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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

REGINA BOWERS,

Plaintiff and Appellant,

v.

CALIFORNIA STATE PERSONNEL
BOARD,

Defendant and Respondent;

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION,

Real Party in Interest.

E077659

(Super. Ct. No. CIVDS2021071)

OPINION

APPEAL from the Superior Court of San Bernardino County. David S. Cohn,
Judge. Affirmed.

California Correctional Peace Officers Association and Nichelle Banasiak, for
Plaintiff and Appellant.

California Department of Corrections and Rehabilitation Office of Legal Affairs
and Michael P. Doelfs, Real Party in Interest.

No appearance for Defendant and Respondent.

I.

INTRODUCTION

A prison inmate under the watch of Correctional Officer Regina Bowers climbed an exercise yard fence and fled toward the perimeter fence, but was apprehended by prison staff before the inmate could escape the institution. As a penalty, Officer Bowers received a 5 percent pay reduction for 10 pay periods. She contends the penalty is not supported by substantial evidence and is excessive. We affirm.

II.

FACTUAL AND PROCEDURAL BACKGROUND

Officer Bowers was assigned to the Outpatient Housing Unit (OHU) at the Chino Institution for Men (CIM). Inmate-patients assigned to OHU vary in security level, with some serving life sentences and some deemed “high security.”

The OHU has an exercise yard, which is enclosed on three sides by the OHU building and the fourth side enclosed by a chain-linked fence. The yard is accessible only through the OHU building. There is an interior door that leads into the OHU that is separated by a short walkway and an exterior door that leads to the yard.

At some point, the water supply to the OHU yard was turned off, so inmates could not use the yard’s water fountains. Officer Bowers asked her supervisor for guidance and was told to allow the inmates to use the water fountain inside the OHU about 15 feet from the door leading to the OHU yard.

Office Bowers began escorting inmates to the water fountain when they were in the OHU yard and requested water. When she did so, she could not simultaneously monitor the entire OHU yard and the inmate using the water fountain. Officer Bowers did not inform her supervisor or anyone else that she could not fully monitor the OHU yard while escorting an inmate to the water fountain.

While Officer Bowers was supervising about 17 inmates using the OHU yard by herself, one of them asked her to use the water fountain. Officer Bowers followed her standard practice of unlocking the interior door, opening it for the inmate, and standing near the interior door while the inmate used the water fountain.

While standing inside the OHU near the interior door, inmate Sepulveda climbed the OHU yard's exterior fence and ran toward CIM's perimeter fence. The part of the fence that Sepulveda scaled was not visible from the interior door where Officer Bowers was standing, so she did not see him escape. Other CIM staff saw Sepulveda and apprehended him as he climbed the perimeter fence. Officer Bowers did not know Sepulveda had escaped until an emergency headcount was done.

The Department of Corrections and Rehabilitation (CDCR) issued a Notice of Adverse Action (NOAA) to Officer Bowers. The NOAA stated CDCR found that Sepulveda's escape from the OHU yard gave CDCR cause to discipline Officer Bowers under Government Code section 19572, subdivision (d) (inexcusable neglect of duty) and subdivision (t) (other failure of good behavior that discredits the state employer). CDCR

notified Officer Bowers that her salary would be reduced by 5 percent for 10 pay periods as discipline.

An administrative law judge sustained the NOAA. Officer Bowers appealed the decision to the State Personnel Board (SPD), which adopted the administrative law judge's decision in full without modification. Officer Bowers then petitioned the superior court for a writ of mandate vacating the decision. The trial court denied the petition, and Officer Bowers timely appealed.

III.

DISCUSSION

Officer Bowers contends substantial evidence does not support the finding that there was cause to discipline her for her inexcusable neglect of her duty (Gov. Code § 19572, subd. (d)) and her “failure of good behavior” (Gov. Code § 19572, subd. (t)) (*id.*, subd. (t)). (See *Pollak v. State Personnel Board* (2001) 88 Cal.App.4th 1394, 1404 [appellate court reviews SPD findings for substantial evidence without deference to trial court].) We disagree.

Substantial evidence is “evidence ‘of ponderable legal significance, . . . reasonable in nature, credible, and of solid value.’” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873, italics omitted.) In conducting our review for substantial evidence, we review the record in the light most favorable to the SPB. (*Pollak v. State Personnel Board, supra*, 88 Cal.App.4th at p. 1404.) “[A]ll presumptions are indulged and conflicts

resolved in favor of the [SPB's] decision.” (*Telish v. State Personnel Board* (2015) 234 Cal.App.4th 1479, 1487.)

Under Government Code 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” is “an extreme departure from the ordinary standard of conduct.” (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 765.) The difference 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.)

Officer Bowers knew (or at least should have known) that she had a duty to safely monitor inmates in the OHU yard. She knew (or at least should have known) that she could not effectively monitor inmates in the OHU yard while escorting an inmate to the water fountain inside the OHU. She also knew that failing to properly monitor inmates and leaving them unguarded could endanger the safety of other inmates, CIM staff, and the surrounding community. As she acknowledged, escorting inmates to the water fountain while leaving the OHU yard unsupervised created a security risk. By failing to monitor Sepulveda, Officer Bowers allowed him to escape the OHU yard and attempt to escape CIM entirely without her knowing. His attempted escape created a serious security risk and his actual escape could have created an even more serious security risk.

The SPD thus reasonably found that Officer Bowers inexcusably neglected her duty under Government Code section 19572, subdivision (d).

Government Code section 19572, subdivision (t) provides that a public employee like Officer Bowers may be disciplined for “[o]ther failure of good behavior either during or outside of duty hours, which is of such a nature that it causes discredit to the appointing authority or the person’s employment.” The Legislature enacted this provision “to discipline conduct which *can be detrimental* to state service.” (*Stanton v. State Personnel Bd.* (1980) 105 Cal.App.3d 729, 740.) The charged behavior “must be of such a nature as to reflect upon [the employee’s] job,” it “must bear some rational relationship to [the employee’s] employment,” and it “must be of such character that it can easily result in the impairment or disruption of the public service.” (*Warren v. State Personnel Bd.* (1979) 94 Cal.App.3d 95, 104.)

Substantial evidence supports the SPD’s finding that Officer Bowers’ conduct warranted discipline under government Code section 19572, subdivision (t). As the SPD noted, the CDCR’s “essential public service” is keeping inmates safely in custody. Officer Bowers recognized that escorting inmates to the water fountain while leaving the OHU yard unsupervised created a security risk. Although Officer Bowers could have sought assistance with monitoring the OHU yard, she knowingly chose not to do so because she did not want to inconvenience her colleagues.

At the time of Sepulveda’s attempted escape, Officer Bowers was the only Correctional Officer supervising the inmates in the OHU yard. Sepulveda climbed a

portion of the fence that Officer Bowers could not see because she was escorting an inmate to the water fountain inside the OHU. Sepulveda's attempted escape caused an alarm to go off, forced some of Officer Bowers' colleagues to leave their posts to apprehend Sepulveda, and led to a shutdown of parts of CIM followed by an emergency inmate headcount. On this record, the SPD reasonably found that Officer Bowers' failure to properly supervise inmates in the OHU yard, as she was required to do, disrupted the public service of running CIM safely. (*Warren v. State Personnel Bd.*, *supra*, 94 Cal.App.3d at p. 104; *Cate v. State Personnel Bd.* (2012) 204 Cal.App.4th 270 286 [“The safety and physical integrity of inmates is one of the . . . paramount responsibilities” of a correctional officer.])

Officer Bowers argues Sepulveda's escape from the OHU yard was not her fault because her position was “plagued by a litany of issues” out of her control, including being the only Correctional Officer assigned to the OHU yard, confusion about her role and responsibilities, and inadequate supervision by her superiors. In her view, the CDCR unjustifiably “shifts the blame” to her instead of taking responsibility for the “constant deficiencies in her position” and the “defective conditions on the OHU yard.”

Even if true, we must uphold the SPD's decision if supported by substantial evidence. Substantial evidence supports the SPD's finding that Officer Bowers' failure to adequately supervise the OHU yard is why Sepulveda was able to scale its fence and make it to CIM's perimeter fence without. Substantial evidence thus supports the SPD's finding that Officer Bowers' conduct impaired and disrupted CIM's functioning. In other

words, substantial evidence supports the SPD's finding that Officer Bowers' "failure of good behavior . . . cause[d] discredit" to CDCR under Government Code section 19572, subdivision (t) and amounted to an inexcusable neglect of a known duty to effectively monitor inmates under Government Code section 19572, subdivision (d), even if CDCR's conduct, policies, or inaction contributed to Sepulveda's attempted escape.

Officer Bowers argues that even if there was cause to discipline her, CDCR's penalty of a 5 percent pay reduction for 10 pay periods was excessive. We find no abuse of discretion.

The SPD's decision as to the appropriate penalty for Officer Bowers' conduct is entitled to great deference and will be reversed only for an abuse of discretion. (See *County of Siskiyou v. State Personnel Bd.* (2010) 188 Cal.App.4th 1606, 1615.) But "if reasonable minds may differ as to the propriety of the penalty, there is no abuse of discretion." (*Ibid.*)

Officer Bowers' failure to properly supervise the OHU yard allowed Sepulveda to nearly escape and significantly disrupted CIM's operations. Her inadequate performance put her colleagues and other inmates at risk and put CDCR at risk of incurring liability and suffering reputational and financial harm. Under these circumstances, the SPD reasonably found that the appropriate penalty was a 5 percent pay reduction for 10 pay periods. This is not an "exceptional case" where "reasonable minds cannot differ on the appropriate penalty." (*County of Los Angeles v. Civil Service Com. of County of Los*

Angeles (2019) 40 Cal.App.5th 871, 877.) Because the SPB’s decision to uphold Officer Bowers’ pay reduction was within its discretion, we affirm the judgment.

IV.

DISPOSITION

The judgment is affirmed. The CDCR may recover its costs on appeal.

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CODRINGTON
Acting P. J.

We concur:

FIELDS
J.

RAPHAEL
J.