

Chaplin v. State Personnel Board (RPI Department of Forestry)

*Court of Appeal, First Appellate District, Div. 1
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***Court of Appeal Holds that the Term
“final” means FINAL***

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They probably would have gotten away with it, if a battalion chief was not being investigated for murdering his girlfriend.

In April 2014, three firefighters (“appellants”), Justin Chaplin, James Michels, and Frank Schonig and four other candidates applied to be interviewed for three fire captain positions that were available. Before their interviews, the battalion chief texted the interview questions and the agency’s “desired” responses to Chaplin, Michels and Schonig. Unsurprisingly, they, (and not the other four candidates), were appointed to the three vacant captain positions. During the course of the battalion chief’s investigation for murder, the appellants were interviewed and admitted that they had received the text messages.

In January 2015, the Department of Forestry (“CAL FIRE”) served disciplinary notices, i.e., notices of adverse action, on the appellants for cheating on the promotional exam. The three were notified that their term as fire captains concluded and/or they failed the probationary period, and that their *pay would be reduced by 5% for one year*. The discipline was upheld following the *Skelly* hearing. Only Schonig

appealed his discipline to the State Personnel Board (“Board”).

Within weeks of their discipline being upheld, two of the three firefighters, Schonig and Chaplin, were given new promotional interviews and were again promoted to captain. In May 2015, a newspaper published an article, with comments by the director of CAL FIRE, about the “boomerang promotions” of Schonig and Chaplin. The article reported that the firefighters’ “re-promotions caught [the director] off-guard,” and he was “unhappy that both men so quickly regained the rank he stripped from them.”

Shortly after the article was published, CAL FIRE notified Chaplin and Michels that the disciplinary action taken against them was “withdrawn,” and they were placed on administrative leave. It also notified Schonig, who was in the process of appealing his original discipline, that his discipline was being rescinded and he would also be placed on administrative leave. CAL FIRE then notified the three that they would be sanctioned more severely by being demoted from their positions to the rank of Fire Fighter II. All three appealed the new discipline to the Board.

In proceedings before the Board, the three men argued that they could not be disciplined twice for the same conduct. An administrative law judge (“ALJ”) denied the firefighters’ motions to dismiss and in January 2016, the consolidated evidentiary hearing was conducted. The ALJ found CAL FIRE met its burden of proof and upheld the demotions. The Board adopted the decision.

In June 2016, the three firefighters filed petitions for a writ of administrative mandamus in the Superior (“trial”) Court. The three reiterated their claim that the Board was prohibited from disciplining them twice for the same misconduct. Both CAL FIRE and the Board filed oppositions. In their reply brief, the firefighters, for the first time, specifically cited to Government Code section 19575 and argued that it precludes employers from withdrawing *final* disciplinary actions. The trial court denied the petitions, finding no violation of Government Code section 19575.¹ All three appealed the trial court’s ruling.

CAL FIRE and the Board argued that because CAL FIRE made the employees whole before imposing new discipline, it did not violate the prohibition against disciplining employees twice for the same misconduct.

The Court agreed with the firefighters’ argument that **once a disciplinary action becomes final, the employer cannot withdraw it and initiate a new adverse action.** So when is discipline “final”? The Government Code section was clear: the power to discipline is final if not appealed within 30 days.

The Court of Appeal agreed that the discipline against Chapin and Michels became *final* because they did **not** appeal their discipline within 30 days of its imposition, and that CAL FIRE was therefore not permitted to withdraw the notices of adverse action and serve new and different notices. However, for Schonig, who appealed the first notice of adverse action to the

¹ This section relates to appeals filed with the State Personnel Board by state employees

Board, the Court found that his discipline was not yet final because it was still under appeal. Government Code section 19575.5 permits CAL FIRE to amend or file a supplemental notice of adverse action any time “before the employee’s appeal is submitted to the board[] for decision.”

In summary, it was permissible for CAL FIRE to substitute the discipline against the firefighter whose appeal was pending before the Board, but not against the other two, because by statute their discipline became final 30 days after they did not appeal. Therefore, Schonig, who appealed his discipline, was demoted to Firefighter II. Chapin, who did not appeal his discipline, was promoted to Captain, and Michels, who also did not appeal, retained the position he had before all this started.

Sometimes it may be better to not challenge the proposed discipline at a *Skelly* hearing, or request a disciplinary appeal. What happened to Schonig in this case is an example of what could go wrong. As Kenny Rodgers used to sing, you’ve got to “Know when to fold ‘em. Know when to walk away.” It is important to have an attorney experienced in this area of law to advise you through every stage of the disciplinary process - there will be those times when it is better to not challenge your discipline, but just walk away.

Stay Safe!