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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

DEPARTMENT OF CORRECTIONS AND
REHABILITATION,

Plaintiff and Appellant,

v.

STATE PERSONNEL BOARD,

Defendant and Respondent;

ROXANA HIDALGO,

Real Party in Interest and Respondent.

F069478

(Super. Ct. No. CV274533)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Brian M. McNamara, Judge.

Hazel Bergtholdt for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Law Office of Michael A. Morguess and Michael A. Morguess for Real Party in Interest and Respondent.

* Before Levy, Acting P. J., Kane, J. and Smith, J.

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Real party in interest, Roxana Hidalgo, is employed by appellant, the Department of Corrections and Rehabilitation (CDCR), at the Wasco State Prison. After being served with a notice of adverse action, Hidalgo filed an appeal with the State Personnel Board.

By a notice sent in November 2010, the parties were scheduled to participate in a prehearing/settlement conference on May 12, 2011, at 2550 Mariposa Mall, Fresno, California. In February 2011 a corrected notice was sent out changing the location of the conference to the CalTrans facility located at 2015 E. Shields, Fresno, California, approximately four miles away.

On May 12 at 3:30 p.m., the time noticed for the prehearing/settlement conference, neither Hidalgo nor her attorney were present. Approximately 30 minutes later, the administrative law judge (ALJ) went on the record. The ALJ noted that Hidalgo's attorney would not be appearing and that Hidalgo was en route. The ALJ's assistant had informed the ALJ that Hidalgo had gone to the initially noticed location because she had not received the corrected notice. However, the ALJ did not believe that Hidalgo had not received notice of the location change. The ALJ refused to wait for Hidalgo to arrive and deemed her appeal withdrawn. The State Personnel Board adopted the ALJ's decision.

Hidalgo petitioned the trial court for a writ of mandate. The court granted the petition and directed the State Personnel Board to set aside the decision and grant Hidalgo a full hearing on the substantive issues.

CDCR argues the ALJ did not abuse his discretion when he dismissed Hidalgo's appeal and therefore the trial court erred in granting Hidalgo's petition. We will affirm.

DISCUSSION

Hidalgo sought judicial review of an administrative decision through a petition for writ of mandate. Thus, the trial court was required to determine whether the ALJ prejudicially abused his discretion. (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 216.)

Discretion is abused when the court exceeds the bounds of reason. Although expansive, discretion may not be capricious or arbitrary and must be exercised impartially and in such a way as to serve the ends of substantial justice. (*Dubois v. Corroon & Black Corp.* (1993) 12 Cal.App.4th 1689, 1694-1695.)

Government Code section 19579 provides that the failure of either the employee, the employer or their representatives to proceed at the hearing on an adverse action is deemed a withdrawal of the appeal or the action unless the hearing is continued by mutual consent or good cause. Here, however, Hildago was not purposefully failing to proceed. Rather, she mistakenly went to the wrong location and, upon discovering her error, was attempting to make her appearance at the prehearing conference.

CDCR relies on California Code of Regulations, title 2, section 57.1, subdivision (c), to support its position that the ALJ did not abuse his discretion in dismissing Hildago's appeal. That subdivision provides, in part, "Each Appellant and his or her representative, and each Respondent and his or her representative, shall appear in person at all prehearing/settlement conferences." According to CDCR, the fact that Hildago's attorney did not intend to appear at the prehearing conference in violation of this regulation demonstrates the ALJ did not exceed the bounds of reason. Instead, the ALJ merely applied the rules to the situation he faced.

However, Hildago's attorney's actions do not indicate that Hildago was withdrawing her appeal or that she was engaging in dilatory tactics. Hildago had filed her prehearing/settlement conference statement and intended to appear at the conference. The ALJ was aware of Hildago's error and that she was on her way to the correct location when he deemed the appeal withdrawn. Under these circumstances, the trial court did not err in ruling that the ALJ abused his discretion. The ALJ imposed a harsh sanction that did not serve the ends of substantial justice.

DISPOSITION

The judgment is affirmed. No costs are awarded.