

**DECISION AND ORDER**

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IN THE MATTER OF THE APPEAL OF:

**TERESA ALSON**, Appellant,

vs.

**DEPARTMENT OF PUBLIC WORKS, FINANCE AND ADMINISTRATION DIVISION**,  
and the City and County of Denver, a municipal corporation, Agency.

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The hearing in this appeal was held on Aug. 8, 2011 before Hearing Officer Valerie McNaughton. Appellant was present throughout the hearing and was represented by Marilee E. Langhoff, Esq. Assistant City Attorney Franklin Nachman represented the Agency in these proceedings. Having considered the evidence and arguments of the parties, the Hearing Officer makes the following findings of fact and conclusions of law, and enters the following order.

I. STATEMENT OF THE APPEAL

This is the appeal of Appellant Teresa Alson, Contract Compliance Coordinator for the Division of Finance and Administration, Department of Public Works, which challenges the 15-day suspension imposed May 25, 2011. The parties stipulated to the admission of Agency Exhibits 1 - 3, 5 - 11, 15, 16, and Appellant's Exhibits C and D. Exhibit H was rejected for admission.

II. ISSUES

The issues in this appeal are as follows:

- 1) Did the Agency establish by a preponderance of the evidence that Appellant's conduct justified discipline under the Career Service Rules (CSR), and
- 2) Did the Agency establish that a 15-day suspension was within the range of penalties that could be imposed by a reasonable administrator for the violations established by the evidence?

III. FINDINGS OF FACT

Appellant Teresa Alson has been employed by the City for 15 years in two different agencies, and is now assigned to the Capital Projects Management division within the Department of Public Works.

On Apr. 15, 2011, Appellant received in her office email a copy of a scanned draft document sent to her in error by Kimberly Fresquez, Executive Assistant for Public Works Manager George Delaney. The attachment was an unsigned draft letter of admonishment from Delaney to a high level Agency official. A letter of admonishment is a personnel document that, once issued, is placed in an employee's supervisory file. [Stuber, 10:52.] Coincidentally, that morning Appellant had just been shown an article that was critical of that same official. Appellant opened and read the document, and immediately realized it had been sent to her by mistake. She printed a copy and saved the document in her private drive on her office computer, "not to send or use in the future, but as insurance", she later informed the Agency. [Exh. 3-2.] Appellant added at hearing that she kept a copy "to shield myself." She explained that her treatment by her former supervisor had degraded over time, causing her to keep copies of her work to rebut any misrepresentations. [Appellant, 1:20.] Her former supervisor is not the official who was the subject of the letter of admonishment. After saving and printing the letter, Appellant forwarded it to Agency Human Resources (HR) Professional Karen Brennan with the following note: "[r]ead this and delete it. It accidentally got sent to me." [Exh. 4.]

Executive Assistant Kimberly Fresquez testified that in attempting to make a copy of the Director's letter, she inadvertently scanned it to the last person who used the machine, since the copier had not been reset from the scan function. The copier is shared by the manager's office and the finance department. Fresquez immediately realized what had happened, felt panicked that she had inadvertently transmitted a sensitive document to an unknown recipient, and quickly sought help from Senior IT Administrator Angela Boyd to determine who had received the scan. "I was terrified because I just made a big mistake . . . it's something you're not going to forget." [Fresquez, 9:27.] Boyd tested the machine and learned that it had gone to Appellant. Fresquez went to Appellant's desk in an agitated state and asked her if she had received a scanned document, explaining that it had been sent by mistake. Appellant confirmed that she had received it. At Fresquez' request, Appellant deleted the document from her inbox, and volunteered that she would not forward it to anyone. In the written statement she submitted at the pre-disciplinary meeting, Appellant stated, "[i]n all candor, I did not tell Kim I had forwarded the email. What I said was that I would not forward it and I have not done so since speaking with her." [Exh. 3-2.] At hearing, Appellant conceded that her statement was "skirting a thin line. It was semantics", since she had already forwarded it to Brennan. [Appellant, 1:41.] Appellant then left her desk for about 15 minutes, hoping that would be the end of the matter, because she did not want to "get caught". [Appellant, 1:42.]

When Fresquez returned to inform Boyd she had found the recipient and had watched Appellant delete it from her inbox, Boyd reminded her that it could still be retrieved from her "deleted items" Outlook folder. Boyd sought and got approval from Delaney to access Appellant's computer. Boyd then went to Appellant's desk with Fresquez, and logged onto Appellant's Outlook program. She discovered that Appellant had forwarded the Delaney letter to Brennan, accompanied by a message that Brennan should read the attachment and then delete it. Boyd printed the message at Fresquez' request, and it was admitted into evidence as Exhibit 4.

Fresquez took the printed message to HR Supervisor Roxane Stuber, and informed her about the situation. Stuber walked to Appellant's desk, where Boyd was still working. At that point, Appellant returned to her cubicle, saw Boyd typing on her computer and asked her what was going on. Stuber invited Appellant to accompany her to a nearby conference

room so they could speak privately. Once there, Stuber told Appellant they believed she had received a confidential document and forwarded it to someone else. Appellant responded, "I fucked up. I so fucked up." Stuber confirmed that she had indeed messed up, and asked her why she had done it. Appellant responded that Brennan had filed a grievance against the official, and would be glad to know about the letter of admonishment. [Stuber, 10:19.] Appellant asked Stuber if she would be fired. Stuber told her she did not know, but there would be some action taken.

That evening, Appellant took her copy of the admonishment letter home and showed it to her husband, a City employee who is supervised by the official named in the letter. [Appellant, 12:06.] The next day, a Saturday, Appellant went to the home of her supervisor Beth Sample, informed her about the situation, and offered to show her the letter. Sample declined to read it. [Appellant, 11:39, 12:07, 2:05.]

As a result of Appellant's actions, the contents of the scanned document became widely known and the incident caused turmoil in the office. [Appellant, 2:00; Exh. 3-2.] Fresquez was afraid her mistake would cause managers to lose trust in her ability to handle confidential matters, and so she sought a meeting with Director of Finance Barbara Puls to assure her she had not intentionally forwarded the document. [Fresquez, 9:31.]

In 2007, Appellant had signed the City's Information Technology (IT) Acceptable Use Policy governing use of email accounts, and was aware she would be evaluated based on her compliance with that policy and other City rules. [Appellant, 1:21; Exhs. 6-3, 7.] Under that policy, signatories must use their account appropriately, and "shall not knowingly transmit, retrieve, or store any communication that is . . . in violation of another User's privacy". [Exh. 7-3.] In addition, an unintended recipient of an email is prohibited from "unauthorized review, forwarding, printing, copying, distribution, or use" of that email. [Exh. 7-3.]

After her meeting with Appellant, Stuber informed Director Puls about the incident. As a result of their conversation, Appellant was placed on investigatory leave and the disciplinary process was initiated by service on Appellant of a pre-disciplinary letter. [Exh. 9.]

The Agency ultimately determined that Appellant's actions were dishonest, violated the IT policy and standards of performance on accountability, respect and integrity, and divulged confidential or sensitive information, in violation of CSR Rules § 16-60 E, K, L and X. After considering Appellant's employment and disciplinary history, her written statement, the gravity of the offense and its effect on the Agency's ability to trust Appellant to properly handle confidential information, Puls imposed a 15-day suspension for the misconduct. [Exh. 2.]

#### IV. ANALYSIS

The Agency bears the burden to prove by a preponderance of the evidence that the conduct stated in the disciplinary letter violates the Career Service Rules cited in the disciplinary action. The Agency must also establish that the 15-day suspension is within the range of discipline that can be imposed by a reasonable administrator based on the proven violations. *In re Gustern*, CSA 128-02, 20 (12/23/02); *Turner v. Rossmiller*, 535 P.2d 751 (Colo. App. 1975).

## 1. Dishonesty, CSR § 16-60 E

An employee violates this rule by making a knowing misrepresentation within the employment context, or remaining silent about such a matter when the situation calls for a response. In re Clayton, CSA 111-09, 5 (3/31/10); In re Mounjim, CSA 87-07, 6 (CSB 1/8/09).

Here, the Agency conceded that Appellant did not alter or falsify any records under § 16-60 E.1, as specifically cited in the disciplinary letter. [Exh. 2-1.] The Agency alleges instead that Appellant committed an act of dishonesty in violation of the rule by her misleading responses to Fresquez' request that she delete the document mistakenly forwarded to her. [Puls, 11:26.] Fresquez approached Appellant that morning by frankly admitting she had made a big mistake, and asking her anxiously to help her correct it. Fresquez' nervous demeanor and her urgent request to delete the scan clearly communicated her intent that all forms of the sensitive document must be erased, and Appellant understood that request. Instead, Appellant deleted the document from one folder in Fresquez' presence, knowing it was saved in others, and assured Fresquez that she would not forward it. Appellant admitted at hearing that this response was "skirting a thin line" in terms of the truth, since she had already forwarded it to another employee who had reason to take satisfaction in the official's reprimand. Appellant's statements thus knowingly misrepresented the true state of affairs as to whether the mistake had been completely corrected. There is no dispute that Appellant's responses were made about a matter in the employment context: her receipt of a disciplinary letter inadvertently sent to her email inbox during work hours. Therefore, the Agency established that Appellant was dishonest in violation of this rule.

## 2. Failing to meet standards of performance, CSR § 16-60 K

An employee violates this rule when the agency clearly communicates a standard of performance, and the employee fails to meet that standard. In re Bernal, CSA 54-10, 11 (3/11/11).

In support of this allegation, the Agency proved that Appellant was required by her PEPR to follow Career Service and Agency rules, including their spirit and intent. [Exhs. 6-3, 7.] Appellant knew that her performance was being evaluated based on her compliance with the Agency's IT Acceptable Use Policy. [Appellant, 1:21.] Her misleading statements to Fresquez as well as her apology to Stuber are convincing evidence that she knew this use of her email account was improper. The Agency therefore proved that Appellant failed to follow the letter, spirit and intent of that policy, and also violated CSR § 16-60 X by divulging confidential or sensitive documents, as found below.

Under the performance standard of accountability, Appellant must demonstrate high standards of ethical conduct, among other duties. Appellant failed to meet that standard by her action in concealing from Fresquez that she had both saved and forwarded a confidential letter in order to use it for her own purposes: either as a shield to protect herself or as a sword to discredit the official named in the letter. Even after she had been forcefully confronted by Stuber for forwarding the letter, Appellant showed it to two other employees over the next 24 hours. Thus, Appellant used City equipment in violation of the policy protecting the privacy rights of other employees, and concealed her misconduct, contrary to her obligation to demonstrate high standards of ethical conduct.

With regard to the performance standard of respect, Appellant was required to assist her fellow employees and contribute to positive working conditions. These standards were clearly communicated to Appellant in the IT policy and CSR rules, and were understood by her. However, Appellant misled Fresquez instead of helping her retrieve the document in all its forms. Her dissemination of a sensitive disciplinary letter addressed to a high level Agency official created a negative work environment. Appellant breached the same performance standard by showing the confidential document to her husband that evening. These actions violated the confidentiality of sensitive personnel matters, defeated Fresquez' urgent efforts to reverse her error, and caused emotional upset in the office. As a result, the Agency's trust in Appellant's willingness to maintain confidentiality was seriously compromised. Based on the same evidence, Appellant failed to lead by example, in violation of her performance standard to demonstrate integrity. Therefore, the Agency established that Appellant failed to meet her established standards of performance, as required by § 16-60 K.

### 3. Failure to observe agency policies, CSR § 16-60 L

Under this disciplinary rule, an agency must prove the existence of a written policy, and that the employee was aware of the policy but failed to follow it. In re Mounjim, CSA 87-07, 6 (CSB 1/8/09).

As found above, Appellant had agreed in writing to be bound by the City's policy on the use of its computers and email, or face disciplinary action. [Exh. 7-1, 7-8.] That policy unmistakably prohibits reviewing, copying or forwarding a misdirected transmission, and Appellant admitted throughout this process that she had done all three. Thus, the Agency proved Appellant violated the IT Acceptable Use Policy, and thereby breached this Career Service Rule.

### 4. Divulging confidential or sensitive information, CSR § 16-60 X

This rule bars an employee from disclosing "confidential or otherwise sensitive information to unauthorized individuals." § 16-60 X.

Appellant conceded that she shared a draft admonishment letter with two employees, and attempted to show it to a third. None of the three employees were authorized to receive or see it. Appellant did not dispute the testimony of HR Supervisor Roxane Stuber that a letter of admonishment is a confidential personnel record that is stored in an employee's personnel file, where access is strictly limited. See e.g. Colorado Open Records Act, CRS § 24-72-204(3)(a)(II)(A) (personnel files are not open to inspection as public records); § 24-72-202(6)(II)(A) (documents considered work product are not public records). While this letter was only in draft form, Appellant acknowledged that it showed misconduct by and discipline of the official. [Exh. 3-2, 3-3.] Appellant's statements and actions demonstrated that she knew the document was sensitive: she saved it "as insurance" in the event she was criticized, and hoped her private use of it would not be discovered. Appellant tearfully admitted to Stuber that she had "fucked up", and apologized with a promise not to handle similar matters the same way in the future. [Appellant, 12:07; Exh. 3-2.] The undisputed evidence proved that Appellant disclosed confidential or sensitive information to two unauthorized individuals.

Appellant argues that her action did not damage the reputation of the official because it was already negative, although she admitted that private distribution of disciplinary letters to unauthorized person does not foster respect and good relationships within the City. [Appellant, 1:59; Exh. 3-2.] This rule does not require evidence that a disclosure of sensitive information causes damage.

#### 4. Appropriateness of Disciplinary Action

In evaluating the proper degree of discipline under the Career Service Rules, an agency must consider the severity of the offense, an employee's past disciplinary record, and the penalty most likely to achieve compliance with the rules. CSR § 16-20; In re Norman-Curry, CSA 28-07, 23 (2/27/09). The reasonableness of discipline is determined by the facts of each case. See In re Paz, CSA 07-09A, 2 (CSB 1/21/10). The level of discipline imposed by an agency must not be disturbed unless clearly excessive or not supported by substantial evidence. In re Owens, CSA 69-08, 8 (2/6/09).

The Agency established that Appellant violated its email policy by reading, forwarding, copying and saving a highly confidential personnel document sent to her in error. Appellant was dishonest thereafter by concealing that she had forwarded it to a co-worker whom Appellant believed would be pleased to know the official had been chastised. Brennan admitted Appellant was right in that prediction, as shown by her sardonic reply to Appellant: "[i]t couldn't have happened to a nicer person". [Brennan, 2:37.] As a result of Appellant's actions, Brennan too made a copy of the letter and saved it on her Blackberry phone. After that fact was discovered, the Agency electronically removed the copy from the Blackberry. The Agency likewise was required to retrieve or erase copies made by Appellant, and ensure that no other copies existed.

Unfortunately, destruction of the paper and electronic copies did not undo the damage done by Appellant's actions. The contents of the letter became widely known and was a topic of discussion in the office. Stuber reminded employees that they were not to talk about the matter, as it was confidential. [Stuber, 10:21.] Fresquez became concerned that her managers might have lost confidence in her ability to securely handle confidential information as a result of her scanning error. The Agency's trust in Appellant's ability to perform one of her key duties – handling confidential information – was compromised. Exposure of a disciplinary matter to office speculation and gossip defeats the remedial purpose of discipline. All of these were easily foreseeable consequences of Appellant's willful actions, and caused harm to several employees and to the office as a whole, a fact the Agency properly considered in determining the penalty most suited to the offense.

Appellant contends that a 15-day suspension was not in keeping with progressive discipline principles, since a 2007 counseling letter for attendance issues was her only previous discipline. The reasonableness of discipline within the career service personnel system is determined by the facts of each case, including in this case Appellant's motivation to harm the reputation of the official. While Appellant admitted fault and has apologized for her actions, she reiterated at hearing her opinion that she has a right to send out negative information if the reputation of the employee concerned is already bad. Thus, the Agency was justified in concluding that a significant suspension was necessary to convey that the behavior would not be tolerated, and to deter similar misconduct in the

future. See e.g. In re Morgan, CSA 63-08, 18 (4/6/09) (holding that an employee's continued intransigence supports substantial discipline.) I find that a 15-day suspension was not unreasonable given the violations proven and their effects on the workplace.

Order

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered that the Agency's suspension action dated May 25, 2011 is AFFIRMED.

Dated this 15<sup>th</sup> day of September, 2011.

  
Valerie McNaughton  
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this decision, in accordance with the requirements of CSR § 19-60 *et seq.*, within **fifteen** calendar days after the date of mailing of the Hearing Officer's decision, as stated in the decision's certificate of delivery. The Career Service Rules are available as a link at [www.denvergov.org/csa](http://www.denvergov.org/csa).

**All petitions for review must be filed with the:**

Career Service Board  
c/o CSA Personnel Director's Office  
201 W. Colfax Avenue, Dept. 412, 4<sup>th</sup> Floor  
Denver, CO 80202  
FAX: 720-913-5720  
EMAIL: [Leon.Duran@denvergov.org](mailto:Leon.Duran@denvergov.org)

AND

Career Service Hearing Office  
201 W. Colfax, 1<sup>st</sup> Floor  
Denver, CO 80202  
FAX: 720-913-5995  
EMAIL: [CSAHearings@denvergov.org](mailto:CSAHearings@denvergov.org).

I certify that on September 15, 2011, I delivered a correct copy of this Decision and Order to the following via email:

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