

Public Labor and Employment

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AALRR Alert



California Court of Appeal Dismisses Officer's Administrative Appeal After He Refuses to Testify at Evidentiary Hearing

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In *Thaxton v. State Personnel Board*, 2016 WL 6777825 (Nov. 16, 2016), a California appellate court affirmed the dismissal of a corrections officer's administrative appeal of his termination. The court ruled that the employee's failure to appear in person constituted a "failure to proceed" with an evidentiary hearing, thereby warranting the dismissal of his appeal.

Facts of the Case

Kevyn Thaxton worked as a corrections officer for the California Department of Corrections and Rehabilitation ("CDCR"). He and three other officers were terminated from their positions for dishonesty and other misconduct arising from a use-of-force incident. All four individuals appealed their dismissals to the State Personnel Board ("SPB"), a statewide administrative agency authorized to adjudicate disciplinary actions.

The SPB consolidated the officers' appeals and held a two-day evidentiary hearing at which Thaxton was scheduled to testify. Although his attorney was present

for both hearing days, Thaxton did not attend on either day. He told the process server he was purposely avoiding acceptance of the subpoena that would compel his presence at the hearing. On the morning of the second hearing day, the Administrative Law Judge ("ALJ") ordered Thaxton to appear that afternoon. Thaxton refused, providing no justification or explanation for his absence.

The ALJ dismissed Thaxton's appeal. She reasoned that because California Government Code §§ 19578-79 and the SPB's analogous Rule 58.3 require parties to "proceed" with a hearing, a party's appeal may be dismissed if he fails to attend hearing proceedings.

The SPB adopted the ALJ's decision. Thaxton petitioned for a writ from the superior court, which ordered CDCR to reinstate Thaxton to his position as a corrections officer. CDCR appealed to the California Court of Appeal.

Analysis of "Failure to Proceed at the Hearing"

California Government Code § 19578 provides state civil service employees with the right to a hearing if they choose to appeal an adverse employment action such as termination. Cal. Gov. Code § 11513(b) provides that each party to a formal administrative hearing has the right to call and examine witnesses and cross-examine opposing witnesses on any matter relevant to the issues involved in the hearing. Cal. Gov. Code § 19579 specifies that if either party (the employee, the employer, or their representatives) fails to "proceed" at such a hearing, their action or appeal will be considered withdrawn.

--> "It would not make sense to allow an employee to invoke the hearing process and appeal his termination, and then allow him to avoid participating in that process and prevent his employer from exercising its right to examine him during the hearing."

The ALJ and superior court both focused on the fact that Thaxton had failed to personally appear at his termination appeal hearing. Thaxton had argued that his attorney's presence at the hearing had satisfied his requirement to "proceed." The ALJ rejected Thaxton's reasoning. However, the superior court agreed with Thaxton that his personal appearance was not required.

The appellate court reversed the superior court's ruling based on a different issue: whether Thaxton's avoidance of the subpoena and refusal to testify as a witness constituted a failure to proceed with the hearing in violation of Cal. Gov. Code § 19579. The court noted that CDCR, as Thaxton's employer, was entitled to call Thaxton as a witness pursuant to Cal. Gov. Code § 11513(b) and that Thaxton knew his testimony would serve as crucial evidence in the proceedings. Furthermore, he failed to appear and testify as a witness even after the ALJ had ordered him to do so. Thaxton's intentional avoidance of service of the subpoena and violation of the ALJ's order effectively prevented the hearing from properly proceeding, in violation of Cal. Gov. Code § 19579.

The court reasoned that permitting Thaxton to behave in the manner he did would frustrate the primary purpose of an adjudicatory hearing: enabling both the employee and the employer to present their versions of the facts. It would not make sense to allow an employee to invoke the

hearing process and appeal his termination, and then allow him to avoid participating in that process and prevent his employer from exercising its right to examine him during the hearing. Therefore, Thaxton's conduct was a "failure to proceed" with the hearing and justified dismissal of his appeal of his termination from his position as a corrections officer.

Future Implications

The reasoning in this decision is not necessarily limited to state employees or SPB proceedings. Many public agencies have Memoranda of Understanding ("MOU") or Civil Service Rules that, like Cal. Gov. Code §§ 19578-79 and 11513(b), provide their employees with the right to a formal hearing when appealing a disciplinary action, and may contain language similar to these statutes. Thus, the court's reasoning in *Thaxton* could be applied to disciplinary hearings conducted by other public agencies. In fact, the appellate court noted that the SPB, as an agency with adjudicatory powers created by the California Constitution, "acts much as a trial court would in an ordinary judicial proceeding."