STATE PERSONNEL BOARD, STATE OF COLORADO

Case No. 96B159

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

PETER E. COLBATH,

Complainant,

vs.

DEPARTMENT OF PUBLIC SAFETY,
COLORADO STATE PATROL,

Respondent.

This matter came on for hearing on June 12, 1996 and concluded on August 23, 1996 before Administrative Law Judge Robert W. Thompson, Jr. Respondent was represented by Michael S. Williams, Assistant Attorney General. Complainant appeared and represented himself.

Respondent's witnesses were Major John Wise and Trooper Gerald Lamb of the Colorado State Patrol. Respondent's Exhibits 1 through 7 and 11 and 12 were stipulated into evidence.

Complainant's evidence consisted of his own testimony.

MATTER APPEALED

Complainant appeals a six-month reduction of pay. For the reasons set forth below, the action of the respondent is affirmed.

ISSUES

1. Whether complainant committed the acts for which discipline was imposed;

2. Whether the discipline imposed was within the range of alternatives available to the appointing authority;

3. Whether respondent's action was arbitrary, capricious or contrary to rule or law;

4. Whether respondent is entitled to an award of attorney fees.

STIPULATIONS OF FACT[1]

1. On February 26, 1996, fresh damage was discovered on patrol car 100. The license plate was bent, and pieces of grass were stuck between the front license plate and bumper. A plastic guard on the undercarriage had been torn loose and was dangling. The black air spoiler appeared to be broken off.

2. Trooper Peter Colbath had driven car 100 for the graveyard shift of February 25, 1996.

3. The qualitative assessment is that the damage to car 100 was minor.

FINDINGS OF FACT

[1] Stipulated facts are conclusive upon the parties and the tribunal. Faught v. State, 162 Ind. App. 436, 440-1, 319 N.E. 2d 843, 846-47 (1974).

1. Complainant, Peter Colbath, has been employed as a trooper for the Colorado State Patrol (CSP) since June 1993, when he attended the training academy.

2. Colbath has experienced job performance problems throughout his employment with CSP in the areas of dealing with other people, report writing and driving. He has been issued approximately six corrective actions for various reasons. Less than a year before the incident under review, he was assigned to a field training officer for 40 hours of training to remedy driving deficiencies.

3. By December 1994, Colbath had been involved in four patrol car accidents. He received two disciplinary actions in 1994 and was required to attend remedial driving school. One of the disciplinary actions was imposed under circumstances similar to the present action, that is, Colbath failed to report to his supervisor that his car had been damaged on his shift and denied knowing that he had caused any damage.

4. CSP regulations require troopers to inspect their vehicles at the beginning and end of each shift. Patrol cars are shared, and it is incumbent upon all troopers to report any damage caused during a shift in order to ensure the safety of the next driver.

5. Trooper Colbath was assigned car 100 for the graveyard shift (10:00 p.m-6:00 a.m.) of February 25/26, 1996. On the morning of February 26, Trooper Nummerdor discovered damage to patrol car 100. No damage had been reported by Colbath.

6. Car 100 had been "bottomed out", i.e., the bottom of the vehicle had hit the ground. According to Major John Wise, "You'd have to be deaf not to hear it," and the impact would be felt through the floor board.

7. Major John Wise, District Six Commander and appointing authority for Colbath's position, properly conducted a Rule R8-3-3 meeting on April 5, 1996. Wise concluded that Colbath either knew or should have known that car 100 had sustained damage, and that the damage should have been reported to Colbath's supervisor.

8. Taking into account Colbath's history of poor job performance, inclusive of a recent, similar incident, the appointing authority imposed a penalty of a six-month, one-step reduction in pay.

9. Colbath concedes that the vehicle damage occurred on his shift but denies knowing of the damage at the time it occurred. He testified that, because it had snowed one or two inches, the car was covered with snow when he drove it into the CSP garage and, consequently, he would not have noticed any damage despite doing a "walk-around" inspection of the vehicle.

10. Complainant filed a timely appeal on April 23, 1996.

DISCUSSION

Respondent contends that complainant knew or should have known that he caused damage to patrol car 100, that complainant's failure to report the damage was a clear violation of CSP policy and, in view of numerous prior corrective and disciplinary actions, the discipline imposed was more than warranted.

In complainant's view, the issue for resolution is whether or not he knew that the vehicle had been damaged. If he did not know, as he adamantly asserts, then presumably he should not be disciplined.

After a considered review of the entire record in this case, it is found that complainant knew or should have known that patrol car 100 had been damaged while he was in control of the vehicle during his shift of February 25/26, 1996. He was negligent either way. At a minimum, something happened which should have put him on notice to inspect the vehicle more closely than he obviously did.

Given complainant's poor driving history with respondent, the appointing authority was compelled to take action. The underlying purpose of ensuring trooper safety required no less. Substantial evidence supports the conclusions of the appointing authority.

In consideration of the eleven factors governing the decision to correct or discipline an employee, found in Rule R8-3-1, 4 Code Colo. Reg. 801-1, the discipline imposed was warranted, if not lenient.

This is not a proper case for the assessment of attorney fees and costs under §24-50-125.5, C.R.S. of the State Personnel System Act.

CONCLUSIONS OF LAW

1. Complainant committed the acts for which discipline was imposed.

2. The discipline imposed was within the range of alternatives available to the appointing authority.

3. Respondent's action was not arbitrary, capricious or contrary to rule or law.

4. Respondent is not entitled to an award of attorney fees.

ORDER

Respondent's action is affirmed. Complainant's appeal is dismissed with prejudice.

DATED this _____ day of September, 1996, at Denver, Colorado.

_____
Robert W. Thompson, Jr.
Administrative Law Judge

CERTIFICATE OF MAILING

This is to certify that on the ____ day of September, 1996, I placed true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** in the United States mail, postage prepaid, addressed as follows:

Peter E. Colbath
18795 West 59th Drive
Golden, CO 80403

and in the interagency mail, addressed as follows:

Michael S. Williams
Assistant Attorney General
State Services Section
1525 Sherman Street, 5th Floor
Denver, CO 80203

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