

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 40-08

DECISION

IN THE MATTER OF THE APPEAL OF:

CELINA BLAN,
Appellant,

vs.

DEPARTMENT OF LAW,
and the City and County of Denver, a municipal corporation, Agency.

I. INTRODUCTION

The Appellant, Celina Blan, appeals her four day suspension from the Agency, the Department of Law, beginning May 29, 2008, for alleged violations of specified Career Service Rules. A hearing concerning this appeal was conducted by Bruce A. Plotkin, Hearing Officer, on July 18, 2008. The Agency was represented by Neils Loechell, Assistant City Attorney, while the Appellant was represented by Michael O'Malley, Esq. Agency Exhibits 1-5, 7-9, 11-13, and Appellant's Exhibit A were admitted. The Agency called the following witnesses to testify at hearing: the Appellant; Barbara Shaklee; Linda Nickels; Gary Freeman; and Chris Mootz. The Appellant called Ronald Hackett and Leroy Martinez to testify.

II. ISSUES

The following issues were presented for appeal:

- A. whether the Appellant violated any of the following Career Service Rules: 16-60 A., E., J., S., or Z;
- B. if the Appellant violated any of the aforementioned Career Service Rules, whether the Agency's decision to assess a four day suspension conformed to the purposes of discipline, CSR 16-20.

III. FINDINGS

The Appellant has been employed by the Agency as a paralegal for six years. Her direct supervisor is Kim Kline. Her second-level supervisor is John Beckman. Chris Mootz is the division director and was the final decision maker in this discipline.

Paralegals consistently have large amounts of work to accomplish to prepare documents, appear in court, and respond to various attorneys' requests. There is little down time, so that any frolic would result in a significant loss of productivity.

On Monday, March 10, 2008, the Appellant emailed her supervisor, Kimberly Kline, at 8:16 a.m. stating she "need[ed] to go to court to copy a motion from court file." [Exhibit 4-1]. At 12:09 p.m., about four hours later, the Appellant emailed Kline "I just got back, I also had to get my badge fixed." *Id.*

Two days later, Kline asked the Appellant about the necessity of going to court to obtain a file copy and why it took four hours to do so. *Id.* The Appellant's second-level supervisor, John Beckman, also wanted to know what it was about the Appellant's badge that requiring fixing and why it took one and one half hours. [Exhibit 4-2 through 4-4].

The Appellant replied by return email, explaining she went to the courthouse to obtain a date-stamped copy of a document she had filed the previous Friday without having obtained a date-stamped copy at the time. No supervising attorney asked the Appellant to obtain a date-stamped copy, and it was not important to do so. The Appellant was not otherwise scheduled to be in court on March 10, although she was scheduled to be in court the next day and could have obtained the file copy then. In addition, a co-worker paralegal was in court on March 10. The Appellant could have contacted her co-worker to obtain a date-stamped copy.

Regarding the Appellant's badge, the Appellant, as all employees at 1200 Federal Boulevard, must access sensitive areas by swiping a badge. The old badge-reading system failed. The new system required employees to go to a temporarily-designated "badge office" within the building to have their badges enabled to be read by the new system. There is a computerized record of every action taken regarding each badge. The record showed there was no action taken regarding the Appellant's badge on March 10, 2008, during the time the Appellant claimed she had her badge "fixed." There were no substantial delays in processing badges during the times the Appellant stated she had her badge "fixed." It takes less than two minutes to enable a badge. The Appellant had her badge enabled the following day, March 11, 2008.

When the Appellant responded inadequately to her supervisors, the Agency served the Appellant with a letter in contemplation of discipline on April 16, 2008. A pre-disciplinary meeting was held on April 25, 2008. The Appellant was advised she could have a representative, but chose to attend alone. On May 7, 2008, the Agency served its notice of suspension to the Appellant. This appeal followed on May 22, 2008.

The Agency originally claimed the Appellant was unproductive for four hours. During a pre-hearing conference, the Agency acknowledged the Appellant was entitled to take a one half hour lunch break during the time in question. What remains is a three and one half hour period for which the Agency claims the Appellant was not engaged in productive work and about which she was dishonest.

IV. ANALYSIS

A. Jurisdiction and Review

Jurisdiction is proper under CSR §19-10 A. 1. b., as a 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

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

C. Career Service Rule Violations

1. CSR 16-60 A. Neglect of duty.

To sustain a violation under CSR 16-60 A, the agency needs to establish each of the following by a preponderance of the evidence: 1) the Appellant had an important work duty; 2) the Appellant was heedless or unmindful of that duty; 3) no external cause prevented the Appellant's performance of that duty; 4) the Appellant's failure to execute her duty resulted in significant potential or actual harm. In re Martinez, CSA 30-06, 4-5 (Order 10/3/06). See also In re Simpleman, CSA 31-06 (Order 10/20/06).

a. Important work duty.

The Appellant testified she was so busy with work assignments that she did not have time to respond to her supervisors' demands for an explanation of how she spent three and one half unsubstantiated hours on March 10, 2008. [Appellant testimony]. She did not dispute that she has many daily tasks to accomplish, and therefore has a duty to work productively during her shift.

b. Heedless and unmindful.

The Appellant agreed she left her work location for almost four hours on March 10, 2008. The Agency claims the Appellant was not engaged in any useful work during that time. The Appellant replied it took about one hour and 45 minutes to travel to the courthouse, wait in line, obtain a date-stamped file copy and return to 1200 Federal Blvd. There was much disputed testimony about the amount of time it takes to travel to and from the Denver County Courthouse, but the Agency was unable to dispute the amount of time it should have taken on March 10 to wait in line and obtain a file copy. I find the Agency failed to establish this claim by a preponderance of the evidence, without which the Appellant was not heedless or unmindful of the time she was absent to obtain a file copy.

However, the Appellant was unable to justify the necessity of her trip to the courthouse to begin with. When asked why she simply didn't wait until the next day to obtain the file copy, when she was already scheduled to be in court, she answered, non-responsively, that it was her fault for not obtaining a copy when she filed the document the previous Friday. When asked why she didn't simply call her co-worker, who was already in court on March 10, to obtain a copy for her, the Appellant replied she doesn't like to bother other paralegals when they are scheduled to be in court. [Appellant testimony]. However, the Appellant did not satisfactorily explain why the co-worker could not have obtained a copy during a break. She also testified she felt compelled not to wait to obtain the file copy until the next day because she does not trust the court not to lose documents. Both explanations were new on the date of hearing, [Appellant cross-exam], neither explanation was convincing, and the new explanations suggest a late attempt to find a justifiable reason for the Appellant's absence. I find it more likely, by a preponderance of the evidence, that the Appellant's alleged trip to the courthouse on March 10, 2008 was not made of work necessity, that she had other work which went unattended and therefore her courthouse expedition on March 10, 2008 was heedless and unmindful of her work duties.

In addition, the Appellant claimed, upon her return to 1200 Federal Blvd., that it took one and one half hours to have her badge "fixed." The Agency did not dispute that during the period surrounding and including March 10, all employees were required to go to the badge office in order to have their badges enabled to be read by the new security system. Gary Freeman, security supervisor at DHS testified convincingly, and in great detail, about the time it took to enable employee badges on March 10, 2008. The computer which handles security functions would have read any activity concerning the Appellant's badge on March 10 and there was none.

The Appellant replied at hearing that she tried to but did not have her badge enabled on March 10 because she had to wait so long for security. Freeman researched the activity of the only other two security guards besides him, who were involved in badge enabling and found no substantial gaps in their activity on March 10. Moreover, his unrebutted testimony proves there was little or no wait for badge enabling on March 10 at the time the Appellant claims she encountered delays. The Appellant's subsequent explanation, that she only tried to, but did not have her badge "fixed" on March 10, flies in the face of any reasonable reading of her multiple earlier contentions that she had her badge "fixed" on March 10. [Exhibits 4-1, 4-3, 4-4]. The more objective evidence shows the Appellant's explanation is not credible by a preponderance of the evidence. Consequently the one and one half hours on March 10 that the Appellant allegedly took care of her security badge was heedless and unmindful of her work duties that day.

c. No external cause.

The Appellant stated she was delayed arriving at court on March 10 due to traffic, and delayed again at court due to a long line at the clerk's office. Since the Appellant's trip was not justified to begin with, then this claim did not prevent the Appellant's performance of her duties on March 10.

The Appellant also testified she was delayed in obtaining her badge "fixed" on March 10 due to the time it took for a member of the security detail to have another officer contact her. I have already found the Appellant did not have her badge "fixed" on March 10, therefore this claim did not prevent the Appellant's performance of her duties on March 10.

d. Significant potential or actual harm.

The Appellant acknowledged she has many important functions to accomplish and deadlines to meet on a daily basis. This acknowledgment, together with my findings, above, that she failed to establish a work-related reason for her three and one half hour break on March 10, establish this element by a preponderance of the evidence. The Agency proved the Appellant violated CSR 16-60 A. by a preponderance of the 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 her omissions (neglect), which are reviewed. See In re Simpleman, CSA 31-06, 4-5 (10/20/06). Thus, a violation under this rule occurs for performing poorly, rather than neglecting to perform, an important duty. Since the Agency proved the Appellant neglected her work for three and one half hours on March 10, then I find this claim inapplicable. Even if it could be said the Appellant's obtaining a file copy on March 10 was the performance of a duty, for reasons stated above, this was a superfluous task, and consequently was a careless use of her time on March 10, by a preponderance of the evidence.

3. 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....

The Agency disciplined the Appellant under this rule for her dishonesty about the amount of time it took to make a round trip to the courthouse and for her dishonesty about taking one and one half hours to have her badge "fixed" on March 10, 2008. I have already found the Agency failed to prove the first claim by a preponderance of the evidence. The Agency established the second claim, however. For reasons stated above, namely that the Appellant's explanation of having her badge "fixed" on March 10 was not credible, this violation is proven by a preponderance of the evidence.

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.

On March 10, 2008, during the time the Appellant went to the courthouse and for an additional one and one half hours immediately afterward, the Appellant failed to do assigned work of which she was capable. Consequently this violation is proven by a preponderance of the evidence.

5. CSR 16-60 S. Unauthorized absence from work.

It is already established that the Appellant's trip to the courthouse on March 10, 2008 was not necessary; however, given that the Appellant is allowed to work with a high degree of independence in her duties, the Agency did not establish that she was required to obtain permission before departing for the courthouse, even though, at best, that expedition was a waste of time. Therefore the Agency did not prove, by a preponderance of the evidence, that the Appellant's trip to the courthouse on March 10, 2008 was unauthorized.

The Appellant was dishonest about spending one and one half hours to have her badge "fixed" on March 10, 2008. Thus, even though the Appellant may have been at her work location, 1200 Federal Blvd, her unjustified explanation of a one and one half hour absence from her work duties constitutes an unauthorized absence from work in violation of CSR 16-60 S.

6. CSR 16-60 Z. Conduct prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City.

To sustain this violation, the agency must prove the Appellant's conduct hindered the agency mission, or negatively affected the structure or means by which the agency achieves its mission. In re Simpleman, CSA 31-06, 10 (10/20/06). The Agency's proof was Mootz' concern about the following: unauthorized absences are noticed by co-workers; morale may be affected; lying about how an employee spends her work time may subject the Agency to media scrutiny. None of these explanations establishes what Agency mission, or means to that mission, was negatively affected by the Appellant's conduct. This violation was not proven by a preponderance of the evidence.

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 offense.

Mootz testified, and the Appellant did not dispute, that honesty is essential to the integrity of Office of the City Attorney. Attorneys must be able to count on the word of their subordinate paralegals so that even small infractions may carry substantial penalties. The Appellant's dishonesty was a substantial violation.

B. Past record.

The Appellant received a verbal reprimand in January 2008 for violations including failing to accomplish assigned work by failing to be where her schedule required. That violation was based, in part, upon her leaving the court house earlier than scheduled,

without returning to work, and taking sick and other leave without sufficient notice and prior approval. [Exhibit 13]. The Appellant's prior violation bears some similarity to the present claims of abuse of work time.

C. Penalty most likely to achieve compliance.

The Appellant's verbal reprimand did not achieve the desired compliance with the proper use of work hours. A more substantial penalty is warranted.

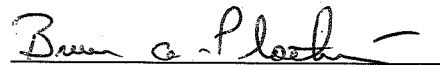
D. Additional considerations.

Mootz considered dismissing the Appellant for her dishonesty. This is a second violation for misuse of work time. I find the Agency's choice of a four-day suspension falls within the scope of discipline which would be assessed by a reasonable manager.

VI. ORDER

The Agency's suspension of the Appellant for four work days, beginning May 29, 2008, is AFFIRMED.

DONE July 31, 2008.



Bruce A. Plotkin
Career Service Hearing 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-service-rules).

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.