BEFORE THE DEPARTMENT OF PERSONNEL ADMINISTRATION OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by

[redacted]
From Involuntary Transfer
9708 Appalossa Way
Sunland, CA 91040

SPB Case No. 97-4105

Represented by:
Bill A. Montgomery
Labor Relations Representative
Association of California
State Supervisors
10600 Trademark Parkway North
Suite 405
Rancho Cucamonga, CA 91730

Respondent:
Department of Industrial Relations
Personnel Office
P.O. Box 420603
San Francisco, CA 94102-0603

Represented by:
Stella Owens-Murrell
Staff Attorney
Department of Industrial Relations
Office of the Director
107 South Broadway, Room 6111
Los Angeles, CA 90012

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted as the Department's Decision in the above matter.

IT IS SO ORDERED: June 22, 1998.

K. WILLIAM CURTIS
Chief Counsel
Department of Personnel Administration

BEFORE THE DEPARTMENT OF PERSONNEL ADMINISTRATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by [redacted] From involuntary transfer from the position of Supervising Workers' Compensation Consultant at Los Angeles to the position of Supervising Workers' Compensation Consultant at Sacramento with the Department of Industrial Relations	Case No. 97-4105

PROPOSED DECISION

This matter came on regularly for hearing before Byron Berry, Administrative Law Judge, State Personnel Board, on February 2, 1998, at Los Angeles, California.

Appellant, [redacted], was present and was represented by Bill A. Montgomery, Labor Relations Representative, Association of California State Supervisors.

Respondent was represented by Stella Owens-Murrell, Staff Attorney, Department of Industrial Relations.

This matter was initially scheduled to be heard on November 26, 1997 and was continued to February 2, 1998 because respondent's counsel had a pre-scheduled vacation for November 26, 1997.

Evidence having been received and duly considered, the Administrative Law Judge makes the following findings of fact and Proposed Decision:

I

The above involuntary transfer effective October 1, 1997, and appellant's appeal therefrom, comply with the procedural requirements of the Department of Personnel Administration.

II

Appellant was appointed as a Field Representative, Self-Insurance Plans (SIP) on August 2, 1976. He promoted to the position of Consultant (SIP), Workers' Compensation on March 1, 1979. On October 30, 1980, he obtained the position of Supervising Workers' Compensation Consultant. He has no prior adverse actions.

III

In a memorandum (memo) dated July 31, 1997, appellant was informed that he was being transferred to the Sacramento SIP Office, effective October 1, 1997. The memo indicated that the closures of the Los Angeles and San Francisco Field Offices of the SIPs would allow SIP to consolidate administrative functions in Sacramento and make more efficient use of program resources. In lieu of transferring to the Sacramento SIP office, appellant was given the option of voluntarily demoting to the position of Workers' Compensation Consultant. He was informed that a

Workers' Compensation Consultant position would be made available to him if he voluntarily demoted to that position prior to the October 1, 1997 effective date of his transfer to Sacramento.

Appellant did not accept the transfer to the Sacramento SIP office and he did not voluntarily demote to the position of Workers' Compensation Consultant. He appealed his transfer to the Sacramento SIP office to the Department of Personnel Administration and his appeal was heard on February 2, 1998.

IV

Appellant was informed on September 23, 1996 and April 23, 1997 that he was under investigation because of allegations that he engaged in inappropriate activities during an audit. There was an investigatory meeting about the audit in May 1997.

On June 1, 1997, appellant took a disability leave.

On July 1, 1997, appellant was informed that the Los Angeles SIP office would be closing and he could transfer to the Sacramento office, or take a demotion and work in the Los Angeles area. Appellant never responded to this memorandum because he was advised not to respond by his workers compensation attorney.

As of the date of this hearing on February 2, 1998, appellant never gave a response to the memorandum that informed him that the Los Angeles office would be closing. On the day of

the hearing on February 2, 1998, appellant was given the option of transferring to the Sacramento SIP office or accepting a demotion to work in the Los Angeles area. Appellant did not accept either of those options.

* * * * *

PURSUANT TO THE FOREGOING FINDINGS OF FACT, THE ADMINISTRATIVE LAW JUDGE MAKES THE FOLLOWING DETERMINATION OF ISSUES:

Government Code section 19994.3 prohibits transfers based on harassment or discipline. Appellant did not establish that his transfer was based on discipline or harassment. Appellant had the option of accepting the transfer to Sacramento, or taking a voluntary demotion to remain working for the Department in Los Angeles. He did not exercise either of those options. The Department followed the proper procedures for the involuntary transfer of appellant.

* * * * *

WHEREFORE IT IS DETERMINED that the involuntary transfer of appellant [redacted] from Los Angeles to Sacramento, effective October 1, 1997, is affirmed and appellant's appeal is denied.

* * * * *

(continued)

I hereby certify that the foregoing constitutes my Proposed Decision in the above-entitled matter and I recommend its adoption by the Department of Personnel Administration as its decision in the case.

DATED: May 13, 1998

Byron Berry

Byron Berry
Administrative Law Judge
State Personnel Board