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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SKEETER REDDING,

Plaintiff and Appellant,

v.

THE CALIFORNIA STATE  
PERSONNEL BOARD,

Defendant and Respondent.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION,

Real Party in Interest and  
Respondent.

B291499

(Los Angeles County  
Super. Ct. No.  
BS166742)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mary M. Strobel, Judge. Affirmed.

Robert Lucas Law, Robert W. Lucas for Plaintiff and Appellant.

California Department of Corrections and Rehabilitation,  
Nathan E. Elmer for Real Party in Interest and Respondent.

## **INTRODUCTION**

Real party in interest and respondent California Department of Corrections and Rehabilitation (CDCR) dismissed petitioner and appellant Skeeter Redding from his employment as a correctional lieutenant for violating Government Code section 19572, subdivision (d)<sup>1</sup> by engaging in inexcusable neglect of duty, dishonesty, and other failure of good behavior. Redding appealed to the California State Personnel Board (SPB). SPB upheld all the charges against Redding and found dismissal was justified.

Redding then brought a petition for writ of administrative mandate in the superior court. After a hearing, the superior court denied Redding's petition and entered judgment in favor of CDCR and SPB. In this appeal, Redding contends (1) SPB erred in failing to dismiss the charge of dishonesty against Redding before the evidentiary hearing; (2) substantial evidence does not support the charges of dishonesty, inexcusable neglect of duty, and other failure of good behavior; and (3) SPB abused its discretion in upholding the penalty of dismissal because the discipline imposed was excessive given the circumstances. We disagree with Redding's contentions and affirm the judgment below.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Redding began his employment with CDCR in March 2003 as a correctional officer. He was promoted to correctional lieutenant in January 2014. In 2014, Redding's duties included

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<sup>1</sup> All further statutory references are to the Government Code unless otherwise indicated.

monitoring Rules Violation Reports (RVRs)<sup>2</sup> to ensure they were processed in a timely manner. The primary staff witness to the suspected misbehavior is responsible for authoring the RVR, and it must be served on the inmate within 15 days of the incident. After the RVR is served on the inmate, a disciplinary hearing is conducted to determine whether the inmate violated prison rules, and the inmate is assessed a punishment for any misbehavior.

Redding's duties as a correctional lieutenant also included serving as the hearing officer for inmate disciplinary hearings. He conducted approximately 40 hearings a week. Redding had discretion in conducting the disciplinary hearings, including which witnesses to call, and ultimately finding the inmate "guilty" or "not guilty" of the charges in the RVR based on the evidence presented at the hearing.

In June 2014, two inmates fought on the yard and an alarm sounded. Redding did not witness the fight, but responded to the alarm. Redding reviewed the incident report,<sup>3</sup> but did not follow up to ensure RVRs were timely issued against the inmates involved in the fight. No disciplinary action was ever taken against the inmates.

In November 2014, staff psychologist Melissa Conkle was conducting a group class for inmates, including an inmate named Calhoun. At the end of the class, Calhoun asked to speak with Dr. Conkle. Calhoun began explaining how he was initially

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<sup>2</sup> When inmate misconduct is believed to be a violation of law or is not minor in nature, applicable regulations require that it be reported on a RVR. (Cal. Code Regs., tit. 15, § 3312, subd. (a)(3).)

<sup>3</sup> All officers who witnessed the incident or were involved in the incident must document what they observed in an "incident package."

skeptical of Dr. Conkle's ability to teach him anything, but had changed his mind. Then he began asking her personal questions and proposed they engage in a secret romantic relationship. Dr. Conkle told Calhoun that his behavior was inappropriate and she would be reporting it. Dr. Conkle wrote a RVR recounting Calhoun's statements and charging him with "overfamiliarity." Based on the RVR, Calhoun was moved to a segregated housing unit.

Redding held a disciplinary hearing for Calhoun concerning the RVR. The prison staff member who reported the infraction is not mandated to appear at the RVR hearing unless either the inmate or the hearing officer requests the witness's appearance. Dr. Conkle insisted she was not contacted before or during the hearing to make a statement. Dr. Conkle did not appear at the hearing as a witness. Redding wrote in the final disciplinary report, however, that Redding "called Psyche. C[onkle] and the following testimony was provided: [¶] Q: Do you recall Inmate C[alhoun] saying the things you wrote in your report? [¶] A: No I am not sure if he was the right inmate." Redding found Calhoun not guilty of "overfamiliarity."

A correctional sergeant informed Dr. Conkle that Calhoun was found not guilty and could be moved back to the area where Dr. Conkle worked, which presented a safety concern for her. Dr. Conkle was shocked to discover she supposedly made a statement at Calhoun's disciplinary hearing on a day she did not work. Dr. Conkle wrote a memorandum to prison staff reiterating Calhoun had sought a personal relationship with her, stating Redding did not interview her, and asserting, if called as a witness, she would have testified that she was "confident beyond any shadow of doubt that it was inmate Calhoun who said the reported

inappropriate things to [her] and engaged in overfamiliar behavior.” Dr. Conkle made similar statements in an investigative interview conducted by CDCR’s Office of Internal Affairs.

Based on the two incidents described above, CDCR served Redding with a Notice of Adverse Action (NOAA), dismissing him from state service for violating Government Code section 19572, subdivisions (d) [inexcusable neglect], (f) [dishonesty], and (t) [other failure of good behavior]. Redding appealed his dismissal and an administrative hearing was held before an administrative law judge (ALJ).

The ALJ issued a proposed decision finding Redding failed to ensure disciplinary charges were brought against the inmates for fighting on June 9, 2014, and intentionally and falsely attributed a statement to Dr. Conkle during Calhoun’s disciplinary proceeding. The ALJ further found Redding’s misconduct constituted gross negligence, dishonesty, and other failure of good behavior, and that dismissal was justified. SPB adopted the ALJ’s proposed decision as its final decision.

Redding filed a petition for writ of administrative mandate in the Los Angeles Superior Court seeking to compel SPB to set aside its decision to discharge him from his position as a correctional lieutenant. The court denied the petition, holding substantial evidence supported SPB’s findings, and SPB did not abuse its discretion in upholding Redding’s termination. Redding appeals from the court’s judgment.

## DISCUSSION

### I. SPB Did Not Err By Declining to Strike the Dishonesty Allegations Before the Hearing

Redding contends SPB erred by denying Redding's motion to strike the dishonesty charge because the NOAA did not include the statements that were allegedly dishonest with sufficient specificity. We disagree.

To ensure the employee is provided with his or her constitutional right to due process, the NOAA must provide the employee with sufficient notice of the charges against him to provide a reasonable opportunity to respond. (*Rosenbilt v. Superior Court* (1991) 231 Cal.App.3d 1434, 1445.) Here, the NOAA identified several dishonest acts. For example, the NOAA stated on December 19, 2014, in his Rules Violation Hearing decision, Redding falsely indicated Dr. Conkle was present at the hearing and provided testimony. The NOAA also stated that on August 10, 2015, in an investigatory interview, Redding denied that he made a false statement in his hearing decision and falsely claimed that he spoke with Dr. Conkle on the phone prior to the hearing.

As the ALJ correctly noted, "there is no requirement that a NOAA specifically connect each instance of alleged misconduct with the charges, e.g., to label each instance as 'dishonest.'" The NOAA specified the acts giving rise to the charges against Redding, providing the dates and a description of the alleged misconduct. Based on this information, Redding could respond to the charges against him. Accordingly, SPB correctly denied Redding's motion to strike the charge of dishonesty.

## II. Substantial Evidence Supports SPB's Findings

### A. Standard of Review

“The scope of our review from a judgment on a petition for writ of mandate is the same as that of the trial court.” (*Department of Corrections & Rehabilitation v. State Personnel Bd.* (2015) 238 Cal.App.4th 710, 716.) “Decisions of the State Personnel Board, an agency of constitutional authority [citation] are reviewed only to determine whether substantial evidence supports the determination, even when vested rights are involved.” (*Coleman v. Department of Personnel Administration* (1991) 52 Cal.3d 1102, 1125.) The trial court appropriately applied substantial evidence review to examine the entire administrative record to determine whether the agency’s findings were supported by substantial evidence. (*Ibid.*)

“On substantial evidence review, we do not ‘weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it.’” (*Do v. Regents of University of California* (2013) 216 Cal.App.4th 1474, 1492). “We are not free to indulge in an independent reconstruction of the events: our review of the record must be circumscribed by a limited appellate review of [SPB] proceedings.” (*Id.* at p. 1490.) “We examine all relevant evidence in the administrative record and view that evidence in the light most favorable to the judgment, resolving all conflicts in the evidence and drawing all inferences in support of the judgment.” (*Ibid.*) “Only if no reasonable person could reach the conclusion reached by the administrative agency, based on the entire record

before it, will a court conclude that the agency's findings are not supported by substantial evidence." (*Ibid.*)

**B. SPB's Finding that Redding's Conduct  
Constituted Inexcusable Neglect of Duty**

**1. Failure to Ensure Disciplinary Charges Were  
Brought Against Inmates Hunter and Scott**

Redding concedes he neglected his duty by failing to ensure RVRs were issued for the June 9, 2014 inmate fight, but contends his conduct did not constitute "gross negligence." Under section 19572, subdivision (d), "neglect of duty" means "an intentional or grossly negligent failure to exercise due diligence in the performance of a known official duty." (*Gubser v. Department of Employment* (1969) 271 Cal.App.2d 240, 242.) "Gross negligence" has long been defined in California as a "“want of even scant care”" or "an extreme departure from the ordinary standard of conduct." (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 765.) The distinction between ordinary and gross negligence "amounts to a rule of policy that a failure to exercise due care in those situations where the risk of harm is great will give rise to legal consequences harsher than those arising from negligence in less hazardous situations." (*Colich & Sons v. Pac. Bell* (1988) 198 Cal.App.3d 1225, 1240.)

The ALJ explained the risk of harm in failing to ensure an RVR is issued: "Inmates Hunter and Scott engaged in a physical fight, and were not held accountable for their actions. Inmate discipline must be maintained for orderly and safe prison operations. Even a relatively minor fight among inmates is a



significant threat to public safety—a small fight may escalate into a larger disruption, and any fight exposes correctional staff to potential injury in quelling the disruption. While [Redding] was not responsible for personally writing Rules Violation Reports against Inmate[s] Hunter and Scott, he was ultimately responsible for ensuring that the disciplinary process was completed.” Redding does not contest the ALJ’s findings on appeal. Given the significant safety risk in failing to ensure disciplinary measures are taken after an inmate fight, a reasonable person could conclude Redding demonstrated a “want of even scant care” in potentially exposing correctional staff and other inmates to danger.

## **2. Finding that Redding Intentionally Fabricated the Calhoun Hearing Report**

Redding further contends no substantial evidence supports the finding that he intentionally fabricated statements of Dr. Conkle in Calhoun’s hearing report. As noted above, Redding wrote in the final hearing report that he “called Psyche. C[onkle] and the following testimony was provided: [¶] Q: Do you recall Inmate C[alhoun] saying the things you wrote in your report? [¶] A: No I am not sure if he was the right inmate.” Redding argues he “testified extensively at the hearing that he had conducted a pre-hearing telephone conference with a female he believed to be Conkle based on how he placed the call to Conkle’s unit to discuss the upcoming hearing in accordance with his custom and practice, and that the [individual] he spoke to, presumably Conkle, volunteered the information that she was not positive that Calhoun was the correct inmate.” And, he argues, “[n]o

evidence exists that Redding did not make the phone call . . . or that the conversation itself did not take place.” In making these arguments, Redding ignores the applicable standard of review. As noted above, we may not re-evaluate the evidence or the ALJ’s credibility determinations. (*Do v. Regents of University of California, supra*, 216 Cal.App.4th at p. 1492.)

The ALJ described Redding’s testimony that he spoke to a woman on the phone he “believed” to be Dr. Conkle as “problematic” and “[w]hile superficially plausible . . . does not withstand scrutiny”: “[Redding] testified that a few days before Inmate Calhoun’s hearing, he attempted to call Dr. Conkle to ask about her whereabouts on the hearing date. He testified that he called a main line and asked for his call to be forwarded to Dr. Conkle, his call was forwarded to a woman, and that unknown woman made the statement, ‘No I am not sure if he was the right inmate.’ . . . [Redding] testified that he believed the woman was Dr. Conkle simply because he asked to be connected to Dr. Conkle. It is unreasonable to believe that [Redding] would not verify who he was speaking to, if the purpose of his call was to ascertain a specific person’s availability on a specific date. Additionally, it is not apparent why the unknown woman would say, ‘No I am not sure if he was the right inmate,’ if [Redding] only asked about her availability on the upcoming hearing date. Moreover, it is unreasonable to believe that if [Redding] was speaking to a woman who had no involvement with the Rules Violation Report, neither [Redding] nor the woman would realize that circumstance during their conversation. An ordinary person receiving an unexpected call would inquire what the call was about. And finally, [Redding’s] description of the phone call is inconsistent with his statement in the disciplinary report that

‘Dr. Conkle’s’ comment was made in response to a direct question from [Redding]: ‘Do you recall Inmate [Calhoun] saying the things you write in your report?’”

The ALJ concluded “Redding’s testimony is not credited,” while crediting Dr. Conkle’s testimony. Dr. Conkle testified Redding never contacted her in connection with Calhoun’s disciplinary hearing, and she never talked to Redding at all about the incident with Calhoun. The ALJ found her testimony was “not vague or evasive, and [was] free from dramatization or hyperbole.” Further, “[s]he demonstrated good recall of events, and described her encounters with Inmate Calhoun and [the correctional sergeant] in detail.” And, the ALJ noted “Dr. Conkle’s testimony is supported by several consistent statements, including her Rules Violation Report, the two memoranda she authored, and her statements when interviewed by CDCR’s Office of Internal Affairs.”<sup>4</sup>

We will not disturb the ALJ’s credibility findings. Dr. Conkle’s testimony constitutes substantial evidence to support the finding that Redding intentionally fabricated the Calhoun hearing report.

### **C. SPB’s Finding that Redding Engaged in Dishonesty**

To support an allegation of dishonesty, “it is enough if the falsehoods the personnel board deemed to constitute dishonesty

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<sup>4</sup> When interviewed by CDCR’s Office of Internal Affairs, Dr. Conkle stated she “absolutely” never said “no I am not sure if he was the right inmate,” the statement Redding attributed to Dr. Conkle in the hearing report on Calhoun’s disciplinary hearing.

could be accepted by a reasonable mind as substantial evidence in support of that deduction.” (*Curcek v. State Personnel Board* (1967) 247 Cal.App.2d 827, 830.) “Dishonesty connotes a disposition to deceive. [Citation.] It ‘denotes an absence of integrity; a disposition to cheat, deceive, or defraud; . . .’” (*Gee v. California State Personnel Board* (1970) 5 Cal.App.3d 713, 718-719.) Redding contends “[d]ishonesty requires more than just differing versions of events by separate witnesses” and no evidence exists that Redding acted with the intent to deceive when he drafted his hearing report.

Because the ALJ did not find Redding’s testimony credible, there was no explanation for why Redding included a false statement in his signed hearing report. Although Redding’s motive is unclear, it is reasonable to deduce Redding intentionally and falsely attributed a statement to Dr. Conkle in his hearing report. If Conkle’s testimony is credited – as it was by the ALJ – it is not unreasonable to conclude that Redding knowingly fabricated his account of his telephone conversation with Dr. Conkle (or someone he thought was Dr. Conkle), and that his report was knowingly false. Accordingly, substantial evidence supports SPB’s finding that Redding engaged in dishonesty.

#### **D. SPB’s Finding that Redding Engaged in a “Failure of Good Behavior”**

Section 19572, subdivisions (a) through (s) list specific kinds of conduct that can be detrimental to state service. Subdivision (t) is a catchall provision that includes situations and acts that do not easily fit into the 19 specific causes in section

19572, but constitute “[o]ther failure of good behavior . . . of such a nature that it causes discredit to the appointing authority or the person’s employment.” (§ 19572, subd. (t); *Nightingale v. State Personnel Board* (1972) 7 Cal.3d 507, 512.) Redding contends the “Court should also dismiss this charge” because “no evidence proves that Redding’s failure to ensure [preparation of] the RVR was grossly negligent and that he was dishonest in writing his hearing report.” Because substantial evidence supports SPB’s findings of gross negligence and dishonesty, as discussed above, we conclude SPB did not err in concluding Redding’s conduct also constituted “other failure of good behavior” under section 19572, subdivision (t).

### **III. SPB Did Not Abuse Its Discretion By Concluding Dismissal Was An Appropriate Penalty**

“The propriety of a penalty imposed by an administrative agency is a matter vested in the discretion of the agency, and its decision may not be disturbed unless there has been a manifest abuse of discretion. [Citations.]” (*Williamson v. Bd. of Medical Quality Assurance* (1990) 217 Cal.App.3d 1343, 1347.) “If reasonable minds may differ with regard to the appropriate disciplinary action, there is no abuse of discretion.” (*County of Los Angeles v. Civil Service Com.* (1995) 39 Cal.App.4th 620, 634.) In considering whether an abuse of discretion occurred, the overriding consideration “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.’” (*Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 218.)

The ALJ noted dismissal would be an extreme punishment for Redding's failure to ensure the inmates were disciplined for fighting. Redding's dishonesty concerning Calhoun's disciplinary hearing, however, demonstrated he could not be trusted. As the ALJ stated, "Whatever [Redding's] motivation may have been—whether cutting corners or bolstering Inmate Calhoun's denial of the charges—he violated the public's trust in him to exercise his authority with integrity. [Redding's] dishonesty discredited himself and his employer." The ALJ also found there was a strong likelihood of recurrence because "[Redding] did not accept responsibility for his serious misconduct in creating affirmative misrepresentations in the disciplinary proceeding against Inmate Calhoun. Instead, [Redding] attempted to craft an alternate version of events that evaded Dr. Conkle's confident insistence that she did not make the statement [Redding] attributed to her. [Redding] also deflected responsibility by complaining of a lack of training . . . . [¶] Dishonesty in a peace officer is a serious offense. . . . [Redding's] lack of remorse or appreciation for his dishonesty also weighs in favor of a harsh penalty."

Given the ALJ's findings concerning Redding's dishonesty, findings that are supported by substantial evidence, we cannot conclude SPB abused its discretion in upholding the penalty of dismissal.

## **DISPOSITION**

The judgment is affirmed. CDCR is awarded its costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

CURREY, J.

WE CONCUR:

MANELLA, P. J.

COLLINS, J.