

HEARING OFFICER, CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER,
COLORADO

Appeal No. 192-00

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

DONNA CHAVEZ, Appellant

Agency: DENVER HEALTH AND HOSPITAL AUTHORITY, and THE CITY AND
COUNTY OF DENVER, a municipal corporation

INTRODUCTION

This matter comes before the Career Service Board on appeal by Donna Chavez (hereinafter "Appellant") filed September 8, 2000. Appellant challenges the Denver Health and Hospital Authority's (hereinafter "DHHA" or "Agency") decision to terminate her employment for the alleged abuse of sick leave and abandonment of her position. Appellant argues that there were mitigating circumstances which prevented her from acting as required by the Agency.

A hearing in this matter was held before Personnel Hearing Officer Joanna L. Wilkerson ("hearing officer") on March 22, 2001 at the Career Service Authority Offices. Appellant was present and was represented by Mr. Richard Sanchez of the AFSCME. The Agency was represented by Assistant City Attorney Chris Mootz, with DHHA Outpatient Pharmacy's Acting Assistant Director, Paul Lehr, present for the majority of the proceedings and serving as advisory representative for the Agency.

Witnesses for the Agency included Mr. Lehr, West Side's Lead Pharmacist Carl Booker, and DHHA Benefits Coordinator Linda Stackhouse.

Witnesses for Appellant included West Side Pharmacy Technician Sarah Lee Cordova and Appellant herself.

The Agency's Exhibits 2 through 5 were admitted into evidence without objection. Exhibit 9 was presented for the first time at the hearing. Although the Agency did not list it as an exhibit in its Prehearing Statement, it was offered and admitted without objection. Exhibits 6 and 7, the Agency's Family Medical Leave documents and instructions for application, were admitted over Appellant's objection that Appellant never received them. Exhibits 1 and 8 were not offered or admitted.

Appellant offered no additional exhibits.

For purposes of the Findings and Order, the Rules of the Career Service Authority shall be abbreviated as the "CSR" with a corresponding numerical citation.

ISSUES

1. Whether Appellant violated Denver Health Employee Principles and Practices, Policy #4-122 (Exhibit 4).
2. Whether Appellant violated CSR Rule 16-50, subsections 1) (gross negligence), 12) (failure to report), and/or 13) (unauthorized absence).
3. Whether Appellant violated CSR Rule 16-51, subsections 3) (abuse of sick leave), 5) (failure to observe departmental regulations), and/or 6) (carelessness in performance of duties).
4. Whether the Agency had just cause to discipline Appellant for abandonment of her position, and whether the severity of the discipline is reasonably related to the offense in question.

FINDINGS OF FACT

1. Appellant was a Pharmacy Technician at DHHA's Sandos West Side Neighborhood Center ("West Side Pharmacy") at the time of her dismissal. Her primary duties were computer data entry and preparation for the processing and filling of prescription requests. Her regularly scheduled hours were Mondays and Wednesdays through Fridays from 9:00 a.m. to 5:30 p.m., and Tuesdays from 10:00 a.m. until 7 p.m.
2. On Tuesday, August 1, 2000, Appellant had a doctor's appointment at 9:00 a.m., one hour prior to the beginning of her shift at 10:00 a.m. Appellant's supervisor knew of this appointment and had excused Appellant based on his expectation that she would arrive at work after the appointment.
3. At approximately 10:30 a.m., Appellant called the West Side Pharmacy from her doctor's office. The Pharmacy is located on the main floor of the building. Carl Booker, Appellant's immediate supervisor, was on another floor at the time and unavailable to take the phone call. Co-worker Lee Cordova took Appellant's call. Appellant told Ms. Cordova that her doctor intended to hospitalize her, and that she was uncertain of the duration of the hospitalization or when she would be returning to work. Ms. Cordova indicated she would pass the message on to Mr. Booker, but also instructed Appellant to call Mr. Booker herself and let him know what was going on. (See, Exhibit 9).

4. Ms. Cordova was not one of Appellant's supervisors and worked on an equal par with Appellant as a Pharmacy Technician.
5. There is an overhead paging system with which hospital employees can reach one another in various locations of the building, but it is typically used for more urgent communications related to hospital business. Both Mr. Booker and Ms. Cordova testified that it is not uncommon for a sick employee to leave a message about absence with a co-worker when a supervisor is not immediately available to take the call, but Mr. Booker testified that the employee is typically expected to call back and speak with the supervisor directly when he becomes available.
6. Ms. Cordova relayed Appellant's message in full to Mr. Booker immediately upon his return to the main floor. Mr. Booker testified he was aware of an ongoing health problem Appellant suffered from, and understood the nature of the anticipated hospitalization and treatment.
7. During Appellant's August 1 appointment, her doctor prescribed medication to stabilize her condition, and released her to return home and await the processing for her admission into the necessary treatment facility. Appellant returned home after the appointment.
8. At some point during the morning of August 1, 2000, Mr. Booker called Outpatient Pharmacies Acting Assistant Director, Paul Lehr, and informed him about Appellant's message left with Ms. Cordova. Mr. Booker told Mr. Lehr that there was a possibility that Appellant might be hospitalized for an uncertain period of time. He relayed that Appellant was expected to call him back sometime soon to update him on the situation, and that he would in turn call Mr. Lehr and update him concerning the situation.
9. Appellant remained at home from Tuesday, August 1 until Monday, August 7, 2000, the alleged date of her admission to the treatment facility. Appellant did not call Mr. Booker or anyone in her supervisory chain at any time during August 1, nor did she do so until August 7. Appellant was not scheduled to work the weekend days, August 5 and 6.
10. Appellant testified that during the period from August 1 until August 7 she was "hysterical" and "not in a good frame of mind." Appellant asserted that she was incapable of calling in during the entire time period.
11. At some time between August 1 and August 7, 2000, Mr. Lehr initiated a Family Medical Leave Act ("FMLA") leave request on behalf of Appellant. Mr. Lehr testified he initiated this request at the advice of the legal department because he had no information about Appellant's status. This request was processed by Benefits Coordinator Linda Stackhouse, who prepared an FMLA leave request packet and sent it to Appellant on August 7 (Exhibit 6). The packet contained the instructions for Appellant to apply for FMLA, and included a response deadline of August 28, 2000.
12. On August 7, 2000 at an uncertain time, Appellant entered the treatment facility.

13. On August 7, Appellant's husband called the West Side Clinic inquiring about Appellant's paycheck. He spoke with Mr. Booker. During this conversation Mr. Booker informed Appellant's husband that Appellant had not called him concerning her absence, as she was required to do, and that she needed to do so. Appellant's husband told Mr. Booker that Appellant had been hospitalized and that he would relay the message to her. Appellant's husband went to West Side Clinic in the middle of the afternoon on August 7 to pick up the paycheck. Appellant had still not called Mr. Booker at that time. Mr. Booker again reminded Appellant's husband that she needed to call him.
14. Appellant called at the end of the day on August 7 between 4:00 p.m. and 5:00 p.m. and informed Mr. Booker that she was in in-patient treatment, and was uncertain when she was to be released, but thought she would be there for approximately three weeks. Mr. Booker told Appellant that she had to have her treating doctor directly contact either Paul Lehr or someone in administration to verify her doctor's treatment orders. Appellant indicated to Mr. Booker that she would tell her doctor about this requirement.
15. During this conversation Appellant said something to Mr. Booker leaving him with the impression that she had been hospitalized for two of the days during the previous week when she was absent. However, Appellant testified at the hearing that she was at home during the entire remainder of the week after returning home from her doctor's appointment on August 1.
16. Following Mr. Booker's conversation with Appellant on the evening of August 7, Mr. Booker informed Mr. Lehr of the conversation and his instructions to Appellant.
17. Mr. Booker testified that an employee on authorized extended leave is not expected to call in on a daily basis during the period of authorized extended leave, but that the employee is expected to first obtain authorization of the period in question, and then either return to work at the end of that period, or provide further medical information establishing the need for additional extended leave.
18. At some time during August 7, 2000, Mr. Lehr prepared a Contemplation of Disciplinary Action ("Contemplation letter") to Appellant (Exhibit 3) due to her prolonged absence and failure to notify the Agency of her status for three consecutive workdays. The Contemplation letter set forth that such conduct constituted job abandonment in violation of CSR Rule 16-50 12), unauthorized absence from work in violation of CSR Rule 16-50 13), and other listed violations presumably relevant to her absence. This Contemplation letter included notice to Appellant that a pre-disciplinary meeting was scheduled for August 21, 2000 at 1:00 p.m.
19. Mr. Lehr considered Appellant's prior disciplinary history as part of his decision to initiate disciplinary actions in this case, and included mention of this consideration in his Contemplation letter as follows. During the rolling year prior to Appellant's dismissal, she had eleven absences during the period of 8/7/99 to 6/8/00. While these absences were apparently "excused" in the manner that Appellant timely called in her intent to be absent from work on those dates, in March of 2000, the Agency initiated a disciplinary action

against Appellant concerning her abuse of sick leave during a one-year period. This action resulted in the issuance of a Verbal Warning issued on June 27, 2000 (Exhibit 5).

20. This Verbal Warning included a caveat that further incidences of abuse of sick leave may result in disciplinary action, up to and including termination (*see*, Exhibit 5, last sentence). Appellant has admitted that she had received the June 27, 2000 Verbal Warning, and that a copy of Denver Health Employee Principles and Practices #4-122 (Exhibit 4) was delivered with the written copy of the Verbal Warning.
21. The Contemplation letter was sent to Appellant's home at 6005 W. 28th Ave. in Edgewater, Colorado (Exhibit 3). Appellant testified that she in fact lived at that address at that time, but she had already entered inpatient treatment on the same date. Appellant testified that although the treatment facility would have allowed her to receive and review her mail, she did not have any of her mail forwarded or brought to her during her treatment period from August 7 to August 26, the date of her release.
22. Approximately two days after Mr. Booker's conversation with Appellant on August 7, and on one other occasion of uncertain date, Mr. Booker spoke with Mr. Lehr and asked him if Appellant or her doctor had contacted Mr. Lehr. Mr. Lehr told Mr. Booker he had not heard anything concerning Appellant's absence as yet. Mr. Lehr subsequently received no information concerning Appellant's status, either from Appellant or from her doctor.
23. Mr. Booker testified that he was not included in the decision to initiate disciplinary action against Appellant, and that he was unaware of such action until Appellant later notified him of the disciplinary action after she went home and discovered it in the mail on August 26.
24. Appellant testified that during her inpatient treatment from August 7 through August 26, she spoke with Mr. Booker several times by telephone from the facility. Appellant testified that there had been a prior incident when she was in an inpatient facility and this information was entered into the database at West Side Clinic. Appellant testified that this information was accessed by her co-workers. She testified that she felt her confidentiality was violated, affecting her working relationships, and that she eventually sought a transfer due to this harassment. Appellant testified that because of this prior experience, she gave Mr. Booker specific instructions not to inform anyone in administration of her status and whereabouts during her conversations with Mr. Booker while hospitalized.
25. At 1:00 p.m. on August 21, 2000 Mr. Lehr and Outpatient Pharmacy Director Randall Orcutt met at the location of the scheduled pre-disciplinary meeting specified in the August 7 Contemplation letter sent to Appellant's home (Exhibit 3). They waited until 1:30, determined that Appellant was a "no-show," and terminated the meeting. (*See*, hand-written note in the upper left-hand corner of Exhibit 3.)
26. Upon her release on August 26, Appellant returned home, discovered the Contemplation letter in her mail, and realized that she had missed the pre-disciplinary meeting on August 21, 2000. Appellant called Mr. Booker and informed him of the disciplinary action. She

told Mr. Booker during this conversation that she would not meet with Mr. Lehr or tell him where she had been, again because of her fear of another breach of confidentiality.

27. Appellant did not return to work after August 26. She contacted no one in administration upon receipt of the Contemplation letter, and took no other action to address or rectify the situation. Appellant testified she decided instead to "wait and see how it would all turn out."
28. The due date for Appellant's response to Ms. Stackhouse's FMLA request packet expired on August 28. Since Appellant had not responded to the request packet, on August 29 Ms. Stackhouse sent a second notice to Appellant again requesting she apply for FMLA and extending the response due date to September 12, 2000. Appellant did not respond to this request either.
29. Appellant claims she never received either of the Agency's FMLA solicitations. The record is unclear whether the database from which the address used to send the Contemplation letter (6005 W. 28th Ave.) was the same database used by Ms. Stackhouse to mail the FMLA request packet. However, Appellant testified that when she moved in February of 2000, she left a change-of-address request at the post office, and that she received other mail forwarded from her previous address as instructed in her change-of-address request.
30. Ms. Stackhouse testified that she did not presently have the address to which Appellant's FMLA packet was sent, but that it was the address in the personnel database. Ms. Stackhouse testified that it is the employee's responsibility to update all address changes with the personnel office. Ms. Stackhouse further testified that she never received this packet back in the mail as undeliverable.
31. As of August 31, 2000, Mr. Lehr had still not received any information from Appellant as to her medical status, her whereabouts or her expected date of return, either from Appellant herself or from her treating doctor. On August 31, 2000, Mr. Lehr sent a "Notice of Dismissal" (Exhibit 2) to Appellant based on the abandonment of her position.
32. On September 8, 2000, Appellant filed her appeal of the Agency's decision to terminate her.

PRELIMINARY MATTERS

1. The Hearing Officer's Jurisdiction

The hearing officer finds she has jurisdiction to hear this case pursuant to CSR Rule 19-10 b), as follows in relevant part:

Section 19-10 Actions Subject to Appeal

An applicant or employee who holds career service status may appeal the following administrative actions relating to personnel.

- ...b) Actions of appointing authority: Any action of an appointing authority resulting in dismissal... which results in alleged violation of the Career Service Charter Provisions, or Ordinances relating to the Career Service, or the Personnel Rules.

Jurisdiction was not disputed by either party to this case.

2. Burden of proof

It is undisputed that the Agency responsible for terminating a career service employee bears the burden of establishing, by a preponderance of the evidence, that it had just cause for terminating the employee under the governing CSR Rules. If the Agency fails to demonstrate just cause, the Agency decision must be reversed. In the event that the Agency demonstrates just cause for its actions, the burden then shifts to the Appellant to rebut the Agency's demonstration of just cause by a preponderance of evidence. If the Appellant cannot sufficiently rebut the Agency's demonstration of just cause, the Agency decision must stand. See, In the Matter of the Appeal of Leamon Taplan, Appeal No. 35-99.

DISCUSSION

1. Just cause.

The Agency posits that it had just cause to dismiss Appellant for the following reasons. Appellant first failed to contact her immediate supervisor directly at any time on August 1, 2000. She subsequently failed to contact her supervisor or anyone else prior to the beginning of her shifts during the remainder of the week on August 2, 3, and 4, and again on the morning of Monday, August 7. The Agency further points to the fact that Appellant did not contact the Agency about her absence until her supervisor asked her husband to tell her to do so, not once, but twice.

The Agency posits that Appellant therefore failed to follow the Agency's Policy #4-122 (Exhibit 4) of which Appellant admits having received a copy on June 27, 2000 attached to her Verbal Warning for abuse of sick leave (Exhibit 5). Paragraph 1 of that Policy requires Denver Health employees to themselves contact their immediate supervisor or supervisor's designee, at least two hours prior to the beginning of each shift "so that replacement staff may be contacted." The Agency posits that Appellant's message left with a co-worker does not satisfy this requirement, and that despite her co-worker's instructions that Appellant call her supervisor back and speak to him herself later, she did not do so. Policy #4-122 further states that "two such absences without such notice within twelve months may result in severe penalties including termination." However, Appellant failed to call in for the duration of the week in violation of this policy.

The Agency further asserts that Appellant's failure to act, despite that she had been released to return home and was in fact at home during the remainder of the week, collectively constitutes failure to report for work, unauthorized absence, abuse of sick leave, failure to observe departmental regulations, and general job abandonment under the CSR Rules as follow in relevant part:

16-50 Discipline and Termination

A. Causes for Dismissal

The following may be cause for dismissal of a career service employee. A lesser discipline other than dismissal may be imposed where the circumstances warrant...

- 1) Gross Negligence or willful neglect of duty...
- 12) Failure to report for assigned shift and failure to notify immediate supervisor for three consecutive workdays. Such conduct constitutes job abandonment.
- 13) Unauthorized absence from work, including but not limited to: when the employee has requested permission to be absent and such request has been denied...

16-51 Causes for Progressive Discipline

A. The following unacceptable behavior or performance may be cause for progressive discipline. Under appropriate circumstances, immediate dismissal may be warranted. Failure to correct behavior or committing additional violations after progressive discipline has been taken may subject the employee to further discipline, up to and including termination....

- 3) Abuse of sick leave or other types of leave...
- 5) Failure to observe departmental regulations.
- 6) Carelessness in performance of duties and responsibilities...

The Agency additionally argues that even if Appellant's first week of absence is somehow circumstantially justified, Appellant evidenced the abandonment of her position by failing to provide medical authorization for extended leave, or otherwise make any further contact with West Side supervision or administration as directed to do by her immediate supervisor. Finally, Appellant failed to appear at her pre-disciplinary meeting on August 21, and failed to file an application for FMLA as required by federal law in cases of extended leave. The Agency maintains that Appellant's cumulative actions in violation of the above Policy and regulations, and her failure to take any mitigating measures on her own behalf, constitute just cause for her termination.

Appellant responds that on the morning of August 1, 2000, she was in a state of breakdown and could barely function. Appellant argues that she did call the West Side Pharmacy and her supervisor was not available to take the call. She consequently left a message for him with her co-worker, Ms. Cordova, who then forwarded the message. Appellant submits

that such practice of leaving a message of anticipated absence with a co-worker is not unusual when the immediate supervisor is unavailable to take the call. Appellant concedes that she was placed on medication to stabilize her condition and sent home, but that she remained in a dysfunctional state until her admission to the facility on August 7.

Appellant further asserts that after her admission to the facility, she feared contacting anyone in DHHA administration as to her whereabouts, because of the prior incident when her confidential medical status and diagnosis ended up in the Pharmacy's computer database and was made available to her co-workers. She states she thereafter suffered harassment and lack of trust from co-workers over the whole incident, and did not want this to happen again. Appellant testified that she gave her immediate supervisor specific instructions not to tell anyone in administration of her whereabouts in order to avoid a repeat of this incident.

Finally, Appellant responds that she did not have her mail forwarded to her while in in-patient treatment, but instead focused on recovery. She stated that she did speak to her husband by telephone when he was at home on a few occasions while she was in treatment, but that neither of them brought up the issue of mail. She therefore did not learn of the Agency's contemplation of disciplinary action until she was released and returned home on August 26, after the pre-disciplinary meeting had already taken place on August 21.

Appellant further claims that while she left a forwarding address request at the post office upon moving to her then current residence, the FMLA documents the Agency sent her were never delivered to her home, despite that other mail sent to her old address was forwarded as requested. For these reasons, Appellant never responded to the Agency's FMLA documents. In essence, Appellant presents some circumstantial obstacle for her every failure to act as required, maintaining that she did the best she could under those circumstances.

The hearing officer is persuaded that in light of the information it had at the time of its actions, the Agency had just cause to discipline Appellant for violations of the rules governing sick leave and the abandonment of her position. Alternatively, the hearing officer initially finds Appellant's assertion that during the first few days of her ordeal, Appellant was in a state of breakdown, distressed, dysfunctional, not thinking clearly, and generally incapable of functioning.

However, the hearing officer finds many of Appellant's remaining claims, intending to rebut the Agency's demonstration of just cause, contradictory and unpersuasive, casting doubt on the credibility of all her testimony, including that concerning the first week of her absence. While her failure to act as required might have been justified by emergency circumstances during the first week, it is not reasonable that after she was stabilized and the emergency was abated, Appellant did not take some responsibility for following the steps required in the regulations.

To this day, Appellant has failed to provide any medical authorization indicating her incapacitation and unavailability, during the first week or otherwise. While she claims to have told her doctor that he needed to contact administration and inform them of her status as directed to do so by Mr. Booker, she did not provide testimony from the doctor, documentation, or any

evidence other than her own self-serving hearsay claim to substantiate that she had done so and that her doctor said he would "take care of it."

In light of several inconsistent assertions by Appellant, the hearing officer finds such a claim even less convincing. At one point in her testimony, she claimed she checked into inpatient with no money and since the only phone available was a pay phone, she could not call administration as she was instructed to do. Later she claimed, while still under oath, that she did call her immediate supervisor and spoke with him several times while in inpatient. At one point Appellant stated that she failed to act when finally receiving the Contemplation Notice because she thought it was futile to do so because she apparently didn't have a job. Yet at another point she testified that she did not believe termination would result from her inaction because she had not been reprimanded for her actions. Appellant testified that she did not understand the Verbal Warning was a reprimand, despite that it states in the last sentence that additional disciplinary action including dismissal may result if her use of sick leave did not immediately improve.

Similarly, Appellant's sworn statement that she requested her doctor to contact Mr. Lehr as she was instructed to do is inconsistent with her repeated claim under oath that she deliberately avoided informing administration for fear of another breach of confidentiality, and even specifically instructed Mr. Booker not to do so. This inconsistency further weakens Appellant's already unsubstantiated claim that she told her doctor he had to contact administration and give medical authorization for her extended absence.

Finally, even if it is true that she told her doctor to call administration and authorize extended leave, Appellant once again allegedly placed the responsibility on someone else other than herself to make sure the required procedures were complied with, just as she did on the morning of August 1, then failed to follow up with that individual to establish that compliance was achieved, even after she became aware of a pending disciplinary action.

In addition, Appellant repeatedly claimed that the reason she did not want to speak with Mr. Lehr was because her previous diagnosis turned up in the database. Yet she established no evidentiary connection whatsoever between the medical information which turned up in the database during the prior incident, and any actions taken by Paul Lehr, an individual not in medical practice, but in administration acting as the Outpatient Pharmacies Assistant Director. There is no evidence whatsoever that Mr. Lehr would have any direct connection with diagnostic information concerning patients appearing in the database. This alleged connection between Mr. Lehr and the prior violation of confidentiality stands before the hearing officer as nothing more than an unfounded, unexplained presumption, even if it did excuse the Appellant's deliberate stonewalling of administration during her treatment.

Furthermore, even if this fear were shown to be legitimate, the hearing officer is not persuaded that Appellant's fear of a confidentiality breach excuses her obligation to inform her employer of her status, or at the very least, her expected date of return. It is not reasonable to simply vanish and expect one's employer to indefinitely remain in the dark without taking some corrective action in either determining whether the employee will return, or filling the gap created by her absence. It is clear from Policy #4-122, of which Appellant admittedly had received a copy only weeks before, that of primary consideration is the additional stress placed

on other employees, when one is absent without notice and the opportunity to provide coverage of the employee's post. This is particularly true in a medical facility which has in its hands the lives and health of the people it serves.

Appellant further either consciously decided to ignore her mail while in treatment, or carelessly failed to consider the potential consequences of doing so. Then, even upon receiving the Contemplation letter when she returned home, and realizing she had missed to pre-disciplinary meeting, she still failed to take any actions to mitigate the situation. Appellant failed altogether to offer any reasonable explanation for her failure to act at this point, simply stating she decided to "wait and see how it would all turn out." The hearing officer is wholly unpersuaded that Appellant's failure to act at this juncture was reasonable.

Finally, under the circumstances the hearing officer is not persuaded that Appellant did not receive her FMLA mailings even if they were sent to the wrong address, where Appellant admitted her other mail sent to her old address was being forwarded to her new address as she requested. It is far too coincidental that the postal system failed on these two specific occasions, while successfully forwarding Appellant's other mail to her new address. In addition, despite Appellant's claim that personnel did not have her current address, it is Appellant's responsibility to keep the personnel database current.

The Agency took every action it was supposed to under the governing personnel rules. The Agency took several reasonable measures in attempt to contact Appellant, allow her to respond to allegations of job abandonment, and provide additional sources of leave authorization to her. Not knowing where else to contact her, they sent her several pieces of mail, which she ignored while in treatment or claims she never received them. Appellant took none of the actions required of her in order to protect her own rights. She essentially not only refused to contact DHHA administration as she was required to do, she further took actions which made it impossible for them to reach her.

Given the totality of circumstances, the hearing officer finds the Agency had just cause to discipline Appellant, and Appellant's responses have failed to rebut just cause in this case.

2. Severity of discipline

The remaining issue is whether the discipline imposed is reasonably related to the offense under the totality of circumstances. CSR Rule 16-10 states:

The purpose of discipline is to correct inappropriate behavior or performance. The type and severity of discipline depends on the gravity of the infraction. **The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record.** The appointing authority or designee will impose the type and amount of discipline she/he believes is needed to correct the situation and achieve the desired behavior or performance. (Emphasis added)

Appellant's disciplinary history is clearly relevant to Agency's determination in this case. The Verbal Warning memo (Exhibit 5) sets forth the relevant portions of Denver Health Employee Principles and Practices #4-122 (Exhibit 4). The Verbal Warning specifically addresses Appellant's abuse of sick leave, and warns Appellant that further sick leave infractions may result in additional disciplinary actions, up to and including termination.

The CSR Rules clearly contemplate that an employee's failure to report for work and failure to notify the employee's immediate supervisor for three consecutive workdays is potentially severe enough in and of itself to warrant dismissal. CSR Rule 16-50 12), specifying such failures, appears under the section of CSR Rule 16 headed "Causes for Dismissal." This section is separate from section 16-51, which is headed "Causes for Progressive Discipline."

Appellant admitted having received and read the Verbal Warning, and to receiving the attached Policy #4-122 on June 27, 2000. Mr. Lehr testified he hand-delivered both these documents to Appellant and told her to call him with any questions. Yet little more than a month later, she not only failed to directly contact and inform her immediate supervisor of her expected absence for four consecutive work days, she subsequently failed to take any action informing administration of her status as her immediate supervisor instructed her to. She furthermore deliberately obfuscated the Agency's knowledge of her status and whereabouts, and its repeated attempts to reach her and ascertain what to expect. She told Mr. Booker not to tell administration where she was. She failed to review her mail while in treatment, despite that the facility would have allowed her to do so. Finally, she failed utterly to make any reasonable attempt to respond to the Contemplation letter even after she admittedly received it.

In essence, it was wholly unreasonable for Appellant to repeatedly fail and refuse to act, and then place the entire burden for the protection of her position on her employer, despite that she was informed only five weeks prior of precisely what she had to do, and warned point blank that her failure to do so might lead to termination. Appellant clearly demonstrated the abandonment of her position, not once, but several times, even after repeated opportunities and warnings. Under the totality of facts and circumstances in this case, the hearing officer concludes that the Agency's subsequent termination of Appellant for the abandonment of her position was reasonably related to the Appellant's conduct.

CONCLUSIONS OF LAW


1. Appellant violated Denver Health Employee Principles and Practices #4-122, and did so knowingly and deliberately.
2. Appellant acted in violation of CSR Rules 16-50, subsections 12) and 13), and 16-51, subsections 3) and 5).
3. Appellant did not act in violation of CSR Rule 16-50, subsection 1) referencing gross negligence, or 16-51, subsection 6) referencing carelessness in performance of duties. These regulations are related to job performance. There is no evidence that Appellant misperformed any of her duties while on the job. The evidence suggests that on the contrary, Appellant's performance has been rated highly in the past.

4. The Agency has demonstrated just cause to discipline Appellant for the above violations constituting abandonment of her position, and that the severity of the discipline was justified under the totality of the circumstances.
5. Appellant has failed to rebut the Agency's demonstration of just cause in its decision to discipline Appellant, and has failed to rebut the Agency's demonstration that the severity of discipline was justified under the totality of circumstances.

DECISION AND ORDER

Based on the Findings and Conclusions set forth above, The Director's decision to terminate Appellant is AFFIRMED, and this appeal is DISMISSED.

Dated this 2ND day of April, 2001.



Joanna L. Wilkerson
Hearing Officer for the
Career Service Board

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing **FINDINGS AND ORDER** by depositing same in the U.S. mail, postage prepaid, this 2nd day of April, 2001, addressed to:

Richard Sanchez
AFSCME
3333 Quebec St. Suite 7500
Denver, CO 80207

Donna Chavez
6005 W. 28th Ave.
Edgewater, CO 80214

I further certify that I have forwarded a true and correct copy of the foregoing **FINDINGS AND ORDER** by depositing same in interoffice mail, this 2nd day of April, 2001, addressed to:

Chris H. Mootz
Assistant City Attorney

Denver Health and Hospital Authority
Office of General Counsel
660 Bannock St. 5th Floor
MC 1919

Dr. Patricia Gabow
Denver Health and Hospital Authority

V. Granado