Filed 2/17/17 Patterson v. Bd. of Civil Service Commissioners CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

DWAYNE L. PATTERSON, Petitioner and Appellant, v. BOARD OF CIVIL SERVICE COMMISSIONERS FOR THE CITY OF LOS ANGELES, Respondent; DEPARTMENT OF WATER AND POWER, Real Party in Interest.	B269665 (Los Angeles County Super. Ct. No. BS149551)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Kesluk, Silverstein & Jacob, Douglas N. Silverstein, Lauren J. Morrison and Judith K. Williams for Petitioner and Appellant.

Michael N. Feuer, City Attorney, Joseph A. Brajevich, General Counsel for Water and Power, Anat Ehrlich, Assistant City Attorney, Heather E. Jones, Deputy City Attorney, for Respondent Board of Civil Service Commissioners for the City of Los Angeles and Real Party in Interest Department of Water and Power.

Real Party in Interest, the Los Angeles Department of Water and Power (the Department), discharged petitioner and appellant Dwayne L. Patterson from his position as an Electric Trouble Dispatcher (dispatcher) following four instances of misconduct in violation of its administrative manual. Patterson admitted to one instance of misconduct, but disputed his culpability as to the three of the allegations. Respondent Los Angeles Board of Civil Service Commissioners (the Board) upheld Patterson's discharge on the basis of the admitted incident and two of the three contested incidents.[1] Patterson petitioned the trial court for administrative mandamus, seeking reinstatement of his

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[1] It found that a preponderance of the evidence did not support Patterson's culpability in the remaining contested incident.

position and damages. (Code Civ. Proc., §§ 1094.5, 1095.)[2] The trial court found that the weight of the evidence supported the Board's factual findings, and that Patterson's discharge was not an abuse of discretion. Patterson appeals the trial court's denial of the petition.

Patterson contends: (1) the contested incidents of misconduct are not supported by substantial evidence; (2) the Department's investigation of the incidents and its reports were biased, resulting in bias in the Board's decision; (3) the Department failed to follow its policy of progressive discipline; (4) the Department failed to give adequate notice of the charges; and (5) the discipline imposed was excessive.

We affirm.

FACTS[3]

Background

The City of Los Angeles has approximately 1,770 electrical circuits within its boundaries serving its customers. Pursuant to the Department's Operating Orders, the Electric Control Center is the point of origin for all

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[2] All future statutory references are to the Code of Civil Procedure unless otherwise indicated.

[3] We do not discuss the March 5, 2010 incident, which the Board found was not supported by a preponderance of the evidence.

primary clearances—including "OKs To" perform certain functions—for all circuits and equipment that are in service on the power system. The Electric Trouble Section has jurisdiction over "[p]arts of feeder circuits that can be isolated without any switching in a distributing station and 4.8-kv and below customer stations." Dispatchers are "authorized to . . . issue secondary clearances and OKs To based on the primary clearances and OKs To, to authorize persons in charge of work crews."

At the time of his discharge, Patterson had worked at the Department for 24 years, and was a dispatcher in the Electric Trouble Section of the Power Transmission and Distribution Division. He had held that position for approximately 16 years, and had been assigned to the graveyard shift for about 4 years.

The Electric Trouble Section operates 24 hours a day, 7 days a week. There are three shifts: day, p.m., and graveyard. The Electric Trouble Section dispatches work crews to restore electrical service, and monitors the work crews remotely to ensure safety. The section is also responsible for handling electric trouble complaint calls, and calls from the fire department and law enforcement agencies, including the Los Angeles Police Department (LAPD).

Normally, if a circuit is interrupted it will "relay"—automatically shut itself off—and then reset, reclosing the circuit and restoring electricity. A circuit will automatically energize 30 seconds after it is closed. When a work crew is

dispatched to work on a circuit, the electrical load is redirected to a parallel circuit, and a hold is placed to prevent the circuit that the crew will be working on from resetting automatically. Once this has been done, the Department's Electric Control Center will issue an "OK To Work Hot," and the Electric Trouble Section will advise the work crew that it can safely proceed to repair the circuit.

The Department has stringent safety measures in place. For each job dispatched by the Electric Trouble Section, there is a "cut sheet," which lists each step that a work crew will take to restore energy. For each shift, there is one dispatcher designated as the "hot seat" who is responsible for documenting the time that each step is completed on the cut sheet, as relayed to him by an electric distribution mechanic in the work crew (crew mechanic). The crew mechanic contacts the hot seat as each step is completed, and carefully states which steps have been taken and the times those steps were taken. The hot seat must clearly and completely repeat each step back to the crew mechanic so there is "a clear understanding because misunderstandings can lead to people not going home that day." If there is any confusion regarding what has occurred, all work must come to a complete stop for safety reasons. In addition to the cut sheet, the hot seat maintains a circuit map that he annotates with hatch marks to show any open circuits, and job notes that are referred to as "board whites." The hot seat should refer to the cut sheet, map, and any board whites when communicating with the crew mechanic

to ensure safety. Any phone calls regarding a job must be relayed to the hot seat to avoid confusion. When the job is complete, the cut sheets are reviewed for accuracy and archived.

November 2, 2010 Incident

The Department's Evidence

Dispatcher Vernon Segee was the hot seat when Patterson arrived at work early in the morning on November 2, 2010. Segee had worked the p.m. shift, and was working overtime on the graveyard shift. Segee had informed senior electric crew mechanic David McClung of an OK To Work Hot during the p.m. shift, and was required to continue handling all communications with McClung until the job was completed. Patterson, who would have normally been the hot seat for the shift, was Segee's backup.

McClung told Segee that he had an hour's worth of work to complete, and would call back to close the job as soon as he was done. Segee erased the hatch marks showing open circuits on the map for the job.

When McClung called, Segee was on another line. McClung spoke to Patterson, and attempted to give him the final steps of the job for readback.[4] Patterson stated that it appeared the work hot had already been cleared. McClung

[4] The Department introduced an audio recording of the conversation between McClung and Patterson.

asked whether Patterson had the cut sheet in front of him, and Patterson responded that he did not. McClung said that he had not previously called in the steps to complete the job. He told Patterson it was standard practice to read back the completed steps of the job, but Patterson did not read the steps back. Patterson told McClung the work hot had been cleared and that there was nothing left to do.

While Patterson was on the phone, Segee asked whether he was speaking with McClung. Patterson did not respond, so Segee assumed he was talking to someone else. Patterson did not speak with Segee about the call. Segee asked Patterson if McClung had called several more times throughout the shift, but Patterson responded no each time.[5]

When the day shift began, Segee informed the hot seat that the job was open. When Segee returned at 2:30 p.m. for the p.m. shift, the job was still open. McClung was contacted and he said the job had been cleared with Patterson.

Patterson's Response

Patterson testified that he followed procedure. While speaking with McClung, Patterson took the circuit map from Segee's desk and reviewed it. The map had eraser marks where there had previously been hatch marks indicating open switches on the circuit. Although McClung said he had

[5] The Department introduced an e-mail written by Patterson in which he stated, "I did not tell Segee that I had talked to McClung."

not called in the final steps, the map showed that the work hot had been cleared. Because there was a discrepancy in the paperwork, he returned it to Segee's desk for Segee to sort out, in compliance with operating orders.[6]

While Patterson was on the phone, Segee asked if he was speaking with McClung. Patterson answered, "Um hum." Later, Segee asked if McClung had called, but Patterson responded no because he thought that Segee knew about the first phone call, and McClung had not called back since.

The Department's Reply

The Department did not dispute that the open circuits on the map had been fully erased although the cut sheet had not been completed.[7] Erasing the map prior to completing the cut sheet was not good practice, but it was not a violation of operating orders. Patterson had violated Operating Orders 2.2.1 and 2.3 by failing to read back the steps to McClung and ensure there was a clear understanding as to

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[6] McClung had been issued a prior work hot order that night, which had been cleared. There was no board white showing that the work hot in question had been reissued to McClung. Patterson did not testify that he had reviewed the board white showing that the prior work hot had been cleared.

[7] It also admitted that there was no board white showing that the work hot had been reissued.

whether the work hot had already been cleared. If Patterson had been looking at the cut sheet, he would have known that the work hot had not been cleared. Patterson should have brought the discrepancy to Segee's attention to make sure it was properly resolved. He was also required to inform Segee of McClung's call. As the hot seat, Segee should have been informed of all communications with McClung. As a result of Patterson's actions, Segee was unable to complete his paperwork and was led to believe that McClung was still in the field.

February 17th, 2011 Incident

The Department's Evidence

A transmission line in West Hollywood relayed during the graveyard shift on February 17, 2011. Patterson's supervisor, Troy Hanna, instructed him to contact crews working in the area to inform them of the relay so that they could respond if customers called with questions. Patterson refused to relay the information. After Hanna requested that Patterson relay the information several more times without success, he issued a work directive and advised that there would be consequences for refusing to follow the directive. Patterson remained noncompliant. He explained to Hanna that he had not seen a "ticket" with the information. Hanna pointed out that dispatcher Charles Tweedy had shown him the ticket, to which Patterson

responded that he had a headache. He did not mention safety as a reason for refusing to comply. Several employees witnessed the incident. One employee stepped in and began advising the crews of the relay. After about four minutes, Patterson relented and began informing crews of the relay.

Patterson's Response

Patterson testified that he did not comply with Hanna's work directive because Hanna gave him what he knew to be the wrong name for the transmission line. He obtained the correct information and then informed the crews of the relay.

The Department's Reply

Hanna initially misidentified the transmission line. The mistake was irrelevant, however, because it did not pose a safety threat. The disturbance was on the transmission side, and the crews that Patterson was supposed to inform of the relay worked on the distribution side. Although there was no safety concern, the disturbance had affected service and customers had begun calling. Hanna decided to notify the crews of the problem so that they could address customer questions.

A dispatcher is only excused from following a work directive if it is immoral, illegal, or unsafe.

February 22nd, 2011 Incident

On February 22, 2011, an operator from the LAPD called to report that a pole had been hit in a traffic accident. It was Patterson's job to dispatch a work crew to address the problem. He failed to do so, and placed the operator on hold for 27 minutes. The operator hung up and called back. She spoke to Segee, who dispatched a work crew. The downed pole posed a safety risk—it could have been supporting a transformer, or it could have fallen on a car or blocked a sidewalk.

Patterson admitted that he placed the operator on hold and had forgotten that he had done so. He "accept[ed] full responsibility."

PROCEDURAL HISTORY

On February 17, 2012, following investigation of the incidents, the Department served Patterson with a Notice of Proposed Disciplinary Action and "*Skelly*"[8] Package. The notice informed Patterson that the proposed disciplinary action was discharge for: violation of the Department's Administrative Manual, Section 50-04, by failing to carry out assigned work adequately, directly, or promptly under subdivision B-5; requiring excessive supervision or instruction in performance of duties after completion of training for the position under subdivision B-2; and failing to

[8] *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194.

cooperate with other employees, supervision, and the public under subdivision D-2. Patterson was informed that he had the right to have a representative of his choice present, and that he could respond either in person or in writing within seven days.

The *Skelly* Package contained copies of the documents upon which the proposed discipline was based, including: a Notice of Discharge; a memorandum from Mark Berenbach, Manager of Distribution Operations, to Daniel Duffy, Director of Power System Transmission and Distribution, dated January 26, 2012, recommending discharge; a memorandum from Andrew Kendall, Superintendent of Electric Trouble, to Berenbach, dated January 25, 2012, recommending discharge; memoranda regarding investigation of the three incidents described above;[9] audio recordings of phone conversations related to the incidents; forms documenting a verbal warning to Patterson in 2004, a notice to correct deficiencies in 2005, a 6-day suspension in 2006, and a 20-day suspension in 2009; Patterson's training record; and a copy of the Department's Administrative Manual, Section 50-04, Work Performance, A Guide to Employee Discipline.

Kendall's report recommending discharge specified that the incidents on November 2, 2010, February 17, 2011, and February 22, 2011, were in violation of Administrative

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[9] There was also a memorandum regarding investigation of the incident that the Board later found unsupported by a preponderance of the evidence.

Manual, Section 50-04, subdivisions B-5 and D-2. It also cited to the four prior incidents of misconduct that were violations of Administrative Manual, Section 50-04, subdivision D-2, and noted that this continuing pattern of behavior resulted in the need for excessive supervision under subdivision B-2.

A *Skelly* meeting was held on April 6, 2012. Patterson appeared with his attorney. Jeff Carivau, Superintendant of Electric Trouble; Andrew Kendall, Electrical Service Manager; and Wendy Genz, Deputy City Attorney[10] were present. Following the meeting, Carivau advised Barenbach that he recommended proceeding with the proposed discharge.

Patterson was served with a Notice of Discharge on April 26, 2012. He appealed to the Board on April 27, 2012.

Hearings were held before Hearing Officer Jerry Ellner. The parties stipulated that all the requirements of *Skelly* were met.[11] The hearing officer found that the

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[10] At one place in the record Genz is referred to as a Deputy District Attorney.

[11] "In *Skelly*, *supra*, 15 Cal.3d 194, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee certain 'preremoval safeguards,' including 'notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing

Department sustained its burden of proof as to three of the four incidents charged, and that, as to the remaining charge, Patterson displayed an unwillingness to work in harmony with others, but his behavior was excused because it was consistent with operating orders. The hearing officer found the penalty of discharge supported for the following reasons:

"1) [Patterson] had a disciplinary history of failing to cooperate with other employees, supervision, and the public[.]

"2) On November 2, 2010, Mr. Patterson failed to record and repeat back information given to him by Mr. McClung in violation of [the] Department's Operating Orders.

"3) On February 17, 2011, [Patterson] refused to contact field crews as instructed by a supervisor thereby requiring the supervisor to issue a work directive.

"4) On February 22, 2011, [Patterson] failed to cooperate with an LAPD operator by placing her on hold for twenty-seven minutes constituting an unreasonable length of time; thereby requiring excessive supervision."

The hearing officer made the following findings of fact:

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discipline.' (*Id.* at p. 215.) The Supreme Court's directive gave rise to an administrative procedure known as a *Skelly* hearing, in which an employee has the opportunity to respond to the charges upon which the proposed discipline is based." (*Flippin v. Los Angeles City Bd. of Civil Service Commissioners* (2007) 148 Cal.App.4th 272, 280 (*Flippin*).)

"1. The parties have stipulated that the requirements of a due process Skelly Hearing were met.

"2. At all material times, [Patterson] was employed as an Electric Trouble Dispatcher with the City of Los Angeles, Department of Water & Power.

"3. On November 2, 2010, [Patterson] failed to verbally acknowledge and record information given to him by Mr. McClung.

"4. On February 17, 2011, [Patterson] refused to contact field personnel after being instructed by a supervisor to do so with the result that he was issued a work directive.

"5. On February 22, 2011, [Patterson] placed an LAPD operator on hold for an unreasonable length of time.

"6. Mr. Patterson received a documented verbal warning in 2004, for unacceptable behavior/failure to cooperate.

"7. Mr. Patterson received a Notice to Correct Deficiencies in 2005, for failure to cooperate with, or use of abusive language toward employees or the public.

"8. [Patterson] was given a six-day suspension in 2006, for failure to cooperate with, or use abusive language toward employees or the public.

"9. [Patterson] was given a twenty-day suspension in 2009, for failure to cooperate with, or use abusive language toward employees of the public.

"10. The Department followed the system of progressive discipline in the application of penalties for [Patterson's] misconduct.

"11. On or about Apri1 26, 2012, [Patterson] was personally served by Richard Austin at his place of residence with Notice of Discharge effective the end of shift on April 26, 2012.

"12. [Patterson] was served with notice of Proposed Disciplinary Action-Discharge on February 17, 2012.

"13. With the exception of the March 5, 2010 incident, [the] Department has established its case against [Patterson] by a preponderance of the evidence."

The Board sustained Patterson's discharge on March 27, 2014, adopting Hearing Officer Ellner's decision as its own.

Patterson petitioned for administrative mandamus on June 24, 2014, seeking reversal of the Board's decision, reinstatement with full back pay, and an award of incidental damages under section 1095. As relevant here, his contentions included: (1) his right to due process was violated because the Notice of Discharge did not specify the factual basis for the charges against him; (2) Kendall's bias in the investigation and recommended discipline of Patterson fatally infected the hearing; (3) the Board's third and fourth findings with respect to the November 2, 2011 and February 17, 2012 incidents were not established by the weight of the evidence; (4) the Board's tenth finding that the Department followed its policy of progressive discipline was not supported by the weight of the evidence; and (5) the discipline imposed was excessive as a matter of law.

On November 12, 2015, the trial court issued a Statement of Decision, concluding that the weight of the evidence supported the Board's findings and denying the writ. Judgment was entered against Patterson on November 20, 2015.

Patterson timely appealed.

DISCUSSION

Standard of Review

"The applicable standard of review in a mandamus proceeding depends on the right at issue. When a fundamental vested right is involved, such as the right of a city employee to continued employment (*McMillen v. Civil Service Com*. (1992) 6 Cal.App.4th 125, 129), the trial court exercises its independent judgment to determine whether due process requirements were met and whether the agency's findings are supported by the weight of the evidence. (*Strumsky v. San Diego County Employees Retirement Assn*. (1974) 11 Cal.3d 28, 32; *Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 51 (*Kazensky*).) An appellate court must sustain the trial court's factual findings if substantial evidence supports them, resolving all conflicts in favor of the prevailing party, and giving that party the benefit of every reasonable inference in support of the judgment. (*Kazensky*, [*supra*,] at p. 52.)

"Judicial review of an agency's assessment of a penalty is limited, and the agency's determination will not be disturbed in mandamus proceedings unless there is an arbitrary, capricious or patently abusive exercise of discretion by the agency. (*Kazensky*, *supra*, 65 Cal.App.4th at p. 54.) 'Neither a trial court nor an appellate court is free to substitute its discretion for that of an administrative agency concerning the degree of punishment imposed. [Citations.]' (*California Real Estate Loans, Inc. v. Wallace* (1993) 18 Cal.App.4th 1575, 1580.) If reasonable minds may differ with regard to the propriety of the disciplinary action, no abuse of discretion has occurred. (*County of Los Angeles v. Civil Service Com*. (1995) 39 Cal.App.4th 620, 634.) An appellate court conducts a de novo review of the trial court's determination of the penalty assessed, giving no deference to the trial court's determination. (*Deegan v. City of Mountain View* (1999) 72 Cal.App.4th 37, 46 [(*Deegan*)].)" (*Flippin*, *supra*, 148 Cal.App.4th at p. 279.)

Sufficiency of the Evidence

Patterson first contends that there is insufficient evidence to support the trial court's findings with respect to the incidents that took place on November 2, 2010, and February 17, 2011. Patterson's arguments are fundamentally an attempt to reargue the evidence. Where there are "factual and evidentiary conflicts, the superior court's determination of culpability is conclusive and binding

on the reviewing court." (*Deegan*, *supra*, 72 Cal.App.4th at p. 45.) Viewing the facts in the light most favorable to the Department, we conclude the findings are supported by substantial evidence.

With respect to the November 2, 2010 incident, Segee testified that Patterson never told him McClung called, despite the fact that he asked several times. In an e-mail regarding the incident, Patterson himself stated that he did not tell Segee McClung called. The audio recording of Patterson and McClung's phone conversation demonstrates Patterson did not read back the steps McClung gave him, although McClung reminded him that this was the procedure. Patterson told McClung that he did not have the cut sheet—on which the steps must be recorded with the time of completion—in front of him. He informed McClung the work hot was released without clarifying the situation with Segee, or even advising him of what transpired.

As to the February 17, 2011 incident, both Patterson and Hanna testified that Patterson did not comply with Hanna's request to notify work crews that a transmission line had relayed, and that Patterson continued to refuse to comply even after Hanna issued a work directive. Although it is uncontested that Hanna originally gave Patterson the name of the wrong transmission line, the Department presented testimony that the mistake was irrelevant, as the crews would not be working on that line, just addressing customer questions. Absent safety concerns, Patterson offered no valid justification for disobeying a work directive.

Substantial evidence supports the trial court's findings with respect to both incidents. Moreover, Patterson does not challenge the findings relating to him placing the LAPD operator on hold for an extended period of time, conduct that had the potential for danger to workers and the public.

Bias

Patterson makes numerous arguments with respect to the Department's bias in both its investigation and reports, which he claims tainted the Board's decision. As the Board argues, many of these arguments were not raised in the trial court, and were therefore forfeited. (See *Szmaciarz v. State Personnel Bd.* (1978) 79 Cal.App.3d 904, 922 ["'The general rule is that contentions not raised in the trial court may not be raised for the first time on appeal. [Citation.] *Skelly v. State Personnel Board*, *supra*, did not change that basic rule"'].) We address only the contentions that were raised below.

Patterson contends that Kendall was biased against him because Patterson had filed an internal Equal Employment Opportunity (EEO) complaint against him, and had another EEO complaint pending. He asserts Kendall was the driving force behind the investigations, and that memoranda written at Kendall's request never resolved conflicts in his favor. Patterson concedes that Kendall did not serve as the *Skelly* hearing officer or make the ultimate decision regarding his discharge, but argues that under the

"cat's paw" doctrine articulated in *Shager v. Upjohn Co.* (7th Cir. 1990) 913 F.2d 398 at page 405, the biased nature of the underlying investigations tainted the Board's decision.

Regardless of whether the cat's paw doctrine applies, substantial evidence supports the trial court's finding that Kendall was not biased. Patterson presented no evidence that either EEO complaint existed, and we will not presume their existence for purposes of appeal. When Patterson's counsel questioned Kendall about the EEO complaints, he said he did not recall any complaints against him by Patterson. Kendall testified that he suggested Patterson might want to file an EEO complaint about another incident because it was not resolved to Patterson's satisfaction. Kendall denied having any animosity towards Patterson. In the absence of any evidence of bias on the part of Kendall, there is no basis for the contentions that the Department's investigations were tainted, or that the Board was influenced by biased investigations.

Progressive Discipline

Patterson contends that the Department failed to follow its policy of progressive discipline, because it did not give him timely notice of the charges against him or the discipline it proposed to impose. His contention fails for two reasons.

First, Patterson was found to have violated Administrative Manual Section 50-04, subdivisions B-5, B-2,

and D-2. As stated in the Administrative Manual, when an employee commits more than one offense, "the appropriate corrective action should be selected from the range of actions applicable from the most serious offense, and the severity of the disciplinary action should be determined after considering the less serious offenses." The penalty for a first offense under subdivision B-5 includes discharge. Therefore, the Department was under no obligation to impose a lesser penalty.

Second, Patterson received a verbal warning, a written warning, a 6-day suspension, and a 20-day suspension for four prior offenses that took place between 2004 and 2009. Patterson's four prior offenses were violations of subdivision D-2. A third offense under subdivision D-2 may warrant discharge. Discharge is therefore unquestionably within the range of appropriate penalties for a fifth offense. Substantial evidence supports the trial court's finding that the Department imposed progressive discipline on Patterson.

Notice

Patterson contends that the Board's decision is invalid because the Notice of Discharge does not specify the factual basis of the charges against him in violation of *Skelly*, *supra*, 15 Cal.3d. 194. We disagree.

Skelly requires "that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee . . . 'notice of the

proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based . . . .' [Citation.]" (*Flippin*, *supra*, 148 Cal.App.4th at p. 280.) Patterson forfeited this contention by stipulating that the *Skelly* requirements were met at his hearing, but even if he had not, it is the Notice of Proposed Action that must contain the reasons underlying the proposed action, the charges, and materials upon which the action is based. Patterson was served with a *Skelly* Package containing all of the requisite materials concurrently with the Notice of Proposed Action. Included in the *Skelly* package was Kendall's recommendation of discharge, which tied each of the charges to specific incidents.[12]

Discipline

Patterson contends that the punishment imposed was excessive in light of the fact that he acted out of concern for

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[12] Patterson argues that he was prejudiced by confusion regarding the charges, as evidenced by the trial court's finding that he was sleeping when he left the LAPD operator on hold on February 22, 2011. Patterson stipulated that he left the operator on hold for nearly half an hour. Why he did so is relevant only insofar as it might mitigate his punishment. Although the trial court considered the fact that Patterson was allegedly sleeping in its analysis of whether the punishment was excessive, we do not review the trial court's decision with respect to penalty. We review the Board's decision regarding the penalty for abuse of discretion, and find none. (*Flippin*, *supra*, 148 Cal.App.4th at p. 279.)

safety and in accordance with operating orders. The Board did not abuse its discretion.

"In considering whether such abuse occurred in the context of public employee discipline, 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. [Citation.]" (*Skelly*, *supra*, 15 Cal.3d at p. 218.)

Here, all three incidents resulted in harm to the public service. In the November 2, 2010 incident, Segee was unable to complete his paperwork, and the next shift believed that it was monitoring a work crew when it was not. As a consequence, the work crew could not be dispatched to assist with other repairs, but instead remained idle, wasting resources. With respect to the February 17, 2011 incident, Patterson disobeyed Hanna despite being issued a work directive. There were no safety issues to excuse Patterson's refusal. The incident occurred in front of other employees, undermining Hanna's authority. In the incident on February 22, 2011, an LAPD operator was placed on hold for 27 minutes waiting to report that a pole had been struck. The downed pole could have supported a transformer, blocked the sidewalk, or resulted in harm to property, threatening the public safety and subjecting the Department to liability for its delayed response. Additionally, given Patterson's disciplinary history, this conduct was likely to

recur. We conclude the Board acted within its discretion in discharging Patterson.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to the Board.

KRIEGLER, J.

We concur:

TURNER, P.J.

BAKER, J.