

Running the Statute: When the Clock Starts on Multiple Acts of Misconduct Case

Garcia v. State Dept of Developmental Services

Ca.Ct.App. Jan. 26, 2023,
No. C094235) 2023 WL 2131039

February 2023

Question:

In an investigation of multiple acts of misconduct alleged to have occurred on different dates, when does the statute of limitations clock start?

Answer:

The 1-year statute of limitations period begins to run at the time the misconduct is *discovered*, **not** at the time the agency initiates an investigation.

Facts

In May 2018, Department of Developmental Services Sergeant Luis Garcia's supervisors became suspicious that he was manipulating work schedules by creating vacant critical positions so he could assign himself and maximize his overtime hours.

The Department initiated an investigation in June 2018. The investigation sustained various acts of misconduct, both related and unrelated, to the alleged overtime manipulation.

In April 2019, the Department terminated Garcia. Garcia appealed and was reinstated to his position as Sergeant.

Three weeks after being reinstated, the Department issued a second Notice of Adverse Action, this time seeking to demote Garcia to Officer. The NOAA was based on the same misconduct as that found in the first notice.

Garcia again appealed and argued that because the charged misconduct occurred in May 2018, the Department was required to serve the Notice of Adverse Action within 1 year of that date per the Gov't. Code §3304(d)(1).

The State Personnel Board agreed and dismissed the overtime manipulation allegation from the Notice; however, because Garcia engaged in numerous *other* acts of misconduct, they upheld the demotion, nonetheless.

Garcia filed a petition for writ of mandate to the Superior Court seeking to reverse the discipline arguing the 1-year statute of limitations expired. The superior court denied Garcia's petition and entered

judgement in favor of the Department. Garcia appealed.

Discussion

The Court of Appeal considered two competing interpretations of when the statute of limitations begins to run when an officer is alleged to have committed multiple acts of misconduct that were discovered on multiple dates.

On the one hand, Garcia argued that the 1-year statute of limitation period begins to run *on all acts of misconduct once the agency initiates an investigation* into any one act.

On the other hand, the Department argued that the 1-year statute of limitations period begins to run on an act of misconduct *only once the agency discovers the act*.

The Court of Appeal agreed with the Department's interpretation, affirmed the discipline and held the one-year limitations period begins to run from the date the misconduct is **discovered**, not from the time the agency initiates an investigation.

Govt. Code §3304(d)(1) states: "No punitive action against [law enforcement officer] . . . shall be undertaken for any act, omission, or other allegation of misconduct *if the investigation of the allegation is not completed within one year of the public agency's discovery* by a person authorized to initiate an investigation." (emphasis added.)

The Court's decision is supported by the language in Govt Code §3304(d) and earlier case decisions. One such precedent, *Bacilio v. City of Los Angeles*, states that the one-year statute "begins to tick once a 'person authorized to initiate an investigation' discovers, or through the use of reasonable diligence should have discovered' the act, omission or other allegation of misconduct".

The Court noted that when there are multiple acts of misconduct, each act must be considered separately in determining the date the agency actually discovered the misconduct. Meaning, if a single investigation yields multiple acts of misconduct, each act is part of a single discovery.

Conclusion

The one-year statute of limitations officially begins to run when the misconduct is actually discovered by the agency; not when there is suspicion, and not the date when the investigation is initiated into unrelated misconduct.

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