

**DECISION**

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IN THE MATTER OF THE APPEAL OF:

**MATTHEW BELL**, Appellant,

vs.

**DEPARTMENT OF PUBLIC WORKS, RIGHT OF WAY ENFORCEMENT**,  
and the City and County of Denver, a municipal corporation, Agency.

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**I. INTRODUCTION**

The Appellant, Matthew Bell, appeals his 15-day suspension, assessed by his employer, the Department of Public Works, Right of Way Enforcement (Agency), for alleged violations of specified Career Service Rules. A two-day hearing concerning this appeal was held on December 17, 2010, and March 29, 2010. Bruce A. Plotkin, Hearing Officer, presided. The Agency was represented by Joseph Rivera, Assistant City Attorney, while the Appellant was represented by Michael O'Malley, Esq. Agency exhibits 1-10 were admitted. The Appellant offered no additional exhibits. The following witnesses testified for the Agency: the Appellant; BP, a citizen who was issued a citation by the Appellant; PR, another citizen who was issued a citation by the Appellant; Darnell Brooks; and Lindsey Strudwick. The Appellant also testified on his own behalf and presented no additional witness. For reasons below, the suspension is AFFIRMED.

**II. ISSUES**

The following issues are to be decided:

- A. whether the Appellant violated any of the following Career Service Rules (CSRs): 16-60 B.; E.3; J.; K.; or O.;
- B. if the Appellant violated any of the aforementioned Career Service Rules, whether the Agency's decision to suspend him for 15 days was reasonable, as determined under CSR 16-20.

**III. FINDINGS**

Matthew Bell has been a Right of Way Enforcement Agent since 2008. His primary duty is to write citations for illegally parked vehicles.

The job of Right of Way Enforcement Agent (Agent) is stressful and subject to almost daily abuse by some citizens who become unjustifiably irate, or worse, even when their citations are valid. Agents are subject to snide remarks, personal derision, swearing tirades and even assault. It is for these reasons that code enforcement agents receive initial and ongoing training in handling angry citizens. The centerpiece of that training is a program called "verbal judo," which provides training in redirecting anger toward peaceful solutions and teaches Agents not to take insults personally. Equally important, Agents are taught, and reminded in ongoing training, never to react in kind to personal affronts. If Agents are unable to prevent a citizen from becoming abusive, they are trained to call a supervisor, or to leave if the situation becomes threatening.

On May 12, 2010, Bell began writing a citation when the owner of the vehicle, BP, approached him. BP explained he was getting change for the meter from a colleague who was parked two spaces behind. An exchange ensued with each of the men snipping at the other. BP returned almost immediately with change to pay the meter, but Bell wrote a citation for a missing front license plate, a valid citation costing \$75.00, one of the more expensive citations. Bell handed the citation to BP, stating "let's see who laughs last." BP's colleague witnessed the event and was surprised by Bell's anger and confrontational attitude. [BP testimony]. BP did not dispute the validity of the license plate violation which he paid the same day. The next day he wrote a complaint about Bell's behavior, and delivered it to Bell's supervisors. [Exhibit 8].

On May 22, 2010, at 2:15 p.m., Bell's supervisor, Darnell Brooks, happened by 23<sup>rd</sup> and Lafayette Streets in Denver where he saw Bell. Because Brooks had assigned Bell to be at a different location, he radioed to ask Bell why he was out of his assigned area. Bell replied he was on his way to the assigned area when a police officer, [Exhibit 9], or a citizen [Bell testimony], asked him to enforce parking violations in that area. Bell told Brooks he wrote 20 citations there before proceeding to his designated beat. In the log of tickets written by Bell for May 22, none was written in the area he claimed. [Exhibit 7]. Agents, including Bell, are trained to call in to receive authorization before changing their designated beats. Bell did not request a change to the area where Brooks saw him.

On June 17, 2010,<sup>1</sup> PR, a young woman, was at the DMV to obtain tags for her expired license plates. When she found it would be a 30-minute wait, she took a number, then walked to a nearby restaurant for lunch. As she left the restaurant, she saw Bell writing a citation on her car. The following exchange ensued.

PR: [knocking on window of Bell's city vehicle] "hey, I know my tags are expired, but I'm here at DMV getting new ones for the plates.

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<sup>1</sup> The Agency claimed the event occurred June 29, 2010, [see exhibit 2-2], but PR emailed her statement about the event on June 18, the day after the event. Therefore the date of the incident was June 17, 2010. It appears the Agency used the day at the top of exhibit 5 to establish, incorrectly, the date of the incident, but the June 30 date listed there reflects the day Bell's supervisor forwarded the email to the HR department. No objection was made, however, and it appears no prejudice results to the Appellant by the mistaken date.

Bell [from inside his City vehicle, with the window cracked]: Yeah, but your front plate is missing, so I'm writing you a ticket.

PR: Dude, I'm walking in right now to get this handled, I have a number in line [showing him her number]

Bell: Yeah, well you don't have it right now.

PR: This is bullshit. This is a bullshit ticket. I can't believe you're doing this.

Bell: Fuck you. You don't talk to me like that.

PR: No, fuck you. You don't talk to me like that.

Bell: Fuck you, bitch. [Bell then stepped out of his vehicle and approached PR who backed away].

[PR testimony; Exhibit 5].

From a distance, PR continued to yell, demanding Bell's badge number to report his conduct. She reported the incident to Bell's supervisors within one hour, and wrote a statement the following day. [Exhibit 5; PR testimony]. She did not dispute the citation.

A pre-disciplinary meeting was held on August 4, 2010. Bell attended with his union representative. Bell stated Brooks was mistaken about seeing him at 23<sup>rd</sup> and Lafayette St. on May 22. He denied being confrontational with either BP or PR. On August 15, 2010, the Agency delivered its notice of suspension to Bell. This appeal followed timely on August 30, 2011.

#### **IV. ANALYSIS**

##### **A. Jurisdiction and Review**

Jurisdiction is proper under CSR §19-10 A. 1.b., as the direct appeal of a suspension. I am required to conduct a *de novo* review, meaning to consider all the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

##### **B. Burden and Standard of Proof**

Throughout the case, the Agency retains the burden of persuasion to prove the Appellant violated one or more cited sections of the Career Service Rules, and to prove its decision to suspend Bell for 15 days complied with the purposes of discipline. CSR 16-20. The Agency must prove its claims is by a preponderance of the evidence.

## C. Career Service Rule Violations.

The Agency claimed Bell violated the above-referenced Career Service Rules four times on three occasions: leaving, then lying about, his assigned beat, and two separate incidents of antagonistic and threatening interactions with citizens. Because each alleged violation depends upon a determination of credibility, we turn first to the Agency's claim that Bell was dishonest.

### **1. CSR 16-60 E. Any act of dishonesty, which may include, but is not limited to... Lying to superiors... with respect to official duties, including work duties, disciplinary actions...**

The Agency asserted Bell dishonestly denied being confrontational with two citizens. The Agency also alleged Bell violated this rule for telling Brooks that he was not outside his assigned area on May 22, 2010.

The lynchpin to deciding whether Bell was hostile to BP and PR is credibility. In that regard, the following evidence was important. BP and PR admitted the validity of their underlying license plate violations, and both readily paid their citations, thus diminishing the likelihood, as claimed by Bell, that both were simply angry about their citations, rather than his conduct. While BP's colleague may have had reason to collude with BP, PR and BP do not know each other, making collusion about Bell's quick temper improbable. Bell testified he did not "recall too much at all" about his interactions with BP and PR [Bell testimony], and in response to being asked whether, generally, he remembers tickets written two months earlier, Bell answered "totally not." To emphasize the point, Bell described the large number of tickets he writes and stated he does not remember most of the incidents surrounding them [Bell cross-exam]; yet Bell quoted precise language used by BP and PR, the location of the incidents, the reason for the citations, and other surprising detail, considering the length of time since both incidents, and the large number of tickets he writes. If the interactions with BP and PR had been as uneventful as Bell claimed, it is unlikely he would have such specific recollection of both incidents. Finally, Bell did not dispute Brooks' claim that Bell had a history of confrontations with citizens, [Brooks testimony], and his interactions with BP and PR were consistent with that history.

With respect to whether Bell was dishonest in denying he was outside his assigned area on May 22, the following evidence is determinative. Bell acknowledged his duty to request authorization for any change in the enforcement area assigned. Bell did not assert Brooks had a motive to punish him. When Brooks saw Bell at 2:15 p.m. on May 22, he noted the time contemporaneously and committed his observation to writing the same day, [Exhibit 6], making it unlikely he was mistaken about the date. Most significantly, regardless what day it occurred, Bell's claim, that he wrote 20 tickets in the area where someone asked him to enforce parking violations, was not borne out by Bell's log. [Exhibit 7]. Even if Brooks had been mistaken about the date he saw Bell, Bell did not offer his log from a different day to substantiate this claim.

Bell claimed he called Brooks several times to request a change of beat to the five-points area, [Exhibit 9 audio CD, 00:00/00:27 to 00:13/00:29], but Brooks did not answer either radio or cell phone calls. Brooks steadfastly denied he was unavailable to receive radio communication, the preferred method of contact, and Bell offered no reason Brooks would invent such testimony. Moreover, Bell's recollection, that he called Brooks on May 22 to request such a change, is inconsistent with his testimony claiming he was not at 23rd and Lafayette St. on May 22.

Bell testified another reason Brooks could not have seen him at 23<sup>rd</sup> and Lafayette St. on May 22 at 2:15 p.m. was that he was at an entirely different location at that time. Bell's evidence for this claim was his ticket log for May 22. After he returned from his morning assignment to Agency offices at the Webb Building, the log shows Bell wrote a series of citations near the Webb Building, ending at 2:03 p.m. Those citations were followed by a gap of 17 minutes, followed by a series of citations near 25<sup>th</sup> and Larimer Street, beginning at 2:20 p.m. Bell claimed the 17 minute gap represents only the time it took him to walk or drive between the area near the Webb Building and the area near 25<sup>th</sup> and Larimer St. [Bell testimony; Exhibit 7-2].

The Agency's explanation for Bell's whereabouts at 2:15 on May 22 is equally plausible, however. In the 17 minute gap between 2:03 and 2:20 p.m., when Bell issued no tickets, he could have travelled by vehicle from 1434 Welton St., the location of the last ticket he wrote near the Webb Building at 2:03 p.m., to 23<sup>rd</sup> and Lafayette St., then to the location where he wrote his next ticket, 25<sup>th</sup> and Larimer, at 2:20 p.m. [Brooks testimony; Exhibit 7-2]. With Bell's principal response to Brooks' contention rebutted by the Agency, the remaining evidence, summarized as follows, weighs in favor of the Agency: Brooks having no motive to lie; Brooks' contemporaneous record of seeing Bell on 5/22 ; the 17-minute citation-writing gap being enough time for Bell to travel to 23<sup>rd</sup> and Lafayette; and Bell's failing to substantiate his claim that he wrote 20 citations near 23<sup>rd</sup> and Lafayette. Since Bell was out of his assigned area at 2:15 on May 22, 20101, he violated his duty to seek authorization for such variance. This violation, for reasons stated immediately above, is proven by preponderant evidence.

## **2. CSR 16-60 B. Carelessness in performance of duties and responsibilities.**

While CSR 16-60 A) and CSR 16-60 B), share similar elements of proof, they are distinguished in that, under 16-60 B., it is the Appellant's acts (performance), rather than his omissions (neglect), which are reviewed. See In re Simpleman, CSA 31-06, 4-5 (10/20/06). The Agency alleged Bell neglected the duty of positive citizen interaction and neglected his duty to notify his supervisor that he wished to leave his assigned beat on May 22. Consequently, this rule, which requires proof of poor performance, rather than a failure to perform, is not implicated.

**4. CSR 16-60 J. Failing to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.**

The Agency alleged Bell failed to check with his supervisor before deviating from his assigned enforcement area on May 22, 2010. For reasons stated above, it is established that Bell was ordered to call in for approval before departing from his assigned enforcement area. He departed from his assigned enforcement area on May 22, 2010, and he failed to write citations during the period when he was out of his assigned area. Therefore Bell failed to comply with a lawful order of an authorized supervisor, and failed to perform assigned work, both in violation of CSR 16-60 J.

**5. CSR 16-60 K. Failing to meet established standards of performance including either qualitative or quantitative standards...**

This rule covers performance deficiencies that can be measured either by qualitative or quantitative standards, such as those one would find in a performance evaluation. *In re Castaneda*, CSA 79-03, 12 (12/18/02). The Agency claimed the Appellant failed to meet the following work standards.

Accountability and Ethics

Baseline Duty

Employee accepts personal responsibility for their [sic.] actions, decisions, and behaviors; ensuring performance contributes to the standards and goals of the City and County of Denver, Mayor, Public Works, Organization and work section as a whole.

Displays high standard of conduct.

[Exhibit 2].

The Agency established Bell's violation of more specific standards, than those expressed here. No further discussion is warranted under this rule.

**6. CSR 16-60 O. Failure to maintain satisfactory working relationships with co-workers, other City employees, or the public.**

For reasons stated above, BP and PR were more credible than Bell. Bell's statement to PR "let's see who laughs last," and his threats to PR, constitute separate violations of this rule. PR was fearful for her safety, as she exhibited at hearing. When recalling Bell's approaching her, PR's voice trembled, she became tearful, and her hands shook so much that she had difficulty pouring a cup of water. The Agency proved both violations.

The Agency proved its four main contentions against Bell: that he left his assigned enforcement area without authorization, that he lied as to his whereabouts, and that he was inappropriately confrontational with citizens in two separate incidents. Those actions violated CSR 16-60 E., J., K., and O. The remaining issue is the degree of discipline.

## **V. DEGREE OF DISCIPLINE**

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-20 to consider the severity of the offense, an employee's past record, and the penalty most likely to achieve compliance with the rules. CSR § 16-20.

### **A. Severity of the proven offenses.**

Bell's actions struck at core values of the Agency: working assigned routes, and treating citizens respectfully. Bell's interaction with BP was inappropriate, but alone, may not have justified a severe penalty. His failure to check in with Brooks and claiming he was somewhere else also may not have resulted in a severe sanction. However, Bell's interaction with PR was of special concern. There was no question PR used foul language, and acted inappropriately. Nonetheless, Bell's reaction was completely unjustified. He understood citizens sometimes become irate, and he was trained to deflect, or simply leave if the interaction became too tense. That he swore at a citizen and approached her in a threatening manner would have justified dismissal. PR's fear of Bell remained palpable even at hearing 10 months later.

### **B. Past record.**

Several months before the current case, Bell was suspended for eight days due to uncontrolled outbursts of temper in several incidents, [Exhibit 3], one of which involved a "run-in" with a citizen. Another incident resulting in the suspension was when Bell stormed out of a meeting, after repeated warnings to pay attention. His supervisor told Bell his action would be documented. Bell said "you going to do all the talking, I ain't got shit to say." A third factor in that suspension was that Bell argued with a Judge during a hearing over a citation issued by Bell. the Judge found Bell was untruthful about the citation, but Bell persisted in arguing in a manner, and to the point that he was banned permanently from the Judge's courtroom. These actions, past and present, are inconsistent with holding a position of frequent contact with the public.

### **C. Penalty most likely to achieve compliance**

Bell denied wrongdoing in any of the incidents leading to his prior eight day suspension or the current fifteen day suspension. Although the Career Service Rules permit dismissal when an employee fails to correct improper behavior, the Agency has employed its discretion to present Bell with another opportunity to reform. For the foregoing reasons, the Agency's election to suspend Bell for 15 days is amply supported by the record.

**VI. ORDER**

The Agency's decision to suspend Bell for 15 days, beginning August 25, 2010, is AFFIRMED.

  
Bruce A. Plotkin  
Career Service Board Hearings Officer

**NOTICE OF RIGHT TO FILE PETITION FOR REVIEW**

A party 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 certificate of mailing below. The Career Service Rules are available at [www.denvergov.org/csa/career service rules](http://www.denvergov.org/csa/career%20service%20rules).

All petitions for review must be filed by mail, hand delivery, or fax as follows:

**BY MAIL OR PERSONAL DELIVERY:**

Career Service Board  
c/o Employee Relations  
201 W. Colfax Avenue, Dept. 412  
Denver CO 80202

**BY FAX:**

(720) 913-5720

Fax transmissions of more than ten pages will not be accepted.

**CERTIFICATE OF SERVICE**

I certify that, on April 29, 2011, I delivered a correct copy of this Order, to the following, in the manner indicated:

Mr. Matthew Bell, <a href="mailto:mattbell2005@yahoo.com">mattbell2005@yahoo.com</a>	(via email);
Michael O'Malley, Esq., <a href="mailto:Michaelomalleylaw@hotmail.com">Michaelomalleylaw@hotmail.com</a>	(via email);
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