

**DECISION AND ORDER**

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IN THE MATTER OF THE APPEAL OF:

**MIKE ARCHULETA**, Appellant,

vs.

**DEPARTMENT OF PARKS AND RECREATION**,  
and the City and County of Denver, a municipal corporation, Agency.

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The hearing in this appeal was held on Sept. 17, 2009 before Hearing Officer Valerie McNaughton. Appellant was present throughout the hearing and was represented by Michael O'Malley, Esq. The Agency was represented by Assistant City Attorney Franklin Nachman, and Gordon Carruth served as advisory witness. 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 CASE**

On May 27, 2009, Appellant Mike Archuleta was dismissed from his position as a Maintenance Technician with the Denver Parks and Recreation Department (Agency). Appellant filed this direct appeal challenging that dismissal on June 5, 2009. The parties have stipulated to the admissibility of Exhibits 1 – 8, 19 – 21, 25, and 26. Exhibits 10, 12, 14, 17 and 18 were admitted without objection during the hearing.

**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 dismissal was within the range of penalties that could be imposed upon Appellant by a reasonable administrator for the violations proven under the rules?

### III. FINDINGS OF FACT

Appellant Mike Archuleta has been a Maintenance Technician with the Denver Parks and Recreation Department for sixteen years. On May 27, 2009, the Agency terminated Appellant based on its finding that he made threatening statements against other employees during a break, in violation of Career Service Rules and Executive Order 112. [Exh. 1.]

On Thursday, April 16, 2009<sup>1</sup>, Appellant and the entire crew of about seven co-workers were in the Agency break room. As is usual during employee breaks, there were several conversations going on at the same time. At his table, Appellant expressed unhappiness about a sentencing he attended the day before. Appellant related to his co-workers Eric Gomez and Aurelio Ibarra that a defendant who was charged with assaulting Appellant in Dec. 2008 was allowed to plead guilty to disturbing the peace. Appellant was unhappy that the victim advocate did not speak to him or ask to see the medical records he brought to the hearing. Appellant asked Mr. Gomez about sentencing proceedings because Mr. Gomez is a trained police officer who worked for Mountain View Police Department for 16 years. Mr. Ibarra asked him what he was going to do to the guy. [Testimony of Appellant, Messrs. Ibarra, Moguez.] Appellant replied angrily, "I should have gone postal on him." [Testimony of Mr. Moguez.] Mr. Ibarra said, "Calm down, Mike." Appellant turned to Mr. Ibarra and said, "If I ever do go postal, you're the first one I'm going to kill, Aurelio!" [Testimony of Messrs. Ibarra, Trujillo, Gomez; Exhs. 12, 17, 18.] Appellant added, "I'm dying anyway and have nothing to lose. I'm going to take that fucking Dominguez out." [Exh. 18.] Mr. Ibarra recalled that Appellant said, "I'm dying anyway so I might as well --", and added that he was going to kill manager Harry Hill and his own supervisor, Jose Dominguez. [Testimony of Mr. Ibarra; Exh. 12.]

Mr. Trujillo heard Appellant say he was sick, and knew he was going through hard times with his children. Appellant's facial expression was serious, and reaction from those who heard his remarks ranged from shock to laughter. Someone exclaimed, "Wow!" [Exhs. 14, 18.] The following Monday, Mr. Gomez reported the incident to his supervisor. The next day, he gave a written statement, in which he said Appellant's threats and other recent comments about the workplace made him believe that "the entire shop may be at risk." [Exh. 18.]

Agency Human Resources Director Ann King opened an internal investigation into this matter on April 23, 2009, and interviewed eight of Appellant's co-workers. [Exhs. 10, 12, 14, 17, 18, 21.] Two expressed the opinion that Appellant needs help. [Exhs. 12, 17.] Mr. Trujillo stated that Appellant seems to feel everyone is against him. [Exh. 17.] Mr. Ibarra reported that Appellant's statements made him very uneasy, and that as a result he didn't know if Appellant "is really not thinking right." [Exh. 12.] Mr. Trujillo observed, "Lately he is making comments about not caring about anyone else and this is not good." [Exh. 17.] Mr. Gomez reported that there is animosity between

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<sup>1</sup> While the termination letter asserts that the incident occurred on April 9th, the parties stipulated before closing arguments on Nov. 2, 2009 that the incident occurred on Thursday, April 16, 2009.

Appellant and Messrs. Trujillo and Ibarra based on Appellant's belief that he is not respected as a lead worker. "The tension is growing. We need some changes." [Exh. 10.] Appellant was placed on investigative leave effective Monday, April 27. [Exh. 4.] On Apr. 30, Ms. King assembled the entire work team for a meeting, and informed the employees that Appellant was on investigative leave. She stressed the importance of a safe and respectful work environment, and encouraged those with anything to report to contact her. [Exh. 21-2.] The investigation concluded on Apr. 30 with a recommendation that the matter proceed to the pre-disciplinary process. [Exh. 21-4.] Due to Ms. King's perception that the threat was serious, she reported the incident to the police, who interviewed Mr. Ibarra and charged Appellant with disturbing the peace. [Exhs. 12-2, 21-3.]

The idiom "go postal" has been defined as "to lose control or go crazy, especially in a violent way . . . in reference to incidents of violence among postal workers in the early 1990's."<sup>2</sup> Mr. Gomez and Mr. Ibarra testified that they believed the phrase referred to someone taking a firearm to work and injuring or killing co-workers. Mr. Trujillo viewed it as a threat, similar to going to the airport and saying, "I have a bomb." Mr. Moguez understood it to mean "being rowdy, shooting somebody." Mr. Carruth defined the expression as meaning a postal employee shooting at employees in the workplace. Appellant acknowledged that the phrase refers to a postal employee shooting multiple other employees. Thus, all witnesses who heard Appellant use the phrase shared an understanding that it meant someone threatening physical violence, especially violence directed at co-workers on the jobsite.

Appellant was served with a pre-disciplinary letter on May 4, 2009, which set the date of a pre-disciplinary meeting to allow him to "correct any errors in the Agency's information or facts, to tell your side of the story and to present any mitigating information as to why possible disciplinary action should not be taken." [Exh. 2.] The letter charged Appellant with violating Executive Order 112, the city's policy on workplace violence, as well as the Career Service Rules regarding threats and work relationships.

Appellant attended the pre-disciplinary meeting on May 19<sup>th</sup> with his attorney David Calvert. At that meeting, he played a tape of a statement he made about the incident. The disciplinary letter summarized this statement as follows: Mr. Ibarra repeatedly asked him to show him "what he was going to do to the guy [the defendant in the criminal matter]", and "how you're going to punch him". Appellant replied,

I looked at Arelio in kind of a joking way. I never got close to him, we were just kind of walking out of the shop and said Shut up and I said I should have just gone postal on him, meaning to me that I should have fought back or beat the heck out of him – you know that's what I really meant and every body knew that because that's what I'd been talking about is the guy I went to court with.

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<sup>2</sup> Postal. Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://dictionary.reference.com/browse/Postal> (accessed: October 15, 2009).

[Exh. 1-3.]

Facility Services Assistant Director Gordon Carruth, Manager Harry Hill and recently retired supervisor Jose Dominguez conferred regarding the discipline imposed. They concluded that Appellant had threatened to physically harm co-workers, a threat that caused concern to employees who heard it. They also considered Appellant's past discipline, in particular a threat made to Operations Supervisor Roger Russomanno in 2007.

Mr. Carruth was the decision-maker in the Russomanno matter. In 2007, Appellant's son was a seasonal worker under the supervision of Mr. Russomanno. In December of that year, Appellant came to Mr. Russomanno's office to let him know that his son had been absent for the past four days because he had been in jail. Mr. Russomanno informed Appellant that he was going to have to let his son go because of ongoing performance issues. Appellant became upset, and advised him that he'd better "be careful, watch your back". Mr. Russomanno asked him if that was a threat. Appellant repeated, "Just watch your back." When Mr. Russomanno reported this exchange to Mr. Carruth, the latter was "taken aback" by Mr. Russomanno's reaction. "I'd never seen him like that, before nor since." Mr. Russomanno testified that the threat changed his life forever, causing him to look over his shoulder to protect himself, even circling the shop and looking in nooks before entering the building. [Testimony of Mr. Russomanno, Mr. Carruth.] Mr. Carruth concluded that there was credible evidence of a threat by Appellant, and imposed a five-day suspension plus mandatory training on preventing workplace harassment and violence. [Exh. 8.] Appellant completed that training on Mar. 20, 2008. [Exh. 19.]

The fact that Appellant had suffered a five-day suspension for the same type of behavior a year before this incident, and completed the workplace violence course, weighed heavily on Mr. Carruth's decision to terminate. Mr. Carruth also considered Appellant's two previous suspensions in 2003 and 2007. At hearing, the Agency presented a third: a one-day suspension in 2001 for dishonesty and verbally abusing a different supervisor. [Exh. 6.]

In addition to the previous discipline, Mr. Carruth noted that Appellant has a pattern of reacting forcefully to disagreements in matters important to him, including his family and his work. Appellant had complained to Mr. Carruth in the past about what he perceived to be unfair treatment by his supervisor. During those discussions, Appellant's demeanor was serious and focused. Mr. Carruth concluded that the shop and its employees could be in danger if Appellant decided to take action on the break room threat.

At hearing, Appellant testified that he was sitting with Mr. Gomez, Mr. Ibarra and others in their usual spots at a break room table. He told them it was "awful" that the victim advocate did not talk to him or look at his medical records during the previous day's sentencing hearing, but that he wasn't really upset. Mr. Ibarra asked him three to five times, "Show us how you gonna punch him." Appellant said he finally responded, "I should have gone postal on the guy by beating the crap out of him the way he beat the

crap out of me. He didn't get in trouble, and I probably wouldn't have." As they were leaving the room, Mr. Ibarra asked him a few more times to show them how he would punch him. Appellant said he repeated, "I should have gone postal." He denied making any of the other statements alleged in the disciplinary letter.

Appellant testified that he was aware at the pre-disciplinary meeting that the incident actually occurred on April 16 and not April 9, as alleged in the pre-disciplinary letter. "I kept it to myself, because I believed it was their error." Appellant admitted that he attended training on Executive Order 112, the city's policy on violence in the workplace. [Exhs. 19, 20.] Based on that training, Appellant understood that "comments regarding violent acts, which are perceived to be a threat of harm" violate the Executive Order. [Testimony of Appellant; Exh. 20-7.]

As to the 2007 incident, Appellant testified that he and Mr. Russomanno, his son's supervisor, discussed problems with his son's performance. Appellant had worked on Mr. Russomanno's roof at his house, and so he thought Mr. Russomanno was a friend who would help his son after his release from jail. Mr. Russomanno "went off on me like nobody's business", and told him he was not going to renew his son's employment. Appellant then told him to watch his back, and walked out with his hands over his shoulders, indicating that the conversation was not going anywhere, and was over.

On Monday, April 20, before Appellant was placed on investigative leave, Andy Moguez offered to buy breakfast for some of the crew because he had just received his tax refund. He recalled at hearing that Mr. Ibarra and Appellant talked at that breakfast about horseshoes and a planned barbecue, and that Mr. Ibarra did not seem afraid of Appellant. [Testimony of Appellant, Mr. Moguez.] Mr. Ibarra testified that he did not think he went to breakfast with them that day, but he would have gone in an effort to calm things down.

Appellant's co-workers testified that they continue to be concerned about Appellant's threat. Mr. Ibarra stated Appellant apologized to him the next day for what he said, and he appreciated the apology. However, Mr. Ibarra noted that Appellant was always upset with the supervisors at work, and frequently argued with other crew members about the way to do an assignment. At hearing five months after the incident, Mr. Ibarra stated he was concerned about testifying, because "you don't know what's going to happen after this." Mr. Gomez believed the entire shop could be "at risk" based on his comments that day. If Appellant returned to the workplace, Mr. Gomez said he would still have concerns, and would "pay closer attention and try to talk to him about personal issues." Mr. Trujillo testified Appellant appeared angry at work, and sometimes said he didn't care about anything. Mr. Trujillo knew Appellant "was going through a hard time with his boy and his daughter". He assumed Appellant was joking when he talked about going postal, but said it would affect his relationship with Appellant if he thought he really intended to go postal. Mr. Moguez likewise acknowledged that it would concern him if Appellant said he was going to go postal and kill him first.

#### IV. ANALYSIS

The City Charter requires that appeals from employment actions must be decided based on a de novo determination of the facts. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975); In re Luna, CSB 42-07, 4 (1/30/09). The Agency bears the burden to prove that the imposition of discipline was appropriate under the Career Service Rules, and that the level imposed was within the range that could be issued by a reasonable administrator.

##### 1. CSR §§ 16-60 M and Y: Threats against employees

Career Service employees are prohibited from "Threatening, fighting with, intimidating, or abusing employees or officers of the City, or any other member of the public, for any reason." CSR § 16-60 M. The city's policy on violence in the workplace, Executive Order 112, must be read consistently with CSR § 16-60 M, as they are both designed to prohibit violent behavior by city employees, and both describe threats as one type of prohibited conduct. [Exh. 20-2.] A word in a statute must be interpreted by reading the statute as a whole, and considering its purpose and context. Dolan v. U.S. Postal Service, 546 U.S. 481, 486 (2006). The procedures for implementing Executive Order 112 further describe conduct that violates the order as "jokes or comments regarding violent acts, which are perceived to be a threat of harm." [Exh. 20-7, Memorandum 112A, 1.0 b.]

The Agency charges that Appellant violated these prohibitions by telling Mr. Ibarra, "If I ever do go postal, you're the first one I'd kill," and saying that he was going to "take out" his supervisor Mr. Dominguez and Mr. Hill. Appellant denies he made either statement, but admits he told Mr. Ibarra that he should have gone postal on the defendant in the assault case. The conflicting evidence requires an analysis of the extensive eyewitness testimony.

Three co-workers in the break room heard Appellant say he would kill Mr. Ibarra "if I ever do go postal." In addition, Mr. Moguez, Appellant's closest friend on the crew, heard Appellant say, "I'm going to have to go postal." Mr. Gomez described Appellant as red-faced, serious, and looking "like he was ready to explode". He'd worked with Appellant for many years, during which he heard Appellant make threatening remarks about his supervisors with a grin on his face. As a result, Mr. Gomez looked at Appellant to see if he was smiling on April 16th, and was very concerned to see that Appellant looked serious. Mr. Gomez's training and experience as a police officer led him to describe Appellant's demeanor and movements in detail. He testified that at the time Appellant made those comments, Mr. Ibarra was sitting at the table, and Appellant was standing in front of him, moving a few feet back and forth. Those who heard his remark reacted with straight faces and silence, and quickly left the break room. Testimony that there was laughter during the break is consistent with evidence that there were several conversations going on. One worker's facetious comment that Appellant should shoot him in the leg so he could retire would naturally draw laughter, even if it was generated more by nerves than real amusement.

Appellant testified his remark about going postal related to the defendant at the previous day's criminal hearing, and he would not have said it if he had not been "egged on" by Mr. Ibarra. Appellant denied saying he was dying anyway, or that he had nothing to lose. He contradicted Mr. Ibarra's testimony that he complained he was being treated badly by his bosses. At hearing, Appellant declared that he loved his job and was very happy with it. "They're my family members." Appellant argues that he was "acting out" like a boy, in keeping with the group's culture, because he was "egged on" by his laughing co-workers.

His manager, supervisor and four co-workers presented strong evidence to the contrary. They perceived that Appellant was often irritated at work, blamed others, and liked to get others in trouble. He was called a hothead who needed help but did not recognize his supervisor's efforts to help him. His most frequent topics were his confrontations with others and his dislike of shop operations. Those co-workers bore Appellant no ill will, and recognized that Appellant was a hard worker and a family man with a generous heart. Several willingly accompanied Appellant to breakfast the Monday after the incident and discussed their plans for a barbeque. However, a week later, they also reluctantly expressed their concerns about his threats and his continuing anger about work issues. Only Appellant testified that he was egged on: Mr. Moguez merely stated he thought everyone knew Appellant was joking. The largely consistent testimony of the co-workers was corroborated by Appellant's disciplinary history and their knowledge of his discontent about work issues.

Appellant urges a finding that Mr. Gomez exaggerated the seriousness of what was said in an effort to obtain work as a criminal investigator, noting that Mr. Gomez chose to write his statement on his letterhead, "Eric Gomez Investigations LLC". [Exh. 18.] Even if the Agency could have contracted for Mr. Gomez' services for the internal investigation, his investigative neutrality would have been compromised by his status as an eyewitness to the event. Appellant also argues that Mr. Gomez' statement was motivated by a desire to obtain favor with the Agency with an eye to trading his current on-call employment status for a permanent full-time job. However, Appellant submitted no evidence that the Agency started the investigation with any bias against Appellant. Therefore, it does not appear that the Agency would have rewarded testimony against Appellant.

Appellant contends that the investigation leading to this discipline was inadequate, as proven by its mistaken reliance on the wrong date, and Ms. King's apparently inaccurate statement that Appellant came to her office to return his keys.<sup>3</sup> Neither error affected the completeness or credibility of the witness statements made during the seven-day investigation. Moreover, Appellant has had the opportunity to fully challenge the evidence during this de novo hearing, at which no eyewitness recanted his original statement on any relevant issue. The weight of the credible evidence supports a conclusion that Appellant did make the statement, "If I ever do go postal, you're the first one I'd kill", and said he would "take out" his supervisor, Jose Dominguez.

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<sup>3</sup> Appellant tendered his work keys to the Hearing Office as supplemental evidence on Oct. 1, 2009. After Appellant withdrew the keys from evidence without objection after the Nov. 2<sup>nd</sup> closing arguments, the keys were ordered returned to the Agency.

Next, I must determine whether these statements are threats as that word is used in CSR § 16-60 M and Executive Order 112. A threat is a communicated intent to inflict harm on another. In re Richmond, CSA 18-07, 7 (8/7/07), citing Black Law Dictionary 1030 (abridged 6<sup>th</sup> ed. 1992). A statement constitutes a threat if a reasonable person would give that meaning to the words used. In re Katros, CSA 129-04, 8 (3/16/05). Objective factors such as listeners' reactions, the speaker's intent, surrounding circumstances, and any expressed conditions should be considered in making a determination about whether a statement is a threat. Metz v. Dept. of Treasury, 780 F.2d 1001 (Fed. Cir. 1986). Attendant circumstances can include bystanders' awareness of Appellant's past displays of temper or threats, the resulting tension in the work atmosphere, and the circumstances surrounding the negative comments. In re Katros, supra.

Appellant made his statements in front of the entire work crew in the break room, and those who heard it reacted by shocked silence or attempts to calm him down. Mr. Ibarra and Mr. Gomez both testified that Appellant was flushed and visibly angry at the time. Both crew members who heard his statement that he was "dying anyway", and so had nothing to lose, connected the comment to his past confrontations and complaints about work, adding to their fear that Appellant was serious. [Exhs. 12, 18.] Employees continued to discuss the incident after the break ended. Many worried that the remark showed Appellant needed help, and some perceived that the shop might be in danger. All but Mr. Moguez were aware of Appellant's ongoing resentment about work issues, and many remained concerned about Appellant's intentions well after the statements were made. The day after the incident, Appellant apologized to Mr. Ibarra, an apology that would not have been necessary if Appellant had not threatened him personally. Mr. Gomez reported the remarks within two working days based on his fear that Appellant might take action on his threats.

While the threat against Mr. Ibarra was stated as conditional ("if I ever do go postal"), the only condition was under Appellant's sole control. Thus, a listener could take no comfort from it, as Appellant's sudden decision to take action would remove the condition. Moreover, Appellant's statement of his intent to "take out" his supervisor was not conditional. The fact that the latter was a threat made against a supervisor negatively affects the agency's essential ability to maintain a safe workplace. In re Katros, supra at 8, citing Vernon v. USPS, 87 M.S.P.R. 392, 400 (2000). The crew's knowledge of appellant's frequent anger towards his supervisors and the 2007 threat to Mr. Russomanno added to their fear that the statements expressed a real and imminent threat to take violent action against co-workers, the very danger the rule was designed to address.

I conclude that Appellant's comments about "going postal" and his stated intention to take out his supervisor were reasonably perceived to be threats of harm by those who heard it, in violation of CSR § 16-60 M and Executive Order 112. The conduct also violates CSR § 16-60 Y by virtue of Appellant's breach of Executive Order 112.

## 2. 16-60 O: Failure to maintain satisfactory work relationships

Conduct violates this rule if a reasonable person standing in the place of the employee would have known it would harm another person or have a significant impact on his working relationship with that person. Co-workers' reactions to the conduct is one factor to consider in objectively determining the nature of the conduct. In re Burghardt, CSB 81-07, 2 (CSB 8/28/08).

Mr. Gomez testified that he would have concerns about working with Appellant in the future. "I would obviously pay closer attention to Mike, and if there were any issues that might be bothering him, sure, I would try to talk to him about them." Mr. Ibarra testified that despite their long working relationship and Appellant's next-day apology, he was still concerned about what Appellant might do to him five months after it was made. His continued concern about his own safety demonstrates that the remark had a significant impact on Mr. Ibarra's working relationship with Appellant. The preponderance of the evidence shows that the work crew was alarmed by Appellant's quick transition from anger at a person outside the workplace to threats towards his co-worker and supervisor. They reluctantly but reasonably interpreted those remarks as indicating that Appellant was threatening the safety of their workplace, which is essential to the Agency's smooth operation and mission. I find that Appellant's conduct on April 16<sup>th</sup> was therefore in violation of CSR § 16-60 O.

## 3. Appropriateness of level of discipline

The purpose of discipline for misconduct is to give the employee an opportunity to correct behavior, and render a reasonable penalty based on the nature of the misconduct and the employee's disciplinary and employment record. CSR § 16-20

The Agency properly considered Appellant's record as a whole in making the disciplinary determination. Mr. Carruth found that Appellant was generally a hard-working employee who took his job seriously. He was personally involved in Appellant's 2007 suspension for a threat made to another supervisor, and was concerned that neither the suspension nor the ordered training on workplace violence corrected Appellant's behavior. Appellant's supervisor had asked Mr. Hill's advice about how to handle Appellant's anger, and Appellant often complained forcefully to Mr. Carruth about his supervisor.

Appellant argues that Mr. Russomanno's reaction to Appellant's 2007 statement to "watch your back" was extreme, and should not be considered in aggravation of this misconduct. However, Appellant did not appeal that five-day suspension. In addition, Appellant did not cross-examine Mr. Russomanno about the reasonableness of his reaction in this appeal. He established on cross only that Appellant had not spoken to Mr. Russomanno or taken any action against him thereafter. That fact does not mitigate the seriousness of Appellant's repeated, angry warning to an Agency supervisor, which left the latter shocked and fearful. I find Mr. Russomanno's testimony showed that his reaction was reasonable under the circumstances, which includes Appellant's strongly-expressed emotion over Mr. Russomanno's refusal to overlook his son's performance and attendant issues.

Appellant also argues that the penalty of termination was too severe for the statements made, which were more a product of the work culture than Appellant's intention to threaten his co-workers. However, Mr. Ibarra asked Appellant in a neutral voice what he was going to do to the defendant in an effort to calm Appellant. None of the four workers who heard the exchange corroborated Appellant's testimony that he was being egged on. Appellant acknowledged that he thought the court proceedings of the previous day were "awful", and others observed that Appellant was visibly upset at the beginning of the conversation. Appellant's testimony that he was not upset was not credible. Those who were in closest proximity observed that Appellant became angrier after he began to talk about his supervisor. No one else said anything on that topic, and all expressed reluctance to get Appellant in trouble. I find the evidence did not demonstrate that Appellant was encouraged to lose his temper by his co-workers.

The first factor listed in § 16-20 for determining the level of discipline is the gravity of the offense. The Agency proved that Appellant made threats to his supervisor and a co-worker in front of his work crew in the break room, and that his co-workers were and remained concerned about those threats. Since safety is an essential requirement in every workplace, those threats were correctly considered serious matters. The Hearing Office has affirmed termination for comparable threats. In re Katros, supra.

The next factor to be considered in determining the type and level of discipline is Appellant's past record. "Wherever practicable, discipline shall be progressive" in order to provide an employee with an opportunity to correct behavior. § 16-50 A.1. Here, Appellant had been recently served with notice that threats were not tolerated, and been given training on workplace violence. This incident occurred a year after that discipline. Appellant presented no argument that he understood and would comply with the policy on workplace violence in spite of this incident. In fact, Appellant presented the event as a misunderstanding, contradicting the testimony of four eyewitnesses with no obvious bias against him. Under the circumstances, the Agency's conclusion that no lesser discipline than termination could have corrected the situation and achieve the desired behavior or performance pursuant to the mandates of CSR § 16-20.

I conclude that termination was within the range of penalties that could be imposed by a reasonable administrator based on the nature of the misconduct established by the evidence.

#### **V. ORDER**

Based on the foregoing findings of fact and conclusions of law, the Agency action dated May 27, 2009 is AFFIRMED.

Done this 5<sup>th</sup> day of November, 2009.

  
Valerie McNaughton  
Career Service Hearing Officer