BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by **KAREN PATCHIN** For mandatory reinstatement to the position of Senior Office Assistant with the Humboldt County Department of Social Services at Eureka	SPB Case No. 97-2304 **BOARD DECISION** (Precedential) **NO. 98-06** July 1-2, 1998

APPEARANCES: James A. Smith, Business Agent, AFSCME Council 57, on behalf of appellant, Karen Patchin; Shelley J. Morrison, Deputy County Counsel, on behalf of respondent, County of Humboldt.

BEFORE: Florence Bos, President; Richard Carpenter, Vice President; Lorrie Ward and Ron Alvarado, Members

DECISION

Appellant, Karen Patchin, resigned from her permanent position with the Humboldt County Department of Social Services (HCDSS), which is in the Interagency Merit System (IMS) and subject to the Local Agency Personnel Standards (LAPS),[1] to take a probationary position with the Humboldt County Mental Health Department (HCMHD), which is not in IMS or subject to LAPS. After she was rejected during probation by HCMHD, appellant sought mandatory reinstatement to her position with HCDSS. HCDSS denied appellant's request for reinstatement. Appellant appealed to the State Personnel Board (Board) from HCDSS's refusal to reinstate her to her prior permanent position.

[1] California Code of Regulations, Title 2, Division 5.

In this decision, the Board finds that, when appellant resigned from her permanent position with HCDSS to take a probationary position with HCMHD, she relinquished any rights she may have had to seek mandatory reinstatement under LAPS § 17528(d)[2] to her prior position with HCDSS, or to appeal to the Board pursuant to LAPS § 17550(a)[3] from HCDSS's refusal to reinstate her. The Board, therefore, dismisses her appeal.

BACKGROUND

IMS, LAPS and the Board's Role

The Board adopted LAPS in accordance with the legislative mandate set forth in Government Code §§ 19800 – 19810. Government Code § 19800 provides:

> The State Personnel Board is hereby vested with the jurisdiction and responsibility of establishing and maintaining personnel standards on a merit basis and administering merit systems for local government agencies where such merit systems of employment are required by statute as a condition of a state-funded program or a federal grant-in-aid program established for the following federal laws: Social Security Act, as amended; the Public Health Service Act; and the Federal Civil Defense Act, as amended

LAPS § 17010[4] sets forth the purposes for LAPS, in relevant part, to be as follows:

> These Standards are adopted by the State Personnel Board to implement Government Code Sections 19800-19810 which require establishment of personnel standards in regulatory form "to assure state conformity with applicable federal requirements". . . . They provide for meeting the federal and state requirements by local agencies and are applicable to both Approved Local Merit Systems and the Interagency Merit System directly administered by the State Personnel Board. . . . The departments administering state and federally funded programs in local agencies which have not met the criteria for Approved Local Merit System status

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[2] California Code of Regulations, Title 2, section 17528(d).
[3] California Code of Regulations, Title 2, section 17550(a).
[4] California Code of Regulations, Title 2, section 17010.

constitute the Interagency Merit System directly administered by the State Personnel Board.

LAPS § 17400[5] explains how the provisions in LAPS will be administered by the Board for the local agencies subject to them as follows:

> Interagency Merit System Regulations. The provisions of Local Agency Personnel Standards Chapter 1 [sections 17010 – 17300] apply to all local agencies, including those in the Interagency Merit System (IMS), subject to the requirements of Government Code Sections 19800 – 19810.
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> The provisions of Chapter 2 [sections 17400 – 17592] are the regulations for the Interagency Merit System. They are adopted by the State Personnel Board in accordance with the provisions of Government Code Section 19803, which provides for State Personnel Board administration of a merit system for local agencies not administering their own merit systems, in order to assure State conformity with applicable Federal requirements.

In accordance with Government Code §§ 19800-19810 and LAPS §§ 17010 and 17400, only those Humboldt County (County) departments that: (1) are required to maintain a merit system in order to assure state conformity with applicable federal requirements and (2) do not have their own merit systems because they have not met the criteria for Approved Local Merit System status are included in IMS and subject to the requirements set forth in Chapter 2 of LAPS.

The Facts Underlying this Appeal

Appellant was appointed by HCDSS to the position of Office Assistant in 1986. In 1994, HCDSS appointed appellant to the position of Senior Office Assistant. As a Senior Office Assistant, appellant was a permanent employee of HCDSS. HCDSS is part of IMS and subject to LAPS.

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[5] California Code of Regulations, Title 2, section 17400.

On August 23, 1996, appellant voluntarily resigned from her position as a Senior Office Assistant with HCDSS effective September 9, 1996. On September 10, 1996, she began a probationary appointment as an Office Services Supervisor with HCMHD. On April 4, 1997, appellant was rejected during probation from her position with HCMHD. HCMHD is not part of IMS or subject to LAPS.

Within a week after HCMHD rejected her during probation, appellant met with John Frank (Frank), Director of HCDSS, and requested reinstatement to her former position at HCDSS. Frank advised appellant that her request for reinstatement was permissive and that he declined to exercise his authority to seek appellant's reinstatement.

On May 2, 1997, appellant and her union representative requested a meeting with the interim director of HCDSS, Winston Kavanaugh (Kavanaugh), to discuss appellant's request for reinstatement. On May 5, 1997, appellant and her representative met with Kavanaugh and Lorraine Davey, HCDSS's Administrative Program Manager. During this meeting, appellant was told that: (1) HCDSS considered appellant's reinstatement to be permissive; (2) HCDSS was not going to seek permission from the Board to reinstate appellant; and (3) the County Department of Personnel was placing appellant on a list of eligible candidates.

On May 7, 1997, appellant filed a formal grievance with Kavanaugh in connection with HCDSS's denial of appellant's request for reinstatement. On May 12, 1997, appellant was informed that her grievance was not accepted because she was not an employee of County and, therefore, lacked standing to file a grievance.

On May 16, 1997, appellant filed her appeal with the Board.

DISCUSSION

When appellant voluntarily resigned her permanent position with HCDSS to take a probationary position with HCMHD, she relinquished her permanent status in IMS. As explained below, as a result, appellant gave up any rights she may have had to: (1) seek mandatory reinstatement under LAPS § 17528(d) to her former position with HCDSS; or (2) appeal to the Board under LAPS § 17550(a) from HCDSS's refusal to reinstate her.

When Appellant Resigned from HCDSS to Take a Probationary Position with HCMHD, She Relinquished her Right to Mandatory Reinstatement

Appellant claims that she is entitled to mandatory reinstatement to her former position with HCDSS under LAPS § 17528(d) which, in relevant part, provides:

> Mandatory Reinstatement After Rejection During Probation. A permanent appointee who has vacated a position to accept another position within the local agency, and who is rejected during the probationary period, shall be reinstated to a position in the former class, except if dismissed under Section 17544.[6] (Emphasis added.)

Appellant contends that the term "within the local agency" as used in LAPS § 17528(d) means within the entire County. In support of this contention, appellant relies upon LAPS § 17030(h)[7] which defines "local agency" to mean:

> any city, county, city and county, district, or other subdivision of the state or any independent instrumentality thereof.

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[6] LAPS § 17544 sets forth the causes for disciplinary action which can be brought against employees in IMS departments subject to LAPS.
[7] California Code of Regulations, Title 2, section 17030(h).

According to appellant, since she was rejected during probation from another department within the County, LAPS § 17528(d) mandates that she be reinstated to her former position within HCDSS.

The County contends that, instead of being entitled to mandatory reinstatement under LAPS § 17528(d), appellant is entitled only to permissive reinstatement under LAPS § 17528(a) which provides:

> Permissive Reinstatement. Upon request of an appointing authority to the State Personnel Board Executive Officer, a person who has held permanent or probationary status in the IMS shall be eligible for reinstatement. Reinstatement may be made to any class in which the employee previously had permanent or probationary status, or another class with substantially the same duties as determined by the State Personnel Board Executive Officer. An appointing authority may require a reinstated employee to serve the probationary period for the class to which the employee is reinstated.

The County asserts that LAPS § 17528(d) does not apply because the term "within the local agency" as used in LAPS § 17528(d) cannot be interpreted to mean within the entire County. Instead, the County contends that the term "local agency" as used in LAPS § 17528(d) applies only to an IMS department subject to LAPS.[8]

The Board is, thus, called upon to interpret the intended scope of the term "within the local agency" as used in LAPS § 17528(d).[9]

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[8] In its Respondent's Brief, the County argues that the meaning of the term "local agency" as used in LAPS regulations varies depending upon its context: in some LAPS regulations the term "local agency" is used to refer to the County as a whole; in other LAPS regulations, the term "local agency" applies only to an IMS department. As examples, the County in its Respondent's Brief at page 7, note 4, states that "in LAPS §§ 17152(a) and 17422, the term can best be interpreted as meaning the IMS department of the county, while in LAPS §§ 17515 and 17519, local agency refers to the county as a whole."

[9] See LAPS § 17010 which provides that the LAPS "standards are intended to be used as broad, flexible guidelines reflecting generally accepted personnel practices. The State Personnel Board Executive Officer will provide necessary interpretations of the standards."

Consistent with Government Code §§ 19800-19810 and LAPS §§ 17010 and 17400, the Board finds that the term "within the local agency" as used in LAPS § 17528(d) means within a County department that is in IMS and subject to LAPS, and not within the County as a whole. The Board interprets LAPS § 17528(d) to require mandatory reinstatement only for those employees who vacate a permanent position for a probationary position within an IMS department and are then rejected during probation from that probationary position, so long as they have not been dismissed by the IMS department for cause under LAPS § 17544. Since the only persons who are subject to dismissal for cause under LAPS § 17544 are employees of IMS departments subject to LAPS, it follows that the only persons who are entitled to mandatory reinstatement are those employees who are rejected during probation by a County department that is in IMS and subject to LAPS.

When she resigned her permanent position with HCDSS, an IMS department, to take a probationary position with HCMHD, a non-IMS department, appellant relinquished her right to seek mandatory reinstatement to her prior permanent position under LAPS § 17528(d). The only recourse available to appellant to regain her prior position in HCDSS was under LAPS § 17528(a). Since reinstatement under that provision is permissive, it was within HCDSS's discretion not exercise its authority to seek appellant's reinstatement.

When Appellant Resigned from HCDSS to Take a Probationary Position with HCMHD, She Relinquished her Right to Appeal to the Board

LAPS § 17550(a) sets forth employees' appeals rights, in relevant part, as follows:

> Employment Rights Appeals – As provided in Government Code Section 19803, the State Personnel Board shall hear and decide employment rights appeals. The following actions when taken against employees with permanent status in the Interagency Merit System, are appealable to the State Personnel Board: Involuntary demotion, dismissal, suspension, medical termination or transfer, automatic resignation, reduction in pay for disciplinary reasons, other disciplinary actions that affects the employee's present status, layoff, refusal to hire from a reemployment list, and grievances involving discrimination or political affiliation. (Emphasis added.)

The County contends that, when appellant resigned from HCDSS, she gave up her permanent status in IMS and, thereby, relinquished any rights she may have had to appeal to the Board under LAPS § 17550(a) from HCDSS's denial of her reinstatement. We agree.

LAPS § 17550 grants only employees with permanent status in IMS the right to appeal to the Board for review of the actions described therein. As a consequence of appellant's voluntary resignation from HCDSS, appellant relinquished her permanent status in IMS. HCDSS's refusal to reinstate appellant to her prior position after she had been rejected during probation by HCMHD was not an action against an employee with permanent status in IMS as is required under LAPS § 17550(a) to establish Board jurisdiction.

CONCLUSION

When appellant resigned her position with HCDSS, she gave up her permanent status in IMS and relinquished any rights she may have had to seek mandatory reinstatement under LAPS § 17528(d) or to appeal to the Board under LAPS § 17550 from HCDSS's refusal to reinstate her to her prior permanent position.[10]

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 appeal of KAREN PATCHIN for mandatory reinstatement to the position of Senior Office Assistant with the Humboldt County Department of Social Services at Eureka is hereby dismissed; and

(2) this decision is certified for publication as a Precedential Decision. (Government Code § 19582.5).

THE STATE PERSONNEL BOARD[11]

Florence Bos, President
Richard Carpenter, Vice President
Lorrie Ward, Member
Ron Alvarado, Member

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[10] Since we have concluded that the Board lacks jurisdiction to hear appellant's appeal, the Board does not need to reach the issue of whether appellant's appeal was filed timely.
[11] Member James Strock did not take part in this decision.

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on July 1-2, 1998.

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Walter Vaughn
Executive Officer
State Personnel Board

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