

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by) SPB Case No. 31358
)
 R [REDACTED] . H [REDACTED]) **BOARD DECISION**
) (Precedential)
 From 30 calendar days' suspension)
 from the position of Correctional) **NO. 93-22**
 Officer at the Correctional Training)
 Facility, Department of Corrections)
 at Soledad) August 3, 1993

Appearances: Jennifer J. Wilke-Berry, Hearing Representative, California Correctional Peace Officers Association, on behalf of appellant, R [REDACTED] . H [REDACTED]; Victor J. James, Attorney, on behalf of respondent, Department of Corrections.

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 the appeal of R [REDACTED] . H [REDACTED] (appellant). Appellant was employed as a Correctional Officer at the Correctional Training Facility, Department of Corrections (Department or respondent) and appealed a 30 calendar days' suspension he received from the department for driving under the influence of alcohol while off-duty and for his subsequent arrest and sentence to a 30-day home confinement program.

The ALJ who heard the appeal revoked appellant's suspension after concluding that there was no rational relationship between appellant's duties as a Correctional Officer and his off-duty conduct of driving under the influence of alcohol and participation

(H [REDACTED] continued - Page 2)

in the home confinement program. The Board rejected the Proposed Decision, deciding to hear the case itself. After a review of the entire record, including the transcript, the exhibits, and the written and oral arguments presented by the parties, the Board concludes that there is a rational relationship or nexus between appellant's duties as a Correctional Officer and his off-duty conduct of driving under the influence of alcohol, and hereby sustains the 30 calendar days' suspension.

FACTUAL SUMMARY

Appellant became a Correctional Officer with the Department in 1986. On December 17, 1991, appellant was pulled over by the Salinas Police Department after he was observed weaving between lanes on a one-way street. Appellant willingly submitted to a blood test, which showed his blood level of alcohol to be .16, twice the legal limit of .08. Appellant was subsequently taken under arrest.

Appellant's arrest for driving under the influence of alcohol was his second such arrest. In fact, at the time of this incident, appellant was still on probation from his first offense, which occurred in 1988. Appellant received a 10-day suspension from the Department for this first offense, which he did not appeal.¹ In connection with the offense at issue here, appellant plead guilty to driving under the influence of alcohol and was sentenced to 5

¹ Appellant also received an official reprimand in 1989 for committing domestic assault while off-duty.

(H [REDACTED] continued - Page 3)

years probation and a fine of \$1,155. In addition, his license was suspended for one year and he was sentenced to 30 days in jail.

Rather than spend the 30 days in jail, appellant participated in a 30-day home confinement program. This program was intended to allow non-violent misdemeanor offenders to continue in their regular employment while serving their "jail" time. The offender is required at all times to wear an electronic bracelet or anklet which emits an electronic beep which is identified by the parole officer by phone. If the offender attempts to leave the house, other than to go to work, the parole officer will be aware of it.

While participating in the home confinement program, appellant voluntarily attended meetings of Alcoholics Anonymous and classes for second-time offenders. He has continued with alcohol abuse counseling and Alcoholics Anonymous classes since his second arrest and claimed to be abstinent at the time of the hearing.

The record reflects that appellant did not work during the time that he was under home confinement, as this period coincided with the period of time during which he served his 30-day suspension from the Department. The record also indicates that appellant would have been allowed to perform all of the usual functions of his position, including carrying a gun while on duty, had he gone to work while wearing the electronic anklet.

As a result of the incident, appellant was charged by the Department with violation of Government Code section 19572,

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subdivisions (c) inefficiency, (o) willful disobedience and (t) other failure of good behavior either during or outside duty hours which is of such a nature that it causes discredit to the person's employer or appointing agency.²

In her Proposed Decision, the ALJ found that there was no nexus between appellant's duties as a Correctional Officer and either his conviction for drunk driving or participation in the home confinement program and accordingly revoked the suspension. This Proposed Decision was rejected by the Board.

ISSUE

Whether there is a nexus between the charged conduct and H [REDACTED]'s position as a Correctional Officer.

DISCUSSION

Charge of Inefficiency

Respondent charged appellant with both inefficiency and willful disobedience based upon the drunk driving conviction, as well as the 30-day home confinement sentence. The Board finds insufficient evidence in this case to support either charge.

Government Code section 19572, subdivision (c) provides that "inefficiency" may be the basis for an adverse action against a

² In addition, appellant was originally charged with violating Government Code section 19572, subdivision (k), conviction of a felony or misdemeanor involving moral turpitude, but this charge was withdrawn by the respondent. He was also charged with violation of subdivision (q) of section 19572 (Board rule 172), but this charge was properly dismissed by the ALJ in her Proposed Decision. D [REDACTED] L. M [REDACTED] (1993) SPB Dec. No. 93-06.

(H [REDACTED] continued - Page 5)

state employee. The charge of inefficiency, however, connotes a failure to properly and/or efficiently perform the duties of one's job. (See R [REDACTED] B [REDACTED] (1993) SPB Dec. No. 93- , at p. 8.) There is no evidence in the record that appellant failed to properly perform his job duties as a Correctional Officer, either because of the drunk driving incident or because of the subsequent 30-day home confinement program. On the contrary, the record indicates that appellant was placed on 30 calendar days' suspension from the Department during the period of his home confinement and, thus, he did not work at the prison during the period of time in which he served his sentence. Therefore, he could not have performed his job duties in an inefficient manner.³

Even if appellant had worked as a Correctional Officer during the period of time in which he was under home confinement, it appears from the record that appellant could have efficiently performed all of the duties of a Correctional Officer. The anklet was to be worn under appellant's sock and would not have been visible to other prison staff or to the inmates. He was permitted to carry a gun while at work, and was not expected to "call in" to his probation officer or otherwise perform any other non-work related tasks during his work time. The argument that appellant's home confinement sentence could have possibly impacted his job

³ This is not to imply, however, that an employee's failure to be at the workplace could never constitute a charge of inefficiency.

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performance if discovered by inmates is simply too tenuous to support a charge of inefficiency. As there is no evidence in the record that appellant failed to perform the duties of his position in an efficient manner, the charge of violation of subdivision (c) is dismissed.

Charge of Willful Disobedience

In addition to inefficiency, the Department also charged appellant with violating Government Code section 19572, subdivision (o), willful disobedience. The Board believes this charge is also erroneous. Willful disobedience requires that one knowingly and intentionally violates a direct command or prohibition. Coomes v. State Personnel Board (1963) 215 Cal.App.2d 770, 775. What is required is evidence demonstrating that a specific command or prohibition was directed at the appellant by his employer, which the appellant then intentionally proceeded to violate. Given the record before us, we decline to find appellant guilty of willful disobedience.

Failure of Good Behavior

Government Code section 19572, subdivision (t) provides that the following may be a cause for discipline of a state employee:

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.

(H [REDACTED] continued - Page 7)

Discipline imposed under this section must be based on more than failure of good behavior; it must be of such a nature as to reflect upon one's job. That is, it must bear some rational relationship to one's employment and must be of such character that it can easily result in the impairment or disruption of the public service. Warren v. State Personnel Board (1979) 94 Cal.App.3d 95, 104.

The requirement of a "rational relationship" between the off-duty conduct of the employee and the employee's job is often referred to as a "nexus." Discipline can not be imposed upon a state employee for an off-duty incident unless a "nexus" is established.

After reviewing the record in this case, prior Board decisions, and the relevant law in this area, we conclude that there is a rational relationship or nexus between appellant's off-duty misconduct of driving under the influence of alcohol and his duties as a Correctional Officer.

Reviewing our prior non-precedential decisions, we note that the Board has previously found a nexus to exist between the act of driving under the influence of alcohol and the duties of a Correctional Officer. (See e.g., In the Matter of the Appeal by R [REDACTED] . A [REDACTED], SPB Case No. 28788 and In the Matter of the Appeal by G [REDACTED] . H [REDACTED], SPB Case No. 26285.) Similarly, this Board recently held in a Precedential Decision that a nexus exists

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between the position of Youth Counselor and the off-duty act of driving under the influence of alcohol. (M [REDACTED] M [REDACTED] (1993) SPB Dec. No. 93-11).⁴

By this decision, the Board reaffirms its position that a nexus exists between the duties of a Correctional Officer and the off-duty conduct of driving under the influence of alcohol.

Correctional Officers are "peace officers" under the law in California. It is a well-established principle that peace officers may be held to a higher standard of conduct than non-peace officers (Paulino v. Civil Service Commission (1985) 175 Cal.App.3d 962) and that peace officers can be disciplined for breaking the law while off-duty. (Parker v. State Personnel Board (1982) 120 Cal.App.3d 84; Anderson v. State Personnel Board (1987) 194 Cal.App.3d 761.) A peace officer who breaks the law that he is sworn to uphold discredits himself and his employer. (Ramirez v. State Personnel Board (1988) 204 Cal.App.3d 288, 293.)

In Hooks v. SPB (1980) 111 Cal.App.3d 572, the court found nexus sufficient to support the dismissal of a Correctional Officer who had been arrested and convicted for possessing marijuana and

⁴ We note that the Board has declined to find a nexus between an off-duty drunk driving episode and the duties of non-peace officers who merely happen to work in a prison environment. (Charles Martinez (1992) SPB Dec. No. 92-09; Daniel J. Kominsky (1992) SPB Dec. No. 92-19.)

hashish off-duty. The court stated:

Next Hook contends that his possession of marijuana did not rationally relate to his work as a correctional officer. Not so. As the trial judge stated in the conclusions of law: "There is a rational relationship between Hook's possessing marijuana and hashish, his conviction, and his employment as a Correctional Officer. Peace officers may be disciplined, including termination of employment for violating laws they are employed to enforce...The rational relationship is obvious in this factual contest." Hooks v. SPB at p. 577.

Similarly, in Parker v. State Personnel Board (1981) 120 Cal.App.3d 84, the dismissal of another Group Supervisor was sustained on the basis that the Group Supervisor was arrested for possessing marijuana while off-duty. Citing to Hooks, the court held:

...it is now established law that Correctional Officers such as plaintiff may be disciplined as peace officers for violating laws they are employed to enforce. Parker v. State Personnel Board at p. 88.

In Constancio v. SPB (1986) 179 Cal.App.3d 980, the court of appeal upheld the dismissal of a Group Supervisor for the Department of Youth Authority who was arrested for driving under the influence of PCP, an illegal drug. The court had no trouble establishing a nexus between the appellant's off-duty actions and his job as a Group Supervisor (a peace officer), despite the fact that, like appellant, Group Supervisors do not generally drive as part of their job duties nor are they charged with making arrests for driving under the influence of drugs.

(H [REDACTED] continued - Page 10)

As in the above cases, appellant is a peace officer who took an oath to uphold the law. A peace officer's disobedience of the drunk driving laws reflects negatively on his employer. Nexus is established despite the fact that appellant's specific duties as a Correctional Officer do not encompass arresting drunk drivers.⁵

As we recently stated in M [REDACTED] M [REDACTED] (1993) SPB Dec. No. 93-11:

While appellant is not assigned the specific duty of arresting 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. M [REDACTED] at pp. 6-7.

Legal precedent compels a finding of nexus in this instance. As is the case with a Group Supervisor, among the responsibilities of a Correctional Officer is the duty to supervise inmates, to maintain order in the correctional facility, and to enforce all laws and regulations pertaining to the inmates. Given appellant's status as a peace officer and his law enforcement duties at the prison, we find a sufficient connection or rational relationship between his position as a Correctional Officer and his

⁵ This is not to say that formal discipline is warranted for every minor violation of the law (e.g. minor traffic violations) a peace officer may commit outside of duty hours. What is considered particularly relevant in this case is the seriousness of the offense. (See John D. Leng (1993) SPB Dec. No. 93-19, p. 8, fn. 4.)

misconduct.

(H [REDACTED] continued - Page 11)

Finally, as to the issue of the appropriate penalty, we find a 30 calendar days' suspension to be more than justified. This was appellant's second conviction for drunk driving in only a few years, and his third adverse action since 1988: all the prior adverse actions were also based upon serious off-duty misconduct. While the Board commends the appellant for his rehabilitation efforts since the time of this incident, we find that the discipline imposed by the Department is "just and proper" under the circumstances.

CONCLUSION

The Department failed to prove the charges of inefficiency and willful disobedience. The appellant's off-duty misconduct of driving under the influence of alcohol, however, constitutes other failure of good behavior for which the appellant may rightfully be disciplined. The 30 calendar days' suspension is hereby sustained.

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 above-referenced adverse action of a 30 calendar days' suspension is sustained.

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

(H [REDACTED] continued - Page 12)

THE STATE PERSONNEL BOARD*

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

*Member Floss Bos was not present and therefore did not participate in this decision. Member Alfred R. Villalobos was not on the Board when this case was originally considered and 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 August 3, 1993.

Officer

GLORIA HARMON
Gloria Harmon, Executive

State Personnel Board