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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BARBARA TRIGUEROS,

Plaintiff and Appellant,

v.

CALIFORNIA STATE PERSONNEL
BOARD,

Defendant and Respondent;

CALIFORNIA DEPARTMENT OF
JUSTICE,

Real Party in Interest and Respondent.

D060055

(Super. Ct. No.
37-2010-00106256-CU-WM-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Michael S. Groch, Judge. Affirmed.

Barbara Trigueros appeals a judgment denying her petition for writ of administrative mandate that challenged the decision by the California State Personnel Board (SPB) upholding the California Department of Justice's (DOJ) termination of her

employment. On appeal, Trigueros contends: (1) the SPB's administrative law judge (ALJ) erred by excluding certain evidence; (2) the evidence is insufficient to support the SPB's finding that she obtained her employment through fraud and dishonesty; (3) she was denied her right to due process; and (4) the SPB abused its discretion by determining the penalty of dismissal from employment was appropriate for her misconduct.

FACTUAL AND PROCEDURAL BACKGROUND

In 1998, Trigueros was hired by the San Diego County Public Defender's Office (PD) as a legal assistant. Effective March 31, 1999, she was "separated" (i.e., dismissed) from that position during her probationary period because, as PD explained, "[her] work performance in the areas of cooperation, application of effort and public relations did not satisfactorily meet the requirements for the position of" legal assistant.

In December 2004, Trigueros applied for a position as a legal secretary with the DOJ. She completed a standard employment application form (Form STD 678) on which Question No. 5 asked:

"Have you ever been dismissed or terminated from any position for performance or other disciplinary reasons? (Applicants whose dismissals or terminations were overturned, withdrawn [unilaterally or as part of a settlement] or revoked need not answer 'Yes'.) If 'Yes' to Question #5, give details in Item #12, and refer to the instructions for further information."

Trigueros checked the box for "No" to Question No. 5.

Question No. 15 on Form STD 678 asked for information regarding her employment history. The instructions for that question stated:

"You must include a complete list of your paid and/or volunteer work experience **which relates to the qualification requirements**

specified on the examination bulletin. The work experience you list will be used to determine if you meet the stated qualifications. List all relevant jobs regardless of duration, including part-time and military service, during the last ten years. You should also list volunteer experience and jobs held more than ten years ago if they relate directly to the job for which you are applying. . . ."

In response to Question No. 15, Trigueros listed various jobs she held from 1993 through 2003, but omitted any reference to her employment as a legal secretary with PD.

Likewise, her attached resume, listing various jobs she held from 1978 through "current," omitted any reference to her PD position. Although she did not list her position as a PD legal secretary, she listed various nonlegal jobs she held (e.g., realtor, leasing professional, and dental technician).

Trigueros signed Form STD 678 after the following printed statement:

"I certify under penalty of perjury that the information I have entered on this application is true and complete to the best of my knowledge. I further understand that any false, incomplete, or incorrect statements may result in my disqualification from the examination process or dismissal from employment with the State of California. . . ."

In August 2005, Trigueros was hired by the DOJ as a legal secretary. Her job responsibilities included preparing pleadings, composing letters, filing, answering telephone calls, calendaring, and processing bills. She also was routinely required to sign proofs of service under penalty of perjury.

On three subsequent occasions, Trigueros applied for promotions at the DOJ and each time submitted a completed and signed Form STD 678.¹ On each of those applications, she again answered "No" to Question No. 5 and omitted her position as a PD legal assistant from her employment history under Question No. 15. She was not promoted by the DOJ.

In September 2007, Trigueros filed a complaint with the SPB (merit issue complaint) asserting unfair promotion practices at the DOJ and retaliation against her. She amended her complaint twice. On October 22, 2009, the SPB dismissed her merit issue complaint as untimely filed, but gave her an additional 30 days to file a whistleblower claim. She did not file a whistleblower claim with the SPB.

On July 29, 2008, Yvonne Kerns, the officer manager of the DOJ's San Diego office, found an anonymous package in a box by her door. It contained various documents relating to Trigueros, including information regarding her dismissal by PD. It also included a blank Form STD 678 highlighting its language regarding the applicant's signature under penalty of perjury. Kerns forwarded a copy of Trigueros's original DOJ employment application (Form STD 678) to Chris Greene, the DOJ's manager of legal support operations. Greene determined Trigueros had omitted her PD position from her DOJ application.

¹ Those applications were dated October 13, 2005, July 8, 2006, and December 11, 2006.

The DOJ's professional standards group (PSG) conducted an investigation regarding whether Trigueros had committed fraud in her employment application. During an October 30, 2008, interview, she admitted to PSG Special Agent Supervisor James Hirt that she had worked for PD and had failed her probation there. She admitted she answered "No" to Question No. 5 on her DOJ employment application, but claimed it was a "mistake" and "maybe" she had not answered it correctly. She stated: "[J]obs that were for a short period of time it's not necessary to put in your resume."

Following its receipt of PSG's investigation report, the DOJ dismissed Trigueros from her employment as a legal secretary because of violations of Government Code² section 19572, subdivisions (a) (fraud in securing appointment), (e) (insubordination), (f) (dishonesty), and (t) (other failure of good behavior that causes discredit to the DOJ or her position). Trigueros appealed her dismissal to the SPB. The DOJ filed in limine motions to exclude the testimony of two of Trigueros's witnesses (Rosario Asencio and Kim Cooney) and to preclude relitigation of her merit issue complaint. In response, York Chang, Trigueros's counsel, withdrew the witness subpoenas for Asencio and Cooney, representing that Trigueros had decided not to call either one to testify at the hearing. He also clarified that Trigueros would not relitigate the merit issue complaint, but intended only to present evidence of her prior SPB complaint in support of her whistleblower retaliation defense.

² All statutory references are to the Government Code unless otherwise specified.

At the hearing on Trigueros's appeal, the SPB's administrative law judge (ALJ) granted the DOJ's motion in limine to preclude relitigation of the merit issue complaint. The DOJ presented evidence, including a transcript of Trigueros's PSG interview, documents regarding her merit issue complaint, correspondence between PD and Trigueros regarding her dismissal, and other documents. Armando Salazar, her former PD supervisor, testified Trigueros was dismissed because her reports were poor, she never got her work done, and she spent a lot of time doing personal things. When he gave her the dismissal letter, he told her she was being dismissed. Trigueros testified at the hearing and admitted Salazar told her she was not getting enough cases done, but she claimed she failed her PD probation because of a personality conflict with him. She stated she had two meetings with PD supervisors regarding the reasons for her dismissal and received the letter informing her of her dismissal. She testified she answered "No" to Question No. 5; she did not interpret the application as requiring her to answer "Yes" because she believed her rejection during the PD probationary period was not a dismissal. She further testified that because her PD legal assistant position was not "relevant work experience" to her job as a DOJ legal secretary, she did not list her PD position in response to Question No. 15 of the application. When asked why she nevertheless listed her former jobs as a leasing professional, a dental technician, and a human resource specialist, she testified those positions showed her "leadership potential." Greene testified the DOJ expected its legal secretaries (and all other staff) to be truthful on applications and during the hiring process. Legal secretaries are responsible for

maintaining confidentiality and truthfulness regarding all documents and sign proofs of service of process under penalty of perjury.

The ALJ excluded, as irrelevant, evidence of Trigueros's work performance because the DOJ had not dismissed her for poor work performance, but rather for fraud in securing her appointment and related dishonesty. Trigueros presented her prior merit issue complaint and two addenda in support of her defense of retaliation for a protected activity.

On or about July 6, 2010, the SPB adopted the ALJ's proposed decision sustaining the DOJ's dismissal of Trigueros's employment as a legal secretary. The SPB found Trigueros's testimony was "inconsistent, and therefore, unbelievable." The SPB noted that although during her PSG interview she admitted her answer to Question No. 5 was a mistake, she testified during the administrative hearing that she was permitted to answer "No" to that question because it did not expressly mention rejections. The SPB stated:

"A simple reading of the language makes clear that the question applies to 'any position' unless otherwise excluded. The instructions for Question #5 state, in part: ["][y]ou **must answer "Yes" if you have ever**, because of poor performance or misconduct, **been fired from a job, let go, or had a work contract terminated.**' (**emphasis added.**) Nowhere in the language of Question #5, or its instructions, are rejections specifically excluded. Because rejections are a form of termination from employment, [Trigueros] was required to answer 'Yes' to Question #5 on all of the STD 678s submitted to DOJ. She did not."

Regarding Question No. 15, the SPB found it required a complete list of work experience. The SPB rejected Trigueros's assertion that Question No. 15 did not require her to list jobs of short duration, noting she listed several jobs of short duration but not

her PD job. Likewise, the SPB rejected her assertion that she did not list her PD position as purportedly "irrelevant" work experience, noting she had listed other jobs as a realtor, leasing professional, dental technician, and human resources specialist. The SPB concluded Trigueros knew she was required to provide a complete work history, but chose not to list her PD position "because of the unfavorable circumstances under which she was separated." The SPB found Trigueros's conduct violated section 19572, subdivisions (a), (f), and (t).³

Regarding her whistleblower retaliation defense, the SPB found Trigueros did not identify a protected disclosure that advanced the public good, but merely sought to resolve issues that affected her alone. Therefore, the SPB rejected that defense.

The SPB found the penalty of employment dismissal was appropriate for Trigueros's wrongdoing, explaining she failed to acknowledge any wrongdoing. The SPB noted her testimony was "riddled with excuses and justifications for her conduct, demonstrating [her] willingness to lie and/or deceive in order to get what she wants. Therefore, the likelihood of reoccurrence seems great." The SPB also found she had intentionally concealed the rejection of her PD probation and misrepresented her work history, preventing the DOJ from comparing her to more honest applicants.

After the SPB denied Trigueros's petition for a rehearing, she filed a petition for writ of administrative mandate (Petition) with the trial court. The DOJ moved to strike

³ The SPB dismissed the charge of insubordination under section 19572, subdivision (e).

portions of the Petition and supporting documents and also demurred to the Petition. The court sustained the demurrer to the extent the Petition challenged the SPB's decision denying Trigueros's merit issue appeal and struck paragraphs 9 through 15 of the Petition. After reviewing the administrative record and hearing arguments of counsel, the trial court denied the Petition. On May 18, 2011, the court entered judgment for the SPB denying the Petition. Trigueros timely filed a notice of appeal.

DISCUSSION

I

Standards of Review

Under the procedures for imposing discipline on a state employee, the employing department (e.g., the DOJ) has the initial responsibility to determine whether there is cause for discipline and, if so, what discipline to impose. (§ 19574.) The employer must give the employee notice of and reasons for the proposed action and give the employee an opportunity to respond. (§ 19574; *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 215 (*Skelly*).)

The employee has the right to a review of the disciplinary action by the SPB. (§ 19575.) The SPB is a state administrative agency with adjudicatory powers under the state Constitution. (Cal. Const., art. VII, §§ 2, 3; *Department of Parks & Recreation v. State Personnel Bd.* (1991) 233 Cal.App.3d 813, 823 (*Parks*).) On review of a disciplinary action, the SPB acts like a trial court in ordinary judicial proceedings (e.g., making factual findings and exercising its discretion). (*Parks*, at p. 823.) The SPB may appoint an ALJ to conduct an evidentiary hearing and issue a proposed decision, which

the SPB may adopt or reject in whole or in part. (§ 19582; *California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 583 (*Youth Authority*)). The SPB may overturn the employer's imposition of discipline for one of three reasons: (1) the evidence does not establish the fact of the alleged cause for discipline; (2) the employee was justified; or (3) cause for discipline is shown but is insufficient to support the level of punitive action imposed. (*Parks*, at p. 827.)

An employee may challenge the SPB's decision by filing a petition for writ of administrative mandate in the superior court. (Code of Civ. Proc., § 1094.5; *State Personnel Bd. v. Dept. of Personnel Admin.* (2005) 37 Cal.4th 512, 522.) "Because the [SPB] derives its adjudicatory authority from the state Constitution rather than from a legislative enactment, a superior court considering a petition for administrative mandate must defer to the [SPB's] factual findings if they are supported by substantial evidence." (*State Personnel Bd.*, at p. 522.) That standard of review is satisfied if the "record discloses substantial evidence (reasonable, credible and of solid value) such that a reasonable trier of fact could have found as it did." (*Parker v. State Personnel Bd.* (1981) 120 Cal.App.3d 84, 87.) In so doing, the trial court resolves all conflicts in the evidence and makes all reasonable inferences favorably to the SPB's decision. (*Youth Authority, supra*, 104 Cal.App.4th at pp. 584-586.) The trial court must uphold the SPB's (and ALJ's, if adopted by the SPB) evidentiary rulings, unless there is a clear showing of abuse of discretion. (*Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1431-1432.) Likewise, the trial court must uphold the SPB's decision regarding the penalty imposed unless the penalty is an abuse of discretion. (*Parks, supra*, 233

Cal.App.3d at pp. 831-832.) An abuse of discretion is shown where the action exceeds the bounds of reason. (*Ibid.*)

On appeal from the trial court's judgment, an appellate court reviews the SPB's, not the trial court's, decision, applying the same standards of review the trial court applied. (*Youth Authority, supra*, 104 Cal.App.4th at p. 584.) We must uphold the SPB's factual findings if supported by substantial evidence. (*Valenzuela v. State Personnel Bd.* (2007) 153 Cal.App.4th 1179, 1184 (*Valenzuela*); *Parks, supra*, 233 Cal.App.3d at p. 823.) We do not reweigh the evidence. (*Youth Authority*, at p. 584; *Camarena v. State Personnel Bd.* (1997) 54 Cal.App.4th 698, 701 (*Camarena*).

II

Exclusion of Evidence

Trigueros contends the ALJ erred by excluding certain evidence. She asserts the ALJ abused her discretion by precluding Asencio from testifying regarding a supervisor and by excluding evidence of her work performance as irrelevant.

A

Although Trigueros argues the ALJ erred by precluding Asencio from testifying regarding a supervisor (i.e., Sher McBrearty), the record shows Trigueros, in response to the DOJ's motion to exclude Asencio's testimony as irrelevant, stated she was withdrawing her witness subpoena for Asencio and represented to the ALJ that she had decided not to call Asencio to testify at the administrative hearing. Furthermore, on the first day of the hearing, Trigueros confirmed she had withdrawn the subpoena for Asencio. Her counsel stated: "I've already withdrawn the subpoenas for [Asencio and

Cooney] and let them know that they won't be required to appear, so [the DOJ's in limine motion to exclude their testimony] is, I think, a moot issue" Contrary to Trigueros's assertion, the record shows the ALJ never made a ruling excluding Asencio's testimony. Absent any showing the ALJ excluded Asencio's testimony, we conclude Trigueros has not carried her burden on appeal to show the ALJ abused her discretion by excluding that testimony.

B

Trigueros also argues the ALJ abused her discretion by excluding, as irrelevant, evidence of her work performance at the DOJ. Although she apparently argues the ALJ excluded that evidence based on application of the doctrine of collateral estoppel, the record shows the ALJ excluded that evidence as irrelevant to the issues regarding Trigueros's dismissal for fraud and dishonesty in applying for her DOJ position, including the issue of whether her dismissal was in retaliation for filing her purported whistleblower complaint. The ALJ stated in part: "I don't have [before me] any [subpar] performance issues. The [DOJ] hasn't raised for me that [Trigueros] is somehow a [subpar] performing employee." The ALJ further stated: "I don't see how [Trigueros's work performance is] relevant to the fact that [she] filled out her state application one way or another." The ALJ ruled:

"I do not find that evidence to be relevant to . . . the Notice of Adverse Action. . . . [¶] I do not find evidence related to [subpar] performance appraisals . . . to be relevant to the action of terminating [Trigueros] for filling out the state applications the way she filled them out."

The ALJ excluded evidence of Trigueros's work performance.

We conclude Trigueros has not carried her burden on appeal to show the ALJ abused her discretion by excluding evidence of Trigueros's work performance with the DOJ. Evidence Code section 210 provides: " 'Relevant evidence' means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." At an SPB hearing, the parties may present competent evidence against or in support of the causes. (§ 19578.) "Competent evidence is evidence that, if relevant, is otherwise admissible under the laws of evidence." (*Coburn v. State Personnel Bd.* (1978) 83 Cal.App.3d 801, 809.) An ALJ, like a trial court, is vested with broad discretion in ruling on the admissibility of evidence (e.g., its relevance). (Cf. *Tudor Ranches, Inc. v. State Comp. Ins. Fund*, *supra*, 65 Cal.App.4th at p. 1431 [trial court discretion].) Furthermore, an ALJ "has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time." (§ 11513, subd. (f).) The ALJ in this case presumably exercised her discretion by excluding evidence of Trigueros's work performance with the DOJ as irrelevant to the issues to be decided at the hearing. Trigueros has not persuaded us the ALJ abused her discretion by excluding that evidence. The ALJ could reasonably conclude Trigueros's work performance was irrelevant to the DOJ's reasons for her dismissal (e.g., fraud and dishonesty in applying for her position). In any event, assuming *arguendo* the ALJ erred by excluding that evidence, Trigueros has not carried her burden on appeal to show that the purported error was prejudicial (i.e.,

that absent that error, it is reasonably probable she would have obtained a more favorable result). (*Tudor Ranches, Inc.*, at pp. 1431-1432.)

III

Sufficiency of the Evidence

Trigueros contends the evidence is insufficient to support the SPB's finding that she obtained her position through fraud and dishonesty. We conclude there is substantial evidence to support the SPB's findings. There is evidence supporting the reasonable inference that Trigueros knew at the time she applied for the DOJ position that she had previously been dismissed from her PD position for poor work performance. She was informed of her poor work performance by her PD supervisor and received a letter informing her of her dismissal. At the administrative hearing, Salazar, her former PD supervisor, testified she was dismissed because her reports were poor, she never got her work done, and she spent a lot of time on personal matters. When he gave her the dismissal letter, he told her she was being dismissed. Trigueros admitted Salazar told her she was not getting enough cases done, but claimed she failed her PD probation because of a personality conflict with him. She stated she had two meetings with PD supervisors regarding the reasons for her dismissal and received the letter informing her of her dismissal. That PD letter stated she was dismissed because "[her] work performance in the areas of cooperation, application of effort and public relations did not satisfactorily meet the requirements for the position of" legal assistant. Therefore, the SPB could reasonably infer Trigueros knew she had been dismissed from her PD position for poor work performance.

Furthermore, there is evidence to support the finding that, despite that knowledge, Trigueros intentionally wrongly answered "No" to Question No. 5 on her DOJ employment application and omitted any reference to her prior PD position in responding to Question No. 15 regarding prior work experience. On her original December 2004 Form STD 678 employment application, she answered "No" to Question No. 5, which asked: "Have you ever been dismissed or terminated from any position for performance or other disciplinary reasons?" Based on the evidence showing Trigueros knew she had previously been dismissed from her PD position for poor work performance, the SPB could reasonably infer she intentionally wrongly answered that question "No" and, instead, should have answered it "Yes" and then explained the circumstances regarding that dismissal. The SPB could reasonably reject Trigueros's proffered explanations for her answer to Question No. 5 that either she was confused by its language or that it did not, in fact, require a "Yes" answer if she had only been rejected during her PD probation period. To the extent Trigueros argues the evidence supports a finding that she was confused by the question's language, she misconstrues and/or misapplies the substantial evidence standard of review. The SPB could reasonably conclude that in December 2004 Trigueros knew she was required to answer "Yes." Evidence that in December 2006 the SPB modified Question No. 5 of the standard Form STD 678 to exclude rejections during probation as requiring a "Yes" answer does not establish Question No. 5 in 2004 was ambiguous or otherwise did not require Trigueros to answer "Yes." The SPB expressly found Trigueros's explanations for her answers on Form STD 678 to be not credible, stating her testimony was "inconsistent, and therefore, not believable." The record shows

she initially told PSG she had made a "mistake" in answering Question No. 5, but later claimed Question No. 5 did not require a "Yes" answer if she were rejected during a probation period.

It is not our function under the substantial evidence standard of review to reweigh the evidence or determine the credibility of witnesses, but rather to review all the evidence and reasonable inferences favorably to the SPB's decision for substantial evidence to support its findings. (*Youth Authority, supra*, 104 Cal.App.4th at p. 584; *Valenzuela, supra*, 153 Cal.App.4th at p. 1184; *Parks, supra*, 233 Cal.App.3d at p. 823; *Camarena, supra*, 54 Cal.App.4th at p. 701.)

Furthermore, there is evidence to support a reasonable inference that Trigueros intentionally wrongly omitted her PD work experience in her response to Question No. 15 on Form STD 678, which asked her for information regarding her employment history, including "a complete list of your paid and/or volunteer work experience **which relates to the qualification requirements specified on the examination bulletin. . . .**" and to "[l]ist all relevant jobs regardless of duration." Despite her omission of her former position as a PD legal assistant, Trigueros's response to Question No. 15 and attached resume included many former positions she held from 1978 through 2003 that had little, if any, relevance to the position as a DOJ legal secretary. She listed various nonlegal positions she previously held, including realtor, leasing professional, and dental technician. The fact that she listed those nonlegal positions, while omitting her former position as a PD legal assistant, supports a reasonable inference by the SPB that she intentionally wrongly omitted any reference to her former position as a PD legal assistant.

The SPB could reasonably reject Trigueros's arguments that she omitted her PD position from her response to Question No. 15 because that position was not relevant work experience and was only of a short duration. Because PD often represents defendants opposing the DOJ, there is the potential that a former PD legal assistant may have a conflict of interest were she to become a DOJ legal secretary. Therefore, Trigueros's former PD legal assistant position *was* relevant to the DOJ legal secretary position and she was required to list it in response to Question No. 15. To the extent Trigueros argues the evidence supports a finding that she was confused by Question No. 15's language or otherwise was not required to list her former PD position, she misconstrues and/or misapplies the substantial evidence standard of review.⁴

Finally, regarding Trigueros's intent in wrongly answering Question Nos. 5 and 15, the record shows she signed her Form STD 678 under penalty of perjury. The SPB could conclude she, like any other applicant, would presumably take great care in answering the questions fully and accurately. Based on the circumstances in this case, the SPB could reasonably infer she acted with the intent to mislead the DOJ in applying for the legal secretary position and therefore acted dishonestly and committed fraud in securing that employment. (§ 19572, subs. (a), (f).) A public employee acts dishonestly where he or she acts with a disposition to deceive, cheat, or defraud, or with an absence of integrity. (§ 19572, subd. (f); *Gee v. California State Personnel Bd.* (1970) 5

⁴ As the DOJ notes, Trigueros subsequently applied for promotions at the DOJ and submitted three subsequent Form STD 678's, in which she repeated her wrong answers to Question Nos. 5 and 15.

Cal.App.3d 713, 718-719.) Similarly, a public employee commits fraud in securing an appointment when he or she intentionally misrepresents or omits known facts in an employment application or resume submitted to obtain a position. (§ 19572, subd. (a).) There is substantial evidence to support the SPB's finding that Trigueros acted dishonestly and committed fraud in securing her DOJ legal secretary position, warranting disciplinary action against her under section 19572. (*Youth Authority, supra*, 104 Cal.App.4th at p. 584; *Valenzuela, supra*, 153 Cal.App.4th at p. 1184; *Parks, supra*, 233 Cal.App.3d at p. 823; *Camarena, supra*, 54 Cal.App.4th at p. 701.)

We further conclude there is substantial evidence to support the SPB's finding that Trigueros's conduct in obtaining her DOJ position constituted "[o]ther failure of good behavior" that caused discredit to the DOJ. Based on her intentionally wrong answers to Question Nos. 5 and 15 on Form STD 678, which she signed under penalty of perjury, the SPB could reasonably conclude that dishonesty and fraud constituted a failure of good behavior that caused discredit to the DOJ. The SPB could reasonably conclude her intentionally wrong answers had a rational relationship to her position as a DOJ legal secretary because, in that position, she was often required to sign affidavits for proofs of service under penalty of perjury. The SPB could reasonably infer that because Trigueros signed Form STD 678 under penalty of perjury even though she intentionally wrongly answered Question Nos. 5 and 15, others (e.g., trial courts, DOJ attorneys, and defense attorneys) could reasonably doubt her veracity in signing proofs of service under penalty of perjury. The SPB found that "courts rely on proofs of service for timelines and notice. Trust and honesty [are] integral to the position of Legal Secretary." The SPB found that

because Trigueros "knowingly manipulate[d] or omit[ted] personal facts in order to get what she wants," her dishonest and fraudulent conduct in securing her position constituted a failure of good behavior that caused discredit to the DOJ. We conclude there is substantial evidence to support that finding.

The evidence showing she filed a merit issue complaint (or purported whistleblower complaint) does not show the evidence is insufficient to support the SPB's finding that she acted dishonestly and fraudulently in securing her DOJ position and therefore was properly subject to discipline. Rather, the SPB could reasonably reject her assertion that she was terminated by the DOJ in retaliation for her complaints regarding the hiring or promotion practices at the DOJ. In her complaints, she claimed there was bias or retaliation against her for her promotion attempts. She did not mention any violation of federal or state law. Therefore, the SPB reasonably concluded her motivation for filing those complaints regarding the DOJ's promotion practices was not advancement of the public good, but was personal and therefore not protected by the California Whistleblower Protection Act (WPA) (§ 8547 et seq.). (Cf. *Mize-Kurzman v. Marin Community College Dist.* (2012) 202 Cal.App.4th 832, 852 ["it is not the *motive* of the asserted whistleblower, but the nature of the communication[,] that determines whether it is covered" or protected by the WPA]; *Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1384-1385 [dismissed employee's claim of retaliation after disclosing internal personnel matters was not covered by the WPA].) The SPB could properly characterize Trigueros's complaint regarding the DOJ's promotion practices and purported retaliation as merely a merit issue complaint that, as the SPB

previously found, was not timely filed.⁵ In any event, the SPB could reasonably conclude Trigueros did not carry her burden to prove her defense that the DOJ retaliated against her for her complaints about its hiring and promotion practices and other internal personnel matters. There is substantial evidence to support the SPB's finding that because Trigueros "made no 'protected disclosures' under the WPA, the issue of retaliation against [her] is moot."

III

Right to Due Process

Trigueros contends she was denied her right to due process and a fair hearing based on the ALJ's conduct. She argues the ALJ was rude and condescending to her, inappropriately spoke to opposing counsel in the hallway during recesses, and permitted the DOJ to have its witnesses present during the hearing. However, she provides few, if any, citations to the record showing the alleged misconduct. Furthermore, she does not provide any coherent, substantive legal analysis showing the purported misconduct (to the extent reflected in the record) constitutes a violation of her right to due process and a fair hearing. We conclude Trigueros has waived this contention.

"Where a point is merely asserted by [appellant] without any [substantive] argument of or authority for its proposition, it is deemed to be without foundation and

⁵ Trigueros's complaints also sought removal of unsatisfactory evaluations and purportedly inaccurate memoranda and letters of reprimand from her DOJ personnel file. Those issues clearly involved internal personnel matters that are not protected by the WPA. (Cf. *Mueller v. County of Los Angeles* (2009) 176 Cal.App.4th 809, 822.)

requires no discussion." (*People v. Ham* (1970) 7 Cal.App.3d 768, 783, disapproved on another ground in *People v. Compton* (1971) 6 Cal.3d 55, 60, fn. 3.) "Issues do not have a life of their own: if they are not raised or supported by [substantive] argument or citation to authority, we consider the issues waived." (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99; see also *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700 ["[w]hen an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary"]; *Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3 [contention was deemed waived because "[a]ppellant did not formulate a coherent legal argument nor did she cite any supporting authority"]; *Colores v. Board of Trustees* (2003) 105 Cal.App.4th 1293, 1301, fn. 2 ["[t]he dearth of true legal analysis in her appellate briefs amounts to a waiver of the [contention] and we treat it as such"]; *Bayside Auto & Truck Sales, Inc. v. Department of Transportation* (1993) 21 Cal.App.4th 561, 571.) Appellants acting in propria persona are held to the same standards as those represented by counsel. (See, e.g., *City of Los Angeles v. Glair* (2007) 153 Cal.App.4th 813, 819.)

In any event, assuming *arguendo* Trigueros has not waived this contention, we conclude she has *not* carried her burden on appeal to present persuasive substantive argument and analysis showing the ALJ violated her right to due process and a fair

hearing.⁶ (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [presumption of correctness of judgment]; *Fundamental Investment etc. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971 [appellant has burden to affirmatively show error]; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 105 [conclusory claims did not persuade appellate court].)

⁶ We further note that Trigueros's opening brief contains an inadequate summary of significant facts and its assertions of fact are supported by very few citations to the record on appeal, violating California Rules of Court, rule 8.204(a)(2)(C). (All rule references are to the California Rules of Court.) Statements of fact not part of, or supported by citations to, the record on appeal are improper and cannot be considered on appeal. (Rule 8.204(a)(2)(C); *Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632; *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625.) We disregard any statements of fact set forth in her brief that are outside of the record on appeal. (*Pulver*, at p. 632; *Kendall*, at p. 625; *Gotschall v. Daley* (2002) 96 Cal.App.4th 479, 481, fn. 1.) Furthermore, to the extent her assertions of fact and procedure ostensibly refer to matters within the record on appeal, her brief does *not* contain adequate citations to the appellate record in violation of rule 8.204(a)(1)(C). Like in *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, at page 1246, her briefs are, in large part, "devoid of citations to the [record on appeal] and are thus in dramatic noncompliance with appellate procedures." "It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations." (*Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205.) "If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived." (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; see also *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239; *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) To the extent Trigueros's contentions do not contain adequate supporting citations to the record on appeal, we consider those contentions to have been waived. (*Nwosu*, at p. 1247; *City of Lincoln*, at p. 1239; *Duarte*, at p. 856; *Guthrey*, at p. 1115.) Finally, we again note the fact that she filed this appeal in propria persona does not exempt her from compliance with established appellate rules. (*Nwosu*, at pp. 1246-1247 [in propria persona litigants must follow the same procedural rules as attorneys]; *City of Los Angeles v. Glair, supra*, 153 Cal.App.4th at p. 819 [same].)

IV

Penalty of Dismissal

Trigueros contends the SPB abused its discretion by determining the penalty of dismissal from employment was the appropriate disciplinary penalty for her misconduct.

A

We uphold the SPB's decision regarding the disciplinary penalty imposed unless the penalty is an abuse of discretion. (*Parks, supra*, 233 Cal.App.3d at pp. 831-832.) An abuse of discretion is shown where the action exceeds the bounds of reason. (*Ibid.*) We should not "substitute [our] discretion for that of the administrative agency concerning the degree of punishment imposed." (*Fout v. State Personnel Bd.* (1982) 136 Cal.App.3d 817, 821.) "[W]hile the administrative agency has a broad discretion in respect to the imposition of a penalty or discipline, 'it does not have absolute and unlimited power. It is bound to exercise legal discretion, which is, in the circumstances, judicial discretion.' [Citation.] In considering whether such abuse occurred in the context of public employee discipline, we note that the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated is likely to result in, '[h]arm to the public service.' [Citations.] Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence." (*Skelly, supra*, 15 Cal.3d at pp. 217-218.)

B

Based on our review of the administrative record in this case, we conclude the SPB did not abuse its discretion in concluding dismissal from employment was the

appropriate penalty for Trigueros's misconduct. Trigueros acted dishonestly and fraudulently in securing her appointment as a DOJ legal secretary. She repeated that dishonest and fraudulent conduct on three subsequent occasions when she applied for promotions. She also gave inconsistent and incredible excuses for her misconduct during her PSG interview and at the administrative hearing, thereby further demonstrating a lack of honesty and trustworthiness. The SPB could reasonably conclude a DOJ legal secretary should be honest and trustworthy in performing his or her job (e.g., signing proofs of service under penalty of perjury, etc.) and therefore Trigueros's demonstrated, and repeated, lack of honesty and trustworthiness warranted her dismissal. The SPB found:

"[Trigueros] failed to acknowledge any wrongdoing. [Her] testimony was riddled with excuses and justifications for her conduct, demonstrating [her] willingness to lie and/or deceive in order to get what she wants. Therefore, the likelihood of reoccurrence seems great. Ultimately, employers must be able to trust their employees, especially in a legal office.

"Here, on four separate [Form] STD 678s, [Trigueros] intentionally concealed that she had been rejected [by PD] during probation, thereby misrepresenting her work history. [Her] repeated misrepresentations prevented the evaluations panels from being able to examine [her] work history in comparison to other, more honest applicants. [The DOJ] should have been given all the information upon which it generally relies in making hiring decisions. Because [Trigueros's] failure to disclose her rejection during probation deprived [the DOJ] of information necessary to make a contentious [sic] hiring decision, dismissal is appropriate."

The SPB sustained the DOJ's dismissal of Trigueros's employment.

There is substantial evidence in the record to support the SPB's finding that Trigueros's dishonesty was likely to recur. (*Skelly, supra*, 15 Cal.3d at p. 218.)

Furthermore, the SPB could reasonably conclude that such dishonesty, if repeated, would result in harm to the public service. (*Ibid.*) We conclude the SPB did not abuse its discretion by determining the penalty of dismissal from employment was the appropriate disciplinary penalty for Trigueros's misconduct. (*Id.* at pp. 217-218; *Parks, supra*, 233 Cal.App.3d at pp. 831-832.)

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.