CALIFORNIA STATE PERSONNEL BOARD
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Governor Gavin C. Newsom

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Highway Patrol
601 North 7th Street
Sacramento, CA 95811

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JUN 24 2025
By OLA

Re: Richard Adams
SPB Case No.: 24-1576
Appeal from Dismissal

I, Natalie Bradburn, declare:

I am over the age of 18 years and not a party to this action. I declare that I am employed by the California State Personnel Board, 801 Capitol Mall, Sacramento, California 95814.

- **BOARD RESOLUTION AND ORDER/PROPOSED DECISION**

On June 18, 2025, I served the above documents on the addressee by placing the same for collection and mailing following our ordinary business practices. I am readily familiar with the State Personnel Board's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business, in the United States Postal Service in a sealed envelope with postage fully prepaid.

Appellant: Richard Adams 1912 I Street Sacramento, CA 95811	**Respondent:** Highway Patrol 601 North 7th Street Sacramento, CA 95811
Appellant's Representative: Mastagni Holstedt, A.P.C. Attn: Melissa Thom 1912 I Street Sacramento, CA 95811	**Respondent's Representative:** Justice - Legal (San Diego) Attn: Ofelia Olmedo Office of the Attorney General 600 West Broadway, Suite 1800 San Diego, CA 92101-3375

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on June 18, 2025, at Sacramento, California.

Natalie Bradburn
Appeals Resolution Team

RICHARD ADAMS v. DEPARTMENT OF CALIFORNIA HIGHWAY PATROL Appeal from Dismissal	Case No. 24-1576 **BOARD RESOLUTION AND ORDER**

The State Personnel Board (the Board) on June 9, 2025, carefully considered the Proposed Decision filed by the Administrative Law Judge (ALJ) in the appeal by Appellant Richard Adams, Case No. 24-1576, from Dismissal by Respondent, Department of California Highway Patrol.

IT IS RESOLVED AND ORDERED THAT the findings of fact, determination of issues, and Proposed Decision of the ALJ are adopted by the Board as its Decision in the case on the date set forth below. A true copy of the Proposed Decision shall be attached to this Board Resolution and Order for delivery to the parties in accordance with the law, and the adoption of the Board Resolution and Order shall be reflected in the record of the meeting and the Board's minutes.

The foregoing Board Resolution and Order was made and adopted by the Board in Case No. 24-1576 during its meeting on June 9, 2025, as reflected in the record of the meeting and Board minutes.

/s/ SUZANNE M. AMBROSE
SUZANNE M. AMBROSE
Executive Officer

RICHARD ADAMS v. DEPARTMENT OF CALIFORNIA HIGHWAY PATROL Appeal from Dismissal	Case No. 24-1576 Proposed Decision

STATEMENT OF THE CASE

This matter came on regularly for hearing before State Personnel Board (SPB or Board) Administrative Law Judge Douglas A. Purdy on April 1-2, 2025, via Webex videoconference. The matter was submitted after closing arguments on April 2, 2025.

Appellant, Richard Adams (Appellant), was present and represented by Jason M. Ewert, Attorney, Mastagni Holstedt, APC.

Respondent, Department of California Highway Patrol (Respondent or CHP), was present and represented by Katharine Tremblay, Supervising Deputy Attorney General, and Ofelia Olmedo, Deputy Attorney General, Department of Justice. Ernest Minner, Attorney IV, CHP, was present as Respondent's party representative.

Respondent dismissed Appellant, an Officer, California Highway Patrol (Officer), effective on November 5, 2024. In the Notice of Adverse Action (NOAA), Respondent alleged that Appellant: pushed his fiancée's daughter in 2022; strangled his fiancée in June 2022; assaulted his fiancée in May 2023 at their residence; was involved in a physical confrontation with his fiancée at their residence in July 2023 in which Appellant forcibly dragged her from inside the house to the front door, lifted her, threw her out the front door, and dragged her legs out the door, while yelling at her; was involved in a domestic dispute with his fiancée in a Poway hotel in February 2024, during which the

San Diego County Sheriff's Department responded and his fiancée related past instances of abuse; made false statements to the San Bernardino County Sheriff's Department about the July 2023 incident; and made false statements during a CHP investigatory interview about the May 2023 and July 2023 incidents.

Appellant denied the allegations and contended that the July 2023 incident arose from consensual sexual role-playing with his fiancée. In addition, Appellant asserted as an affirmative defense that Respondent's decision to dismiss Appellant was retaliation for Appellant taking leave as a military reservist, in violation of the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C.A. §§ 4301 et seq.) ("USERRA").

ISSUES

The issues to be resolved are:

1. Did Appellant establish as an affirmative defense that Respondent dismissed him in retaliation for taking leave as a military reservist in violation of the USERRA?
2. Did Respondent prove by a preponderance of the evidence that Appellant committed conduct constituting cause for discipline under one or more of the following subdivisions of Government Code section 19572: (d) inexcusable neglect of duty, (f) dishonesty, (r) violation of the prohibitions set forth in Government Code section 19990, or (t) other failure of good behavior?
3. If Appellant's conduct constitutes cause for discipline under Government Code section 19572, what is the appropriate penalty?

FINDINGS OF FACT

A preponderance of the evidence proves the following facts:

1. After graduating from the CHP Academy, Appellant began his employment as an Officer in January 2018.

2. Appellant has no prior adverse actions.

CHP Policies and Training

3. Various CHP policies required Officers to conduct themselves honestly in both their personal and professional lives, to protect life and property, and to keep their personal lives unsullied.

4. CHP's "Incompatible Activities" policy prohibited employees from engaging in any "activity ... which is clearly inconsistent, incompatible, in conflict with, or inimical to" their duties.

5. At all relevant times, Appellant understood the policies described above. He also knew that he had a duty to be honest during CHP investigations and during his interactions with other law enforcement agencies.

6. As part of his Academy training and regular ongoing training, Appellant received training on how to determine whether someone was under the influence of alcohol. He also received training on identifying and investigating domestic violence incidents. Although Appellant's duties primarily focused on enforcing traffic laws, he also was responsible for enforcing laws against domestic violence.

Appellant's Home

7. At all relevant times, Appellant lived in a house in Location California. Appellant resided with his fiancée, Victim Appellant and Victim had a tumultuous relationship and often had heated arguments.

8. Victim had two children, Child 1 and 2 from a previous relationship.[1] Child 1 and 2 primarily lived with Victim and Appellant, but the children occasionally stayed with their biological father in the San Diego area.[2]

9. Appellant had a permit to carry a concealed weapon; he kept a personal firearm in his house in a lockbox or safe. When Appellant traveled, particularly to large cities, he brought his personal firearm.

Appellant's Military Service

10. Before joining the CHP, Appellant was an active-duty officer in the United States Marine Corps (Marine). When Appellant joined the CHP, he continued to serve as a reservist Marine.

11. In June 2021, Appellant took approximately eight months of military leave from CHP to serve as a reservist Marine on a long-term assignment.

12. In October 2022, Appellant took approximately six weeks of military leave from CHP to serve as a reservist Marine.

13. In 2023, Appellant took approximately six weeks of military leave from CHP to serve as a reservist Marine.

14. In approximately August or September 2024, Appellant took approximately six weeks of military leave from CHP to serve as a reservist Marine.

15. Over the course of his employment at CHP, Appellant heard some coworkers describe his military leave as "military vacation." Appellant believed that his

[1] This Proposed Decision will refer to the children by their first names to avoid confusion with Victim Victim

[2] The record did not establish the biological father's first name.

coworkers treated him in a derogatory manner because of his use of military leave. He reported his concern to Lieutenant Eric Lee (Lieutenant Lee).

Victim's 911 Call In June 2022

16. In June 2022, Appellant and Victim became involved in an argument at home after Victim showed Appellant text messages on her cellular telephone. Appellant had been drinking alcohol and accused Victim of infidelity. Victim called 911 and told the dispatcher that Appellant was angry and that she needed help.

17. San Bernardino County Sheriff's Department (SBSD) deputies responded to Appellant's and Victim house. The SBSD deputies did not arrest Appellant, and no charges were filed against Appellant at that time.

Child 1's 911 Call

18. On Mother's Day, May 14, 2023, Victim and Appellant got into an argument inside their house and yelled at each other while Child 1 and 2 were outside.

19. Child 1, who was approximately 14 years old at the time, called 911. She told the 911 dispatcher that her "stepdad" (i.e., Appellant) was throwing her mother around and had thrown her off a stool. A few seconds later, however, Child 1 stated that she had "freaked out and called the cops" but did not think they needed the police anymore. Child 1 stated that her mother was not injured and that her stepdad and mother had calmed down. She asked that the dispatcher not send anyone to respond.

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20. Nonetheless, SBSD deputies responded to the call and arrived at the house. The SBSD deputies did not arrest Appellant, and no charges were filed against Appellant at that time.

July 13, 2023, Incident at Appellant's Home

21. On July 13, 2023, Appellant and Victim got into an argument inside the house, and Appellant became angry. Appellant dragged Victim to the front door, picked her up, and threw her onto the front porch.

22. Victim landed on her back with her legs still partially inside the house. Appellant grabbed her legs, dragged her the rest of the way out of the house, and forcibly pushed her away, causing her to roll. Appellant then closed the door.

23. During the incident, Victim screamed several times at Appellant to stop.

Poway Hotel Incident

24. Appellant and Victim made plans to pick up Child 1 and 2 from their biological father in the San Diego area on February 25, 2024. Victim made hotel reservations for the night of February 24, 2024, at the Hampton Inn hotel in Poway, California.

25. On February 24, Appellant and Victim drove in Victim's car from their house to the Poway Hampton Inn. Appellant brought his firearm with him on the trip.

26. When Appellant and Victim arrived at the hotel, Appellant discovered that the room contained two full-size beds instead of one larger queen-size or king-size bed. Because Victim had made the hotel reservations, Appellant interpreted that fact to mean that Victim did not plan to be intimate with Appellant that night. Appellant became upset and angry.

27. Appellant and Victim both consumed alcohol and got into a verbal argument that night.

28. Victim arranged for a late checkout time on Sunday, February 25, 2024. Appellant and Victim continued their argument on Sunday morning. They packed up to begin taking their belongings to their car.

29. Victim told Appellant that she did not want Appellant to come home with her and that she would drive by herself to pick up the children. Appellant blocked the hotel room door for some period.

30. Appellant and Victim eventually left the room and Appellant began to load the car. Appellant did not think Victim was serious about him not going with her, and began placing his items in the car. He told Victim that he would drive.

31. Victim called 911. Appellant walked away from the car and entered the hotel lobby, where he waited for a few hours.

32. San Diego County Sheriff's Department (SDSD) deputies, including Deputy Danielle Powroznik (Deputy Powroznik) and Deputy Nathan McKemy (Deputy McKemy), responded to the call. They spoke to Victim in the hotel parking lot.

33. As part of their regular training at SDSD, Both Deputy Powroznik and Deputy McKemy received training on how to determine whether someone was under the influence of alcohol. As of February 25, 2024, Deputy Powroznik was a relatively new patrol deputy, but Deputy McKemy had been a deputy for approximately eight years.

34. Victim was not intoxicated at the time she spoke with the SDSD deputies. She did not slur her words, smell of alcohol, have bloodshot eyes, or otherwise

display signs of intoxication.

35. In pertinent part, Victim told the SDSD deputies the following:

- On a particular occasion,[3] Appellant had tried to strangle her. Victim called 911. Appellant apologized. When law enforcement officers arrived, she covered for Appellant by refusing to speak with the officers.
- On an occasion in June 2022, Appellant threw Victim against a television and choked her with his forearm. The choking caused blood vessels in her eyes to burst. Victim called 911, but refused to talk to the law enforcement officers when they arrived.
- Child 1 called 911 on Mother's Day 2023 after seeing Appellant throw Victim against the fireplace.
- On July 13, 2023, Victim texted an ex-boyfriend and Appellant became angry. Appellant picked her up, threw her on the ground, and dragged her.
- On February 10, 2024, Appellant punched her in the face and kicked her. She no longer had bruises from the incident.
- That morning, February 25, 2024, Appellant blocked the hotel room door when she wanted to leave after she told him that she did not want him to accompany her.

36. Victim showed the deputies on her cellular telephone video footage of the July 13, 2023, incident taken from a doorbell camera. Deputy McKemy watched the

[3] The record did not establish the date.

video while wearing his body-worn camera (BWC), which recorded the cellular telephone footage.

37. Victim did not have any injuries that were visible to the deputies.

38. Due partially to Victim's statement that Appellant brought his firearm with him, the SDSD deputies did not contact Appellant. Instead, after Victim drove away, the deputies left the area.

39. Although the SDSD deputies determined that they did not have sufficient grounds for arrest at that time, Deputy Powroznik prepared a report to document the suspected domestic violence.[4] The SDSD forwarded the report, as well as the BWC footage of the cellular telephone footage, to the SBSD because the reported July 13, 2023, incident took place in San Bernardino County.

40. On February 25, 2024, after Victim left, Appellant used a rideshare service to go back home.

Appellant's and Victim's Statements to Detective Perez

41. SBSD Detective Jose Perez (Detective Perez) was assigned to investigate the July 13, 2023, incident.

42. On March 18, 2024, Detective Perez telephoned Appellant to arrange a time to speak with him, and they agreed to meet that afternoon at Appellant's house. Detective Perez, accompanied by a sergeant and a female deputy, arrived at Appellant's house that afternoon and spoke to Appellant in front of his garage.

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[4] Penal Code section 13730 requires law enforcement agencies to prepare written records of calls for assistance alleging domestic violence, even if the call does not result in arrest or prosecution.

43. Detective Perez asked Appellant if any of the arguments had become physical, or if either Victim or he had ever alleged that arguments became physical, and Appellant replied no.

44. Detective Perez showed Appellant the video footage of the July 13, 2023, incident. Appellant said he did not know whether Victim and he were arguing then and was not sure what occurred. When Detective Perez asked if the video footage depicted Appellant and Victim Appellant replied that "it looks like us." Appellant stated that the footage depicted them, that they were "hanging out." He further stated that Victim and he "play rough," and he did not recall them "fighting like that."

45. Detective Perez asked Appellant if Victim and he were into "role-playing," and Appellant replied yes. Appellant further stated, "that's stuff that we do sometimes," but that, "normally it's in the bedroom." Appellant said that he did not know why they went outside. Appellant did not tell Detective Perez that the incident depicted in the video footage was an instance of role-playing.

46. Detective Perez attempted to contact Victim by telephone several times before he was able to reach her on March 21, 2024. Victim told Detective Perez that she felt safe. Detective Perez asked Victim about the video footage of the July 13, 2023, incident, but Victim denied knowing which video footage he was describing. When Detective Perez described the events in the video footage, Victim stated, "that's not what happened." Victim also denied that Appellant ever harmed anyone in the house.

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47. It is a common experience among law enforcement officers for domestic violence victims to report domestic violence but later recant their statements due to fear, loyalty to their partner, or feelings of shame or guilt.

Criminal Charges

48. On March 26, 2024, Detective Perez completed his investigation report.

49. As a result of Detective Perez's investigation report, the San Bernardino County District Attorney charged Appellant with domestic abuse in violation of Penal Code section 243, subdivision (e)(1).

50. On April 23, 2024, Victim prepared a letter regarding the criminal charges against Appellant. In her letter, Victim stated that during an incident in February 2024, she had been drinking, Appellant did not want her to drive, and that she was drunk when the law enforcement officers arrived. She also denied that Appellant had abused her.

CHP Investigation

51. CHP Sergeant Scott Mason (Sergeant Mason) was assigned to conduct an administrative investigation into allegations against Appellant. Sergeant Mason conducted an investigative interview with Appellant on June 20, 2024.

52. At the start of the interview, Sergeant Mason advised Appellant that he was required to tell the truth.

53. During the interview, Appellant said that Victim's and his arguments never escalated into physical conflicts.

54. Appellant told Sergeant Mason that he did not push or shove Victim in June 2022, and he did not choke her or cause blood vessels in her eyes to burst.

55. As to the May 14, 2023, incident, Appellant told Sergeant Mason that he (Appellant) and Victim were drunk and arguing inside the house. Appellant further stated that Victim threw a glass, he did not hit Victim, Child 1 called 911, and law enforcement officers responded to the house.

56. With respect to February 10, 2024, Appellant stated that he and Victim got into an argument, and that Victim threw a glass of wine on the ground. Appellant stated that he followed Victim around the house and yelled at her, but did not grab her wrist or neck, shove her, push her, throw her, kick her, or strike her. He denied any physical altercation.

57. Appellant told Sergeant Mason that at some point before February 25, 2024, Victim told Appellant that she had video footage of an incident between them and would "use it."

58. Appellant stated during the interview that Victim was intoxicated on February 25, 2024, and he did not want her to drive.

59. Sergeant Mason showed Appellant the video footage of the July 13, 2023, incident. Appellant stated that the footage showed Appellant and Victim participating in a sexual role-playing scenario.

60. Appellant told Sergeant Mason that when Detective Perez first showed him the video footage, he could not identify if it was Victim and him. Appellant also stated that at the time he was questioned by Detective Perez, he was "not prepared to discuss [his] sexual interactions with [his] fiancée to a 20-year old

dude and my mom[5] and some other dude."

Drafting and Issuing of NOAA

61. Sergeant Mason did not determine what penalty was to be taken against Appellant. However, Sergeant Mason drafted the NOAA based on his investigation.

62. Over the course of the investigation, Sergeant Mason heard one of Appellant's coworkers describe Appellant as a "hard worker" and a "military guy," which Sergeant Mason took to mean a description of Appellant's general bearing. No one communicated to Sergeant Mason anything disparaging about Appellant's military service.

63. Sergeant Mason did not consider Appellant's military service when conducting the investigation or drafting the NOAA.

End of Relationship

64. In approximately mid-December 2024, Victim ended the relationship with Appellant. She, Child 1 and 2 moved to Florida.

Dismissal of Criminal Charges

65. On February 4, 2025, the District Attorney dismissed the criminal charges against Appellant arising from the July 13, 2023, incident.

CREDIBILITY DETERMINATION

Video evidence demonstrated that during the July 13, 2023, incident, Appellant: forcibly dragged Victim to the front door; picked her up; threw her onto the front porch,

[5] Appellant testified that he estimated the female deputy's age to be approximately his mother's age.

causing her to land on her back; grabbed her legs; dragged her the rest of the way out of the house; forcibly pushed her away, causing her to roll; and then closed the door. Appellant testified that the incident was not a violent altercation as depicted, but an instance of consensual sexual role-playing between Victim and him. To determine that the incident was consensual would require crediting Appellant's testimony. Resolving the conflict between Appellant's testimony and other evidence presented at hearing requires a credibility determination in accordance with Evidence Code section 780. When determining credibility, the trier of fact may consider "any matter that has any tendency in reason to prove or disprove the truthfulness of [the witness's] testimony," including witness demeanor; character of testimony; extent of the witness's ability to perceive, recollect or communicate any matter about which she or he testifies; the existence or nonexistence of bias, interest, or other motive; prior consistent or inconsistent statements; the existence or nonexistence of any fact testified to by the witness; and the witness's attitude toward the action or testimony. (Evid. Code, § 780, subds. (a)-(d), (f)-(j).) When a witness testifies falsely as to some matters, some or all of her other testimony may be disregarded, whether contradicted or not. (*Halagan v. Ohanesian* (1967) 257 Cal.App.2d 14, 21.)

The video footage from the doorbell camera was not consistent with consensual role-playing. Appellant lifted Victim and tossed her onto the front porch, where she landed on her back. That action clearly could have resulted in serious injury to Victim which makes it unlikely that she willingly consented to it. Appellant's demeanor in the footage appeared angry and aggressive. Victim appeared to be frightened and screamed at

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Appellant several times to stop. Appellant's testimony therefore was not consistent with the video footage.

Victim was not present at the hearing and did not testify. However, Appellant's statements about the consensual nature of the incident were inconsistent with Victim's statements to the SDSD. Although Victim later wrote that she was not abused by Appellant, and told Deputy Perez that Appellant had never harmed her, it is unfortunately common for domestic violence victims to later recant their statements, even if true. Also, Victim's statement that she was drunk during the Poway incident was contradicted by Deputy Powroznik's and Deputy McKemy's testimony.

Appellant testified in a calm manner, and his testimony generally was consistent with his statements to Sergeant Mason. At times, however, Appellant appeared to be evasive and attempted to downplay his conduct. He also tried to volunteer information beyond the question asked at times. No other witness testified that Appellant and Victim engaged in consensual role-playing, and there was no evidence that Victim made any statement to that effect.

Appellant, who was trained to identify signs of alcoholic intoxication, testified that Victim was intoxicated when she spoke to the SDSD deputies. However, Appellant's testimony conflicted with the testimonies of both Deputy Powroznik and Deputy McKemy, who also were both trained to identify signs of intoxication. Deputy Powroznik and Deputy McKemy both testified that they stood within a few feet of Victim and did not smell alcohol or observe any other signs of intoxication. Both deputies testified in a direct, clear, consistent, and unexaggerated manner, and neither had any apparent interest in the outcome of the hearing.

Furthermore, Victim did not appear to be intoxicated in the BWC footages of Deputy Powroznik or Deputy McKemy. For example, Victim did not slur her words when speaking with the deputies or appear to have bloodshot eyes. Appellant's testimony about Victim's intoxication appeared to be an attempt to justify trying to prevent Victim from driving, an attempt to discredit her statements to the SDSD, or both.

Appellant gave inconsistent statements about Deputy Perez showing him the doorbell video footage. Appellant told Deputy Perez that it looked like he and Victim were fighting. At hearing, Appellant testified that he did not really have a chance to view the video until the CHP administrative investigation interview. Yet, he also testified that he did not tell Deputy Perez about the role-playing because he was embarrassed to do so, especially in front of the older female deputy, and that he "panicked." That testimony suggested that Appellant knew what incident the footage depicted when Deputy Perez showed it to him and tailored his later statements to minimize his actions.

For the reasons discussed above, Appellant's testimony is not credited.

PRINCIPLES OF LAW AND ANALYSIS

In a disciplinary appeal, the appointing power bears the burden to prove by a preponderance of the evidence that the employee committed the charged conduct and that the conduct constitutes a cause of discipline under the applicable subdivisions of Government Code section 19572. (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1153; Evid. Code, § 115; see also *Lyle Q. Guidry* (1995) SPB Dec. No. 95-09.) However, the party asserting an affirmative defense has the burden of proving the elements of that affirmative defense. (*Ladd v. Warner Bros. Entertainment, Inc.* (2010) 184 Cal.App.4th 1298, 1310.) A preponderance of the

evidence is "evidence that has more convincing force than that opposed to it." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.)

In determining whether there is a preponderance of evidence, the trier of fact may consider direct and circumstantial evidence, and consider reasonable inferences drawn from that evidence. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 483.) An inference is a "deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established" at hearing. (Evid. Code, § 600, subd. (b).) An inference must logically flow from other facts established in the proceeding. (See, e.g., *Contreras v. Dowling* (2016) 5 Cal.4th 394, 417.) A trier of fact cannot draw an inference based merely on suspicion, guesswork, or conjecture. (*People v. Davis* (2013) 57 Cal.4th 353, 360.)

Appellant's Affirmative Defense

The USERRA prohibits employers from discriminating against employees because of their service in the United States military. (38 U.S.C.A. § 4311.) Appellant identified retaliation in violation of the USERRA as an affirmative defense in his Prehearing and Settlement Conference Statement, and his counsel referred to that affirmative defense in response to a relevance objection. In closing argument, however, Appellant's counsel did not further elaborate on the defense or identify any specific statute. It appears that Appellant intended to claim that CHP retaliated against him in violation of 38 U.S.C.A. section 4311. To the extent that Appellant intended to assert that any statute other than 38 U.S.C.A. section 4311 applied, that argument is waived. (See, e.g., *Cahill v. San Diego Gas & Electric* (2011) 194 Cal.App.4th 939, 956.) It is not a tribunal's role to develop the parties' arguments for them. (*Ibid.*)

Several unidentified coworkers referred to Appellant's military leave as "military vacation," which he found to be derogatory. Assuming for the sake of analysis that those comments were meant to be derogatory, the evidence established neither who made the comments nor whether they played any role in the decision to dismiss Appellant. Lieutenant Lee was aware of Appellant's use of military leave, but no evidence suggested that he had any role in the decision to dismiss Appellant.

Sergeant Mason heard a coworker or coworkers describe Appellant as a "military guy" to refer to his general demeanor, and was aware that Appellant had some type of military background. However, the evidence did not establish that Sergeant Mason knew that Appellant took military leave to serve as a reservist Marine. Moreover, although Sergeant Mason drafted the NOAA, he did not participate in the decision to dismiss Appellant. No evidence suggested that Appellant's military service had any bearing on Sergeant Mason's investigation.

Appellant did not prove that Respondent's decision to dismiss him was motivated by retaliation for his service as a reservist Marine, or otherwise prove that Appellant's dismissal violated the USERRA. Therefore, Appellant's affirmative defense is rejected.

Inexcusable Neglect of Duty

Finding inexcusable neglect of duty requires finding that an employee intentionally or with gross negligence failed to exercise due diligence in the performance of a known official duty. (*U.W.* (1993) SPB Dec. No. 93-10.) To be subject to discipline for inexcusable neglect of duty, an employee must have actual or constructive notice of expected standards of conduct, unless the conduct is so clearly wrong that notice is not necessary. (*E.D.* (1993) SPB Dec. No. 93-32.) Because peace officers must be above

reproach, a nexus between a peace officer's off-duty misconduct and his or her employment exists where the officer's misconduct could bring embarrassment to his or her employer. (*Anderson v. State Personnel Bd.* (1987) 194 Cal.App.3d 761, 769.)

As a peace officer responsible for enforcing laws against domestic violence, Appellant also had an obvious duty not to act in a violent manner toward his fiancée or other family members. A CHP Officer's violence toward his fiancée easily could embarrass CHP and undermine trust in its Officers.

Respondent did not prove that Appellant pushed Child 1 in 2022; strangled Victim in June 2022; or physically attacked Victim on May 14, 2023. Respondent introduced only hearsay evidence as to those allegations, to which Appellant objected. Absent an applicable exception to hearsay, the Board cannot base a finding solely on hearsay evidence. (Gov. Code, §§ 19578, 11513, subd. (d).)

However, Respondent did prove that Appellant violently dragged Victim to the front door; picked her up; threw her onto the front porch, causing her to land on her back; grabbed her legs; dragged her the rest of the way out of the house; forcibly pushed her away, causing her to roll; and then closed the door. Therefore, Appellant violated his duty not to act in a violent manner toward Victim

Appellant had a known duty to be honest during his interactions with other law enforcement agencies. He violated that duty when he told Detective Perez he did not know what the video footage of the July 13, 2023, porch incident depicted.

Also, Appellant had a duty to be honest during his CHP investigatory interview. As discussed above, Respondent did not prove that Appellant physically attacked Victim on May 14, 2023, and therefore did not prove that Appellant was dishonest when he denied

any physical conflict as to that date. However, Appellant was dishonest when he told Sergeant Mason that the July 13, 2023, incident was consensual role-playing and when he stated that his disputes with Victim had never escalated into physical conflicts.

Appellant's conduct constitutes cause for discipline under Government Code section 19572, subdivision (d), and the charge of inexcusable neglect of duty is sustained.

Dishonesty

Sustaining a charge of dishonesty generally requires finding that an employee intentionally misrepresented a known fact. (*M.S.* (1994) SPB Dec. No. 94-19.) Dishonesty also may include a willful omission of pertinent facts in circumstances where an employee has a known duty to disclose such facts. (*Eliette Sandoval* (1995) SPB Dec. No. 95-15.)

As discussed above in more detail with respect to inexcusable neglect of duty, Appellant made false statements to Deputy Perez and Sergeant Mason. Appellant falsely told Deputy Perez that he did not know what the doorbell video footage depicted. He falsely told Sergeant Mason that the July 13, 2023, incident was consensual role-playing and that his disputes with Victim had never escalated into physical conflicts.

Accordingly, Appellant's conduct constitutes cause for discipline under Government Code section 19572, subdivision (f), and the charge of dishonesty is sustained.

Violation of the Prohibitions Set Forth in Government Code Section 19990

Violation of the prohibitions set forth in accordance with Government Code section 19990 (Section 19990) consists of a violation of the incompatible activities statute. Section 19990 prohibits state employees from conduct such as using one's official

influence for his or her own private gain or the gain of another; using state time or resources for the employee's private gain or another's private gain; receiving outside payment for doing one's official duties; or using, or having access to, confidential information available by virtue of state employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized. In addition, an employee may violate Section 19990 by violating an appointing power's incompatible activities policy, so long as the policy has been clearly communicated to employees. (*Ruth M. Houseman* (1993) SPB Dec. No. 93-33.)

Recently, the Board found that a CHP Officer's physical and sexual assault of his wife was inimical to a peace officer's duties to uphold the law. (*D.G.* (2024) SPB Dec. No. 24-02.) Therefore, the Board concluded that the CHP Officer's conduct constituted a violation of Government Code section 19572, subdivision (r), violation of the prohibitions set forth in Government Code section 19990. Similarly, here, although Appellant's primary responsibility was enforcement of traffic laws, he was a peace officer whose duties included enforcement of laws against domestic violence. His violence towards his fiancée was inimical to his duties as a peace officer.

Appellant's conduct constitutes cause for discipline under Government Code section 19572, subdivision (r), and the charge of violation of the prohibitions set forth in Government Code section 19990 is sustained.

Other Failure of Good Behavior

Other failure of good behavior is misconduct that can easily impair or disrupt the public service, or discredit the appointing authority or appellant's employment, so long as there is a rational relationship between the misconduct and the appellant's employment.

(D.M. (1995) SPB Dec. No. 95-10.) An appointing power need not prove the conduct is known to the public to prove the conduct discredits the appointing authority or the appellant's employment. (*Orlandi v. State Personnel Bd.* (1968) 263 Cal.App.2d 32, 36–37.)

Appellant violently dragged Victim to the front door; picked her up; threw her onto the front porch, causing her to land on her back; grabbed her legs; dragged her the rest of the way out of the house; forcibly pushed her away, causing her to roll; and then closed the door. If known to the public, Appellant's conduct easily could discredit his employment and the CHP. Although not the primary focus of their duties, CHP Officers are responsible for enforcing laws against domestic violence. If known to the public, Appellant's conduct could undermine the public's ability to trust CHP peace officers with respect to reporting domestic violence. Also, Appellant's dishonesty toward Deputy Perez and Sergeant Mason could undermine the public's trust in CHP as well as other law enforcement agencies' trust in CHP.

Therefore, Appellant's conduct constitutes cause for discipline under Government Code section 19572, subdivision (t), and the charge of other failure of good behavior is sustained.

Penalty

The SPB has a constitutional responsibility to review disciplinary actions and render a decision that is "just and proper." (Cal. Const., art., VII, § 3 subd. (a); Gov. Code, § 19582, subd. (a).) In determining the appropriate penalty, the SPB considers the extent to which the employee's conduct resulted in, or if repeated is likely to result in, harm to the public service; the circumstances surrounding the offense; and the likelihood of

recurrence of the employee's conduct. (*Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194.) The harm or potential harm to the public service is the overriding consideration. (*Ibid.*)

Appellant's conduct caused serious harm and potential harm to the public service. Appellant picked Victim up and threw her onto the porch so that she landed on her back, which risked Victim sustaining physical injury. Appellant's dishonest statements to Detective Perez impaired the SBSD's investigation and his dishonest statements to Sergeant Mason impaired the CHP's investigation.

Peace officers hold special positions of trust and are held to the highest standards of behavior. (*Paulino v. Civil Service Com.* (1985) 175 Cal.App.3d 962, 972.) Also, peace officers must frequently testify in court, and must be credible and honest to perform their duties effectively. (*J.A.* (1995) SPB Dec. No. 95-17.) Because of the special position of trust peace officers hold, dishonesty by peace officers warrants harsh punishment. (*Anderson v. State Personnel Bd., supra,* 194 Cal.App.3d at p. 761.)

Although Appellant was a long-term employee with no prior adverse actions, he denied acting violently toward Victim and falsely claimed that she consented to the violence. Appellant's lack of remorse or appreciation for the seriousness of his actions weighs in favor of a harsh penalty. (*Robert R. Watson* (1994) SPB Dec. No. 94-10.) Also, dishonesty is a continuing character trait, not an isolated or transient act. (*Gee v. State Personnel Bd.* (1970) 5 Cal.App.3d 713, 719.) Therefore, there is a high likelihood of recurrence.

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The seriousness of the harm and potential harm resulting from Appellant's conduct, and the high likelihood of recurrence, support dismissal as a just and proper penalty in this case.

CONCLUSIONS OF LAW

1. Appellant did not prove as an affirmative defense that his dismissal constituted retaliation by Respondent in violation of the USERRA.
2. Respondent proved that Appellant's conduct constituted cause for discipline under Government Code section 19572, subdivisions (d) inexcusable neglect of duty, (f) dishonesty, (r) violation of the prohibitions set forth in Government Code section 19990, and (t) other failure of good behavior.
3. Dismissal is a just and proper penalty for Appellant's conduct.

ORDER

The dismissal taken against Richard Adams is **SUSTAINED**.

DATED: April 15, 2025

Douglas A. Purdy
Administrative Law Judge
State Personnel Board