

The adverse action charged appellant with violations of Government Code section 19572, subsections (h) intemperance, and (t) other failure of good behavior either during or outside of duty hours which is of such nature that it causes discredit to the appointing authority or the person's employment, based upon evidence that appellant was driving a vehicle while under the influence of alcohol. The ALJ revoked the adverse action finding that while there was sufficient evidence that appellant drove a

(M [REDACTED] continued - Page 2)

vehicle while under the influence of alcohol, there was no nexus between that off-duty conduct and appellant's job as a group supervisor.

The Board rejected the proposed decision of the ALJ and determined to decide the case itself. After a review of the entire record, including the transcript, the brief submitted by the department, and the oral argument presented, the Board sustains the 10 days' suspension imposed upon the appellant.¹

FACTUAL SUMMARY

Appellant was appointed Group Supervisor at the Ventura School, a facility for youthful offenders of the law, on August 16, 1984. He has no prior adverse actions. On February 24, 1990, appellant was pulled over to the side of the highway by Sergeant Gary Amar of the city of Oxnard Police Department. Sergeant Amar pulled appellant over because he had observed appellant running a red light. Immediately upon coming into contact with appellant, Sergeant Amar recognized appellant as someone who was familiar to him.

Sergeant Amar asked the appellant for his identification, which appellant produced. Upon seeing the identification, Sergeant Amar recognized appellant as a peace officer employed at the

¹The appellant did not submit a brief and did not appear for oral argument.

Ventura School.

Thereafter, the two men had a brief conversation as to why appellant had been pulled over. During this conversation, Sergeant Amar noted numerous symptoms which indicated to him that the appellant was under the influence of alcohol. Among the symptoms observed by Sergeant Amar were appellant's inability to focus his eyes, in particular his inability to "track" Sergeant Amar with his eyes, and the odor of alcohol emanating from appellant. When asked if he had been drinking, appellant admitted to the Sergeant that yes, he had been drinking.

Sergeant Amar testified at the hearing that, at this point, he normally would have proceeded to administer field sobriety tests to someone in appellant's condition. However, he had decided upon recognizing appellant that he would not proceed with an arrest, but rather would let appellant go safely home. Sergeant Amar claims to have made this decision out of professional courtesy to the appellant, because the appellant was a very nice man, and because no person or property had been hurt.

Thereafter, Sergeant Amar went back to his patrol car and called the Ventura School where appellant worked to ask somebody to call appellant's brother, a fellow peace officer, and ask him to come get appellant. However, before appellant's brother could pick up the appellant, appellant's wife arrived at the scene. Sergeant Amar released appellant to her, and upon doing so, observed that

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appellant was unsteady on his feet. No arrest or conviction followed.

The department issued an adverse action charging appellant with intemperance and other failure of good behavior and imposed a 10 days' suspension.

ISSUE

Is there a nexus between appellant's off-duty misconduct and his position as Group Supervisor at the Ventura School?

DISCUSSION

The ALJ found sufficient evidence at the hearing to support a finding that appellant was driving a vehicle while under the influence of alcohol and that his driving ability was impermissibly impaired as a result.² The ALJ based her finding upon the testimony of Sergeant Amar, a 20-year veteran on the police force with a great deal of experience in judging whether persons on the highway are under the influence of alcohol. Her finding was also based upon the fact that she found appellant's testimony not to be credible. Despite her finding that appellant drove a vehicle while under the influence of alcohol, the ALJ revoked the discipline imposed by the department on the grounds that there was no nexus between appellant's misconduct and his position as Group Supervisor.

² Driving while under the influence of any alcoholic beverage is a violation of Vehicle Code section 23152(a).

(M [REDACTED] continued - Page 5)

The Board concurs in the ALJ's findings of fact. There is substantial evidence in the record to support a finding that appellant drove a vehicle while under the influence of alcohol.³ However, the Board disagrees with the ALJ's conclusion that there is no nexus between the appellant's misconduct and his position.

For a state employee to be disciplined for off-duty misconduct, there must be, among other things, a rational relationship or "nexus" between the misconduct and the employment. Vielehr v. SPB (1973) 32 Cal.App.3d 187, 192. We believe there is such a nexus in this case.

As a Group Supervisor, appellant is certified as a peace officer under the laws of the State of California. Peace officers may be held to a higher standard of conduct than non-peace officers merely by virtue of their position. (See J [REDACTED] R [REDACTED] (1993) SPB Dec. No. 93-04, p. 5.)

The courts have specifically addressed the issue of nexus in connection with unlawful conduct committed off-duty by peace officer employees of the Department of Youth Authority. In Parker v. State Personnel Board (1981) 120 Cal.App.3d 84, a Group Supervisor for the Department of Youth Authority was dismissed for

³ The fact that appellant was not convicted of any charge does not mean that he may not be disciplined by the State for his actions. (See, e.g. Ramirez v. State Personnel Board (1988) 204 Cal.App.3d 288; Maynard v. State Personnel Board (1977) 67 Cal.App.3d 323.)

(M [REDACTED] continued - Page 6)

possession of marijuana at his home. The court upheld the dismissal, finding a nexus based upon a supervisor's testimony that group supervisors must have credibility with the wards to be effective in their duties, and that possession of such a drug would have an adverse effect upon Parker's credibility.

Similarly, in Ramirez v. State Personnel Board (1988) 204 Cal.App.3d 288, the dismissal of a Youth Counselor was upheld on the basis that there was a nexus between the off-duty misconduct of masturbating in a public restroom and the job of Youth Counselor for the Department of Youth Authority. The Court stated,

"A youth counselor who does the very thing he is supposed to counsel against (disobedience of the law) cannot be said to be acting in the best interest of the Youth Authority or its wards." 204 Cal.App.3d at 293.

The cases cited above are factually similar to the case at hand, and thus, must be given substantial consideration in the Board's decision.

As was the case in Parker and Ramirez, there was uncontroverted evidence in the record to establish a connection between appellant's misconduct and his official duties as a Group Supervisor. Appellant's position involves counseling youthful offenders of the law, many of whom have abused alcohol themselves.

Appellant's duties also include ensuring that wards follow all rules and laws and, in that respect, appellant is called upon to set an example for the wards under his care.

While appellant is not assigned the specific duty of arresting

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persons for drunk driving, he is nevertheless a peace officer sworn

to uphold the law. A peace officer's credibility is bound to suffer when he or she commits a serious violation of the law while off-duty. Driving under the influence of alcohol constitutes serious misconduct. The state has a right to expect more from persons charged with duties which include law enforcement. Appellant's peace officer status weighs in favor of finding a nexus.

Given the evidence in the record and the state of the law, we find sufficient evidence of a nexus between appellant's off-duty act of driving under the influence of alcohol, and his position as a Group Supervisor for the department.

In addition, we find that the penalty of a 10 days' suspension imposed by the department was appropriate. Although appellant has had no prior adverse actions, appellant's misconduct was serious and, if repeated, could have resulted in tremendous harm to the public service. Moreover, we find that a substantial penalty is necessary to prevent the likelihood of recurrence of such behavior. Under these circumstances, we find the penalty of 10 days' suspension imposed upon the appellant by the department to be "just and proper", and thus, in accordance with the law. (See J [REDACTED] R [REDACTED] (1993) SPB Dec. No. 93-04, p. 7, citing Skelly v. State Personnel Board (1975) 15 Cal.3d 194.)

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 a 10 days' suspension is sustained.

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

THE 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 case was originally considered and have therefore not participated in the vote.

* * * * *

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on April 6, 1993.

GLORIA HARMON

Gloria Harmon, Executive Officer
State Personnel Board