

CERTIFIED FOR PUBLICATION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

STATE BOARD OF CHIROPRACTIC EXAMINERS
et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SACRAMENTO
COUNTY,

Respondent;

CAROLE M. ARBUCKLE,

Real Party In Interest.

C052554

(Sup.Ct.No. 03AS00948)

**ORDER MODIFYING OPINION
And
DENYING REHEARING;
NO CHANGE IN JUDGMENT**

ORIGINAL PROCEEDING. Petition for Writ of Mandate.
Writ issued.

Bill Lockyer, Attorney General, Jacob Appelsmith, Senior
Assistant Attorney General, Alicia M.B. Fowler, Lyn Harlan
and Noreen P. Skelly, Deputy Attorneys General, for
Petitioners.

No appearance for Respondent.

Garcia & Associates, Gaspar Garcia, II, for Real Party in
Interest.

THE COURT:

The opinion filed herein on February 28, 2007, is modified in the following manner:

1. On page 9, delete the first full paragraph in its entirety and replace it with the following paragraph:

First, under a statute cross-referencing the Act the SPB can award damages. The SPB investigates retaliation claims. It "shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 8547.3 within 10 working days of its submission. The executive officer shall complete findings of the hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings" to the parties. (§ 19683, subd. (a).) The statute thus provides for a decision by the executive officer within 70 working days. If the executive officer finds retaliation took place the offending manager may appeal to the SPB to contest that finding. (*Id.*, subd. (b).)

2. On page 26, the following language is inserted at the end of the Disposition as footnote 1.

Footnote 1 reads as follows:

In her petition for rehearing Arbuckle claims that because the executive officer did not issue his findings within 70 working days after she filed her whistleblower claim, as contemplated by section 19683, subdivision (a), the SPB "failed to issue findings" within the meaning of section 8547.8, subdivision (c), and she was free to ignore the decision. We decline to grant a rehearing for three reasons.

First, Arbuckle forfeited this claim because she did not present it to this court until her petition for a rehearing. (*Prince v. Hill* (1915) 170 Cal. 192, 195; *Payne & Dewey v. Treadwell* (1860) 16 Cal. 220, 247.)

Second, the hearing officer *did* issue findings, which became the findings of the SPB, as we have explained. If Arbuckle thought the findings were defective because they were untimely, her remedy was to file a petition for writ of mandate to set them aside, not ignore them.

Third, Arbuckle filed her amended complaint on July 23, 2002, which gave the Board 10 working days to determine if it had jurisdiction over it and then 60 working days for the executive officer to complete his findings. (Former rule 56.2(c)(i).) The findings state, and Arbuckle does not dispute, that after the Board filed its response, and after she filed her administrative reply on September 11, 2002, she submitted additional documents to the executive officer on October 9 and 25, 2002. The October 9, 2002 submission was less than 60 working days from the date of her amended complaint. She later advised the executive officer that she did not intend to amend her complaint by making these late submissions, but the findings state that "submissions of these documents delayed SPB's review of her Complaint." Thus, the delay does not appear to stem from bureaucratic inaction, and in such circumstances it is not clear that she would have been able to set the findings aside as untimely.

Accordingly, we decline Arbuckles request for a rehearing based on this belated claim.

3. Delete the citation "(Cal. Rules of Court, rule 8.276.)" at the end of the disposition.

The petition for rehearing is denied.

This modification does not change the judgment.

FOR THE COURT:

SCOTLAND, P.J.

NICHOLSON, J.

MORRISON, J.