



SPECIAL REPORT

THE VOLUNTARY DEMOTION OF A CORRECTIONAL
OFFICER BY THE CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION

OFFICE OF THE INSPECTOR GENERAL

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JUNE 2009

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The Voluntary Demotion of a Correctional Officer by the California Department of Corrections and Rehabilitation

I. Summary

On June 20, 2008, a correctional officer employed at a northern California adult institution by the California Department of Corrections and Rehabilitation injured three persons in a hit-and-run collision while driving under the influence of alcohol. Just days after he was convicted of two felonies related to this incident and sentenced to serve 30 days in the county jail, the officer's request for a voluntary demotion to the position of lead groundskeeper at the institution was granted by the warden. In granting the officer's voluntary demotion, the Office of Inspector General, Bureau of Independent Review found that the warden failed to take timely disciplinary action against the officer despite the department's policy of presumptive dismissal upon conviction of a felony. In addition, the warden allowed the officer to use his personal leave credits to serve a 30-day sentence in the county jail. The warden's actions in allowing the officer to remain employed while incarcerated and then return to work while on active felony probation compromised the safety and security of the institution and did not serve the long-term interests of the department or the state. Furthermore, the warden failed to ensure that the officer met the minimum qualifications for the position of lead groundskeeper, which in fact he did not. Finally, the staff attorney assigned to this case compounded the department's problems by failing to provide timely legal advice to the warden, which contributed to the department entering into a transaction causing immediate financial waste and subjected the department to unnecessary legal risks.

II. Statement of Facts

The officer injured three persons in a hit-and-run collision while driving under the influence of alcohol.

On Friday, June 20, 2008, at approximately 9:00 p.m., the officer caused a two-car accident while under the influence of alcohol resulting in injuries to himself and three passengers in another vehicle. Among the injured passengers was a three-year-old child.

According to the officer, he began drinking beer at approximately 5:00 p.m. that evening at his home and consumed ten to twelve drinks by 8:00 p.m. Shortly thereafter, the officer began driving toward his girlfriend's home in a neighboring community via a state highway. The officer was driving approximately 85 to 95 miles per hour in the left lane when he struck another vehicle while attempting to change lanes. The collision caused the officer to lose control of his vehicle and spin numerous times before coming to rest on a guardrail. The victims' vehicle simultaneously veered off the shoulder of the highway and rolled over three times before coming to rest vertically on its front bumper with the

vehicle's roof leaning up against a tree. The victim-driver was left suspended from his seat belt, facing the ground and unable to call for help because his phone was ejected from the vehicle during the collision. A law enforcement report of the incident stated that the driver sustained "minor contusions to the arms;" the adult passenger sustained "major facial injuries consisting of numerous, large 4-6 inch lacerations, facial trauma, [and] complaint of pain to the entire body;" and the three-year-old victim sustained "[a] large facial laceration, large bruise to right side of face, large abrasion to back of head, [and] glass imbedded in face near eyes."

Immediately after his vehicle came to a stop, the officer fled the scene of the collision despite the precarious situation of his victims. Approximately 90 minutes later, the California Highway Patrol located the officer one-half mile from the incident. At 12:10 a.m., approximately three hours after the collision, the officer was taken to a hospital where results from a blood sample taken showed a blood alcohol content of .25 percent. The officer was booked into the local county jail on charges of felony hit-and-run (a violation of Vehicle Code section 20001(a)), felony driving under the influence with injury (a violation of Vehicle Code section 23153(a)), and felony driving under the influence with .08 blood alcohol content with injury (a violation of Vehicle Code section 23153(b)).

On November 13, 2008, the officer pleaded no contest and was convicted of felony hit-and-run and felony driving under the influence with injury. Upon sentencing, a judge imposed 365 days custody time (30 days of which had to be served in jail and the remainder on home confinement), among other conditions. The officer's mandatory jail term commenced on December 15 and concluded on January 13. By nature of the felony convictions, the officer was immediately prohibited from possessing any firearms.

The officer was initially granted a voluntary demotion to the position of lead groundskeeper thus avoiding punitive and non-punitive action.

On July 3, 2008, just 12 days after learning of the officer's vehicle collision and arrest, the warden submitted a standard form to the Office of Internal Affairs requesting authority to take direct adverse action against the officer. On August 6, 2008, the Office of Internal Affairs reviewed the warden's request for direct adverse action and concurred. Then, on August 11, 2008, the Office of Legal Affairs, Employment and Advocacy Prosecution Team, assigned a staff attorney to provide legal counsel and representation to the department, generally, and the warden, specifically.

As required by department policy, on or about November 13, 2008, the officer informed the employee relations officer at the institution of his felony conviction and sentencing. On or about November 14, 2008, the employee relations officer provided the staff attorney with a copy of the court's minute order reflecting that the officer had indeed been convicted of two felonies and the terms and conditions of his sentence. On November 17, 2008, four days after the officer suffered his felony convictions, he

submitted a request to be “voluntarily demoted from the position of correctional officer, . . . to be placed into the Lead Groundskeeper I position.” The warden approved the officer’s request that same day.

Also that day, an unidentified individual from the institution submitted a “Hiring Freeze Exemption Request” asking that an “unknown” appointee be permitted to fill the position of lead groundskeeper at [the institution] effective “A.S.A.P.” The request justified the exemption due to the overwhelming size of the institution’s property, the current understaffing of groundskeepers at the institution, and the temporary redirection of a painter to grounds keeping work. The request alleged that “[t]here are a lot of grounds keeping tasks that are not being accomplished in a timely manner. These delays are causing safety and security issues” Lastly, the request asked an undersecretary with the department to approve the request with the understanding that “[t]he above action is essential and/or mission critical to the California Department of Corrections and Rehabilitation.” The request was promptly signed by the Deputy Director of the Division of Adult Institutions on behalf of the Director of the Division of Adult Institutions.

On November 19, 2008, a staff person in the institution’s personnel office prepared a request on behalf of the officer for a voluntary demotion to the position of lead groundskeeper and checked the box “Fill Vacancy (No change to position).” The following day, the warden granted the personnel action and the officer received a voluntary demotion from correctional officer to lead groundskeeper, thus avoiding any punitive or non-punitive action for his felonious misconduct.

The Bureau of Independent Review questioned the appropriateness of granting the officer’s voluntary demotion in lieu of discipline.

On or about December 11, 2008, the employee relations officer informed the staff attorney and the bureau’s special assistant inspector general assigned to monitor the institution (bureau’s monitor) that shortly after the officer’s conviction the warden granted the officer’s request for a voluntary demotion from correctional officer to lead groundskeeper. Upon hearing this, the bureau’s monitor suggested that a case conference be convened the following day to complete the adverse action process since a case conference in another matter as well as a monthly warden’s meeting were already scheduled for that day. The employee relations officer informed the bureau’s monitor a decision had already been made that the case involving the officer would not be added to the case conference agenda for the following day. The bureau’s monitor, nevertheless, informed the warden during the next day’s meeting that the bureau was examining the circumstances surrounding the voluntary demotion of the officer.

Following a series of internal discussions, the bureau’s monitor notified the warden that the bureau questioned the appropriateness of the officer’s voluntary demotion. Further, the bureau’s monitor informed the staff attorney that the bureau questioned the legality and propriety of the officer’s voluntary demotion. In response, the staff attorney questioned the bureau’s authority to examine the appointment.

On December 18, 2008, the bureau's monitor met with the staff attorney and the employee relations officer to discuss the applicable law governing voluntary demotions. The bureau's monitor expressed specific concern that the officer did not meet the minimum qualifications for appointment to the position of lead groundskeeper in that the duties and responsibilities of the correctional officer classification and lead groundskeeper classification are not substantially similar. Later that same day, the bureau's monitor provided the staff counsel with relevant legal authority on the issue. The staff attorney represented to the bureau's monitor that she would also research the legal authority to implement voluntary demotions.

On December 29, 2008, the bureau's monitor met with the warden to discuss the officer's voluntary demotion. At the meeting, the warden stated that he did not feel inclined to void the voluntary demotion even if it was determined to be invalid and despite the officer's continuing incarceration. The warden also left unclear when, if ever, the disciplinary action would be acted upon. As a reason for his reluctance to void the voluntary demotion, the warden stated "I gave the kid my word."

The warden failed to comply with department policy, resulting in the Bureau of Independent Review requesting executive review.

Unsatisfied with the warden's handling of the officer's pending disciplinary action, the bureau informed the warden and the staff attorney that it was invoking executive review, thus elevating the matter to the warden's superior, an associate director with the Division of Adult Institutions, and the staff attorney's supervisor, an assistant chief counsel with the Employment and Advocacy Prosecution Team. After invoking executive review, the bureau's monitor prepared and distributed to the parties a nine-page memorandum discussing the warden's obligation to conduct the case conference previously ignored, whether the voluntary demotion required State Personnel Board approval, and the general legality of a voluntary demotion from correctional officer to lead groundskeeper.

On January 7, 2009, the bureau's monitor and supervisor, a senior assistant inspector general, met with the warden; the associate director; the staff attorney; the assistant chief counsel; and her supervisor, the chief counsel, in executive review. At the conclusion of the executive review, the associate director concurred with the bureau's position that the warden failed to comply with department policies and procedures by granting the officer's voluntary demotion without first convening a case conference to resolve the pending disciplinary action. However, the associate director did not agree with the bureau's position that the voluntary demotion violated civil service rules but, nevertheless, held that the voluntary demotion should be voided.

As a result, the associate director decided to initiate a punitive and non-punitive action dismissing and separating the officer from state service for the two felony convictions. On January 20, 2009, the officer was placed on unpaid leave and served a punitive and non-punitive action terminating and separating him from state service.

III. Assessment

In granting the officer's voluntary demotion, the warden violated a number of department policies and procedures intended to ensure a fair and balanced disciplinary process for all its state employees. Specifically, he failed to timely discipline the officer despite knowledge of his two felony convictions, instead allowing him a voluntary demotion that preserved his employment with the state and his good standing as a peace officer in the department. The officer was also authorized to use personal leave credits (paid vacation and holiday time) to serve 30 days in the county jail. It is unlikely that other employees in the department would receive the same favorable treatment under similar circumstances. The warden then employed the officer as a lead groundskeeper to provide direct supervision over convicted felons despite the officer's felony convictions and felony probation status, thus compromising institutional safety and security. In the process, the warden also failed to consult with the staff attorney assigned to this case or the bureau regarding his decision to grant the officer's voluntary demotion in lieu of discipline and in violation of department policy. Even when these issues were brought to the warden's attention, the warden refused to void the voluntary demotion and impose an appropriate disciplinary penalty; choosing instead to subject the department to immediate financial waste and unnecessary legal risks. Moreover, when these issues were brought to the staff attorney's attention, she failed to provide timely legal counsel; thus undermining the department's disciplinary processes.

The hiring authority violated department policies and procedures by failing to timely discipline the officer.

A decision was made early on by the warden to delay the imposition of discipline on the officer until after the criminal proceedings against him concluded. However, one week after the conclusion of the officer's criminal proceedings, the warden instead granted the officer's request for a voluntary demotion to the position of lead groundskeeper without first conferring with the staff attorney or the bureau's monitor, and thereafter never imposed discipline against the officer for the two felony convictions.

Department Operations Manual section 33030.5.2 provides that "[e]ach Hiring Authority shall be responsible for . . . [t]aking adverse action whenever warranted by an employee's behavior [or] conduct; [e]nsuring adverse actions are imposed in a fair, objective, and impartial manner and are consistent with this policy, the principles of just cause and due process;" Here, the warden (the hiring authority in this case) did not take adverse action against the employee despite the fact the employee was a peace officer, the employee's conduct resulted in two felony convictions, and the conduct was proven in a court of law beyond a reasonable doubt. Such an unusual response (no formal discipline despite two felony convictions) simply fails to comport with the department policy quoted above. Furthermore, it is unlikely other department employees would be afforded such leniency under similar circumstances; thus failing to demonstrate fairness, objectivity, or impartiality. The department's policy is intended to prevent disparate results such as occurred in this case.

Department Operations Manual section 33030.17 provides that, “[t]he Employee Disciplinary Matrix shall be the foundation for all disciplinary action considered and imposed by the Department and shall be utilized by the Hiring Authority to determine the penalty to impose for misconduct.” The employee disciplinary matrix, found in Department Operations Manual section 33030.19, specifically provides that the penalty for a felony conviction is dismissal from state service. Furthermore, Department Operations Manual section 33030.15.5 provides that, “[d]ismissal is appropriate for exceptionally serious misconduct, misconduct that is not correctible through discipline, or misconduct which immediately renders the individual unsuitable for continued employment.” Considered in light of Government Code section 1029, which provides that persons convicted of a felony are disqualified from employment as peace officers, it is clear that the weight of authority compels dismissal of a peace officer employee once convicted of a felony. The warden’s failure to timely discipline the officer under the circumstances was, therefore, unjustifiable.¹

The hiring authority allowed the officer to use personal leave credits to serve 30 days in the county jail.

On November 14, 2008, immediately after learning the officer sustained two felony convictions, the warden should have taken action to place the officer on unpaid leave pending his dismissal from state service. Instead, the officer was allowed to use personal leave credits (paid vacation and holiday time) to serve his 30-day felony sentence in the county jail, which began on December 15, 2008. While in jail, the officer continued to collect a full salary, and the department continued to pay the state’s share of his dental and medical benefits. In addition, he continued to accrue vacation, holiday, sick, and civil service credit toward his retirement that he would not have otherwise received. This needlessly cost the department financial resources when such resources are scarce. Moreover, with approved time off, the department was precluded from separating the officer from state service for failing to report to duty for five consecutive days without approval (commonly referred to as AWOL separation); a process less costly to the department and one with fewer legal risks.

Of equal concern is the precedent established by the officer’s authorized use of personal leave to serve jail time. This raises the question whether it is the department’s policy or practice to permit its employees personal leave to serve jail time, even when convicted of a felony.

¹ Additionally, by granting the officer a voluntary demotion, this may have permitted him to resume his former position as a correctional officer at a later date if he successfully completed felony probation and petitioned the court to reduce his convictions to misdemeanors.

The hiring authority's actions compromised the safety and security of the institution.

An additional concern is the warden's action authorizing the officer to return to work to supervise inmates while on active felony probation after serving a period of incarceration.² According to the State Personnel Board job specifications, a lead groundskeeper (in addition to ordinary landscaping duties): "maintains order and supervises the conduct of persons committed to the Department of Corrections or the Youth Authority; prevents escapes and injury by these persons to themselves or others or to property; maintains security of working areas and work materials; inspects premises and searches inmates, wards, residents, or patients for contraband, such as weapons or illegal drugs."

Employing the officer to provide direct supervision of inmates while on active felony probation compromised the safety and security of the institution. Inmates may have sought to exploit his status as a convicted felon. For instance, it is not uncommon for employees with financial difficulties to traffic contraband to inmates in exchange for cash. Similarly, it is not uncommon for inmates to threaten to falsely accuse staff of wrongdoing (which in this case could have resulted in the officer's violation of probation and return to custody) absent some favor in return. Such favors may include access to restricted areas, confidential records, cell phones, or controlled substances.

A further concern is the precedent established by the warden's hiring of a felon on active felony probation to supervise inmates. This raises the question whether it is the department's policy or practice to employ persons on active felony probation to directly supervise inmates.

The hiring authority may have violated state hiring practices by granting the officer's request for a voluntary demotion.

As described above, the warden circumvented department policies and procedures to implement a series of transactions by which the officer could retain employment with the department despite his multiple felony convictions. As of November 13, 2008, it was the opinion of the employee relations officer, who spoke with the officer, that the officer would tender his resignation the next day. Instead, on November 17, the officer submitted a request for a voluntary demotion to the position of lead groundskeeper. That same day, the institution submitted a hiring freeze exemption request to appoint an "unknown" appointee to the position of lead groundskeeper with the justification that it was necessary to maintain safety and security at such a sprawling institution. Convinced that this appointment was "essential and/or mission critical to the Department," executive management approved the request. By November 20, 2008, the personnel transaction was complete and the officer received a voluntary demotion to the position of lead groundskeeper.

² Pursuant to California Code of Regulations section 3172.1, even a visitor convicted of a felony within the past three years may be barred from entering institutional grounds.

In a memorandum provided to the warden and the staff attorney on January 6, 2009, the bureau's monitor cited specific case law for the proposition that a transfer to a different classification without competitive examination is improper unless the duties, qualifications, responsibilities and salaries of the different classifications are substantially the same. The memorandum then compared and contrasted the respective duties of a lead groundskeeper and correctional officer, concluding that the two involve substantially different qualifications and tests of fitness. Therefore, the bureau cautioned that a voluntary demotion from correctional officer to lead groundskeeper could not legally be effectuated without competitive examination.³ Although made moot in this case by the associate director's decision to void the officer's voluntary demotion, the bureau encourages the department to consider the legal authorities cited in the bureau's memorandum before repeating a similar personnel transaction in the future.

The hiring authority received untimely legal counsel from the staff attorney assigned to the case.

An attorney has many responsibilities; among the most significant is the responsibility to maintain frequent and effective communications with the client regarding all aspects of the case. Another is the responsibility to provide the client with sound legal advice concerning general case strategy, available options and potential pitfalls. The staff attorney's lack of initiative in both regards did not serve the hiring authority nor the department well in this case.

The staff attorney failed to meaningfully consult with the hiring authority and the bureau at the most critical juncture in the case. Department Operations Manual section 33030.5.5 requires that staff attorneys provide legal consultation to the hiring authority on all designated cases and coordinate with the bureau's monitor, for cases the bureau is monitoring, regarding application of the disciplinary matrix to determine the appropriate penalty. In addition, Department Operations Manual section 33030.5.2 requires that hiring authorities consult with the staff attorney, for designated cases, and the bureau's monitor for cases the bureau is monitoring, regarding . . . appropriateness of the penalty. Thus, upon learning of the officer's felony convictions and pursuant to department policy just described, the staff attorney had an obligation to meaningfully and timely confer with the warden and the bureau regarding application of the disciplinary matrix in this case. The staff attorney also had a professional responsibility to counsel the warden regarding his obligation to consult with the bureau regarding the officer's potential penalty. Regrettably, at no point following the officer's felony convictions did the warden or the staff attorney initiate such a dialogue with the bureau (as required by department policy) before the officer's voluntary demotion was granted in lieu of discipline.

³ Notably, in a 2003 case litigated in front of the 3rd District Court of Appeals, the department took the position that it could not provide an injured correctional cadet a reasonable accommodation at his request in the form of a transfer to another position because it violated civil service rules. Yet in this case, the department transferred the officer at his request to another position after he sustained two felony convictions.

A better approach would have been for the staff attorney to discuss with the warden and the bureau all the options available to him in the event the officer was convicted of any of the felony charges pending against him. A meaningful consultation would have included a discussion of the benefits and pitfalls to be anticipated with each option. Accordingly, a sound legal strategy could have been developed to swiftly handle the officer's disciplinary case upon the conclusion of his criminal proceedings, regardless of the outcome of those proceedings. Proactive communications such as this between staff attorneys and wardens are not only required pursuant to department policy, but are also to be expected of any professional legal services organization.

The staff attorney also failed to provide the warden with timely legal advice regarding the risks associated with circumventing department policy, and perhaps the civil service process, by granting the officer's voluntary demotion in lieu of discipline. As early as November 14, 2008, the employee relations officer made the staff counsel aware that the officer had suffered two felony convictions. On December 11, 2008, the staff counsel was also made aware that the warden granted the officer's request for voluntary demotion without convening a case conference. In addition, on December 18, 2008, the bureau's monitor made the staff attorney aware that there might be some legal improprieties involved in the officer's voluntary demotion. Under these circumstances, it was incumbent upon the staff counsel to provide the warden with immediate legal advice to ensure his compliance with the department's policies and procedures. Yet there was no meaningful response from the staff attorney regarding the lack of a case conference or the appropriateness of the voluntary demotion, leaving the bureau to convene an executive review on January 7, 2009, to make the department's executive management aware of these serious violations of department policy.

IV. Conclusion

The warden's actions in this case resulted in the department's employment of a convicted felon to supervise inmates at one of its northern California institutions, as well as approval for that employee to serve time in the county jail while on personal leave. Such a result flagrantly disregarded the higher standard of conduct to which all peace officers are held and which the department ordinarily adheres to. To its credit, the department promptly reversed the warden's actions when the bureau brought this matter to the attention of his superior. Furthermore, in response to this report, the executive leadership of the department acknowledged that a number of policies and procedures were violated by the warden, that he acted outside the scope of his training, and that he did not follow established processes – something that the warden himself has also now acknowledged. Thus, while mistakes were made by the hiring authority, it can also be said that the department's proactive response to the bureau's concerns led to the proper conclusion in this case in that the officer was eventually dismissed for his felonious conduct.

The staff attorney's conduct in this case, while not directly responsible for the continued employment of the officer following his felony convictions and incarceration, nevertheless, did not serve the department well. The warden's actions were clearly in violation of department policies and procedures, as the department acknowledged, yet the

staff attorney was unable to provide timely legal counsel when it was most needed. In response to this report, the executive leadership of the department has taken issue with the bureau's characterization of the staff attorney's legal counsel as untimely, but acknowledged that it should have been provided sooner. This is a distinction without merit. The staff attorneys of the Office of Legal Affairs, Employment and Advocacy Prosecution Team, are specifically charged with ensuring hiring authority compliance with department policies and procedures concerning disciplinary actions. When staff attorneys fail to do so in a timely fashion, as in this case, the department is ill-served.