

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

Appeal No. 143-02

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

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IN THE MATTER OF THE APPEAL OF:

**BARBARA COFFMAN**, Appellant,

Agency: COMMUNITY PLANNING AND DEVELOPMENT AGENCY,  
NEIGHBORHOOD INSPECTION SERVICES, and  
THE CITY AND COUNTY OF DENVER, a municipal corporation.

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**INTRODUCTION**

This matter comes before the Career Service Board on appeal by Barbara Coffman filed July 29, 2002. Ms. Coffman challenges the Community Planning and Development Agency, Neighborhood Inspection Services' denial of a grievance she filed, in response to a written reprimand she received for various alleged violations of Career Service rules.

For purposes of this Decision, Ms. Coffman shall hereinafter be referred to as "Appellant." The Community Planning and Development Agency, Neighborhood Inspection Services shall be referred to as "CPDA," "NIS" or "the Agency." The rules of the Career Service shall be referenced as "CSR" with a corresponding numerical citation.

A hearing in this matter was held before Personnel Hearing Officer Joanna Lee Kaye ("hearing officer") on October 22, 2002 at the Career Service Authority Offices. The Agency was represented by Assistant City Attorney Robert D. Nespor, with CPDA's Consumer Protection Supervisor, Gregory B. McKnight II, present for the entirety of the proceedings as the advisory representative for the Agency. Appellant was present and was represented by Cheryl Hutchinson of the American Federation of State, County and Municipal Employees.

The Agency called the following witnesses: Mr. McKnight, and NIS Administrative Operations Supervisor Caroline Tuthill-Karny.

Appellant testified on her own behalf, and called NIS Plan Review Technician Eleanor Garcia, and NIS Zoning Specialist Inez Duran.

The parties stipulated to the admission of Agency Exhibits 1 through 6, and Appellant's Exhibits B and C. Appellant's Exhibit A was offered and admitted during the hearing. No additional exhibits were offered or admitted.

## PRELIMINARY MATTERS

### 1. The Hearing Officer's Jurisdiction

The hearing officer finds she has jurisdiction to hear this case as a grievance of a written reprimand pursuant to CSR 18-12 4. and 19-10 d). Those rules follow in relevant part:

#### CSR Rule 18-12 Grievance procedure

- ...4. Filing with the Career Service Authority: If the employee still feels aggrieved after receipt of (the second-level grievance) decision... and the grievance concerns an alleged violation of the Charter provisions relating to the Career Service, ordinances relating to the Career Service, or the Career Service Rules, and the employee wants to pursue the grievance further, the employee must appeal to the Hearings Officer of the Career Service Board in accordance with the provisions of **Rule 19 APPEALS**. The period of time shall be computed in accordance with subparagraph 19-22 a) 2.

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#### 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.

- ...d) Grievances resulting in rules violations: Any grievance which results in an alleged violation of the Career Service Charter Amendment, or Ordinances relating to the Career Service, or the Career Service Personnel Rules... The appeal form must state with specificity which career service charter amendment, ordinance or career service rule(s) are alleged to have been violated. An appeal may be dismissed if the appellant fails to cite the alleged rule violation(s).

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Jurisdiction over Appellant's grievance of her written reprimand was not disputed by either party to this case.

### 2. Burden of proof

The City Charter, C5.25 (4), and CSR 2-104(b)(4), require the hearing officer to determine the facts of the case "*de novo*." This means that she is mandated to make independent determinations of the facts and resolution of factual disputes. Turner v. Rossmiller, 535 P.2d 751 (Colo. App. 1975.)

In civil administrative proceedings such as this one, the level of proof required for a party to prove its case is a *preponderance of the evidence*. In other words, to be meritorious, the party

bearing the burden must demonstrate that the assertions it makes in support of its claims are more likely true than not.

It has been previously established that an agency responsible for disciplining a Career Service employee affirmatively bears the initial burden of establishing, by a preponderance of the evidence, that it had *just cause* for the disciplinary action. See, In the Matter of the Appeal of Vernon Brunzetti, Appeal No. 160-00 (Hearing Officer Bruce A. Plotkin, 12/8/00). This includes grievances of written reprimands. See, In the Matter of the Appeal of Martha Douglas, Appeal No. 317-01 (Order entered 3/22/02). The agency must also demonstrate that the severity of discipline is reasonably related to the seriousness of the offense in question. See, In the Matter of Leamon Taplan, Appeal No. 35-99 (Hearing Officer Michael L. Bieda, 11/22/99).

### ISSUES

1. Whether the Agency has shown by a preponderance of the evidence that Appellant engaged in the alleged acts.
2. If so, whether the acts constitute violations of CSR rules, giving the Agency just cause to discipline Appellant.
3. If so, whether Appellant's written reprimand is reasonably related to the seriousness of the offenses in question.

### FINDINGS OF FACT

1. The NIS section of the CPDA is responsible for enforcing ordinances governing the use of property within the city. In Denver, the ground from two feet beyond the public sidewalks to the street is city property. Existing municipal ordinances governing this "right-of-way" prohibit the placement of objects such as boulders, railroad ties, stakes, and the like, beyond the public walkway in the right-of-way. Such objects are considered "tripping hazards." In addition, municipal ordinances governing vegetation limit the height and types of vegetation that can be planted in the right-of-way. Individuals seeking to use items controlled by the ordinances in the public right-of-way must seek a variance from the Department of Public Works, and be granted a revocable permit.
2. Appellant has worked for the CPDA for several years, and has been doing ordinance-related inspection work since 1986. Appellant is presently employed as a Senior City Inspector for the NIS, which is the position she held at all times relevant to this case. Among her duties are the inspection of building exteriors, and enforcement of municipal ordinances addressing such topics as right-of-way use and restrictions, debris on property, and various types of vegetation. She is very familiar with the myriad city ordinances governing her duties. Appellant has had no prior disciplinary actions, and has historically volunteered for special projects.
3. In or around 1999, as a result of growing concerns about drought susceptibility of the city's vegetation, Agency officials began pursuing amendments to the existing ordinance governing

unattended vegetation. The proposed amendments would require more drought-resistant vegetation be used. The "Unattended Vegetation Committee" (Committee) was formed. This Committee comprised officials from many city agencies representing various interests and concerns related to the new vegetation ordinance. Committee participation varied depending on the portion of the ordinance being developed at any given time, and over time included representatives from the CPDA, Denver Water, Denver Botanical Gardens, Waste Water Management Division, Forestry, Parks and Recreation, City Council, the Mayor's Office, and private industry.

4. Appellant became involved with the Committee when it was first formed in 1999, as a representative of the CPDA. Also representing the CPDA were her supervisor, Administrative Operations Supervisor Caroline Tuthill-Karny, and one other CPDA employee, Kevin Patterson.
5. Consumer Protection Supervisor Gregory McKnight is a biologist. He has worked for the CPDA for four years, and was formerly a health inspector and chief maintenance/zoning inspector. He does not enforce vegetation ordinances, but his duties require that he know all such ordinances. Mr. McKnight also eventually became involved as a CPDA representative on the Committee.
6. At some point during the summer of 2001, Appellant, Ms. Karny, Mr. McKnight and Mr. Patterson were all still involved in the Committee and continued to attend meetings regularly. Agency Director R.D. Seawald inquired of Mr. McKnight as to why there were four representatives from the CPDA, questioning whether this might not be a waste of resources. Pursuant to this inquiry, Mr. McKnight met with the chair of the Committee, Cathy Donahue, who decided that one person from CPDA would be sufficient representation of the Agency. She selected Mr. McKnight as the representative for CPDA. Mr. McKnight testified he did not ask for Appellant's removal from the Committee and played no role in that decision. He testified that he believed this decision had been announced and that Appellant had been made aware of it.
7. Ms. Karny testified that she and Appellant went to a Committee meeting during approximately the summer of 2001. Ms. Karny testified that she and Appellant still believed they were on the Committee when they arrived for the meeting. Mr. McKnight was not present at this Committee meeting. After Appellant and Ms. Karny had interjected their input on several occasions during the meeting, Ms. Donahue said something to the effect of, "Don't get me wrong. We don't mind you ladies being here, but (Mr. McKnight) is the decision maker (for CPDA)..." Ms. Karny testified that this is how she and Appellant learned they were no longer on the Committee.
8. Appellant does not recall the meeting during the summer of 2001 described by Ms. Karny. She recalls what she thought was the last Committee meeting occurring approximately a year before the training session in June of 2002 (during which the incident at issue in this case took place). Mr. McKnight was in attendance at that meeting. Thereafter, the Committee went into what Appellant perceived at the time was a period of inactivity. She was never actually informed that she was off the Committee.

9. The new ordinance was approved by the City Attorney's Office and enacted by the City Council sometime in or around May of 2002. (*See*, Exhibit A.)<sup>1</sup>
10. Mr. McKnight has conducted up to thirty training presentations to employees on various subjects in the past. For this particular ordinance, he developed a training presentation that included slides of what had previously been acceptable vegetation under the old ordinance, and what was acceptable vegetation under the new ordinance. He planned on showing several series of slides, with breaks in between each series. During these breaks he planned to turn on the lights to allow for discussion concerning the slides. Ms. Karny also developed a portion of the training presentation, addressing proper documentation under the new ordinance. Mr. McKnight was to be the person to present the entire training package.
11. Mr. McKnight tested the training presentation by presenting it to City Council. He scheduled three training sessions to accommodate all employees.
12. Appellant first learned that the ordinance had been adopted in approximately May of 2002, when she saw the announcement on the training presentation. It was at this time that she realized she had been taken off the Committee.
13. On June 12, 2002 Appellant attended the first training presentation with seventeen other NIS employees, including her supervisor Ms. Karny, Plan Review Technician Eleanor Garcia, and Zoning Specialist Inez Duran.
14. During the presentation, Mr. McKnight presented one of the series of photographs he had prepared as examples of acceptable and unacceptable vegetation. In two of the photographs intended to represent acceptable vegetation under the new ordinance, large rocks and stakes also appeared. When these two photographs were presented, Appellant raised her hand and stated that the landscaping in the photographs would never pass inspection because of the tripping hazards they represented.
15. Mr. McKnight testified that the following events ensued. When Appellant challenged the photographs, he turned the lights on so the participants could see during the discussion. Initially, others "chimed in" on this question. For approximately fifteen minutes, Appellant continued in a discussion with him about the unacceptable nature of the pictures under the ordinances governing right-of-way. On more than one occasion Mr. McKnight said something to the effect that they should move forward now and talk about this after the training session. After several minutes, during the middle of the discussion, Mr. McKnight said something to the effect that he would have to look into this issue. At that point Appellant raised her voice, became "irate, combative, and argumentative," pointed her finger at Mr. McKnight, and said "this is a trip hazard." The discussion then became a "heated argument" for approximately four minutes. When Mr. McKnight said something to the effect that he did not want to argue about the issue, Appellant said something to the effect of, "That's why you pulled me off the Committee, so you wouldn't have to argue with me."

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<sup>1</sup> Mr. McKnight testified that the various dates that appear in the ordinance (Exhibit A) represent the last time changes were made to the various sections of the ordinance. Despite that the word DRAFT appears on the document, this is the final text that was adopted by City Council.

(See, Exhibit 6.) Mr. McKnight indicated that they would talk after the training session, and then tried to return his focus to the presentation. Appellant's tone had returned to normal by the end of the discussion at issue. However, Mr. McKnight had been distracted by the dispute and did not thoroughly cover the section of the materials addressing documentation, which comprised the remainder of the presentation. The entire training session was scheduled to take place within 3 ½ hours. That particular session took the entire allotted time. Mr. McKnight recalled looking back and realizing he had lost "a lot of time" because of the discussion with Appellant.

16. Ms. Karny testified that the following events ensued after Appellant pointed out the ordinance conflict. Mr. McKnight tried to address the question several times, and Appellant responded each time. They "went back and forth." Mr. McKnight said something to the effect that the supervisor responsible for right-of-way issues had not mentioned any conflict in the ordinances. The discussion became "elevated." Appellant became "adamant," "heated," "confrontational," and raised her voice. Mr. McKnight did not raise his voice. Mr. McKnight said something to the effect that he did not want to argue about it, to which Appellant responded "That's why you pulled me off the Committee, so you wouldn't have to argue with me." Appellant was "very upset" and "very heated" when she said this. Ms. Karny found the exchange was "a little embarrassing" and wondered how Mr. McKnight was "to move on from something like that." She noticed some of the employees "looking down at the table" during the dispute. Ms. Karny said something to the effect of, "This isn't something we can resolve at the point, let's move on." The total exchange lasted between 5 and 7 minutes. Ms. Karny recalls looking at the clock because she was concerned about the time, and that the whole training took about thirty minutes. She felt that the effect of Appellant's behavior was to shift focus away from what they were trying to accomplish during the training. She testified that Mr. McKnight did not get deeply into her portion of the training concerning the relevant documentation because of the disruption.
17. Appellant testified to the events in question as follows. Ms. Garcia was sitting next to her, and Ms. Karny was sitting next to Ms. Garcia. When Appellant raised her hand and Mr. McKnight called on her, she stated something to the effect that the landscaping appearing in the pictures would never be approved in the right-of-way because they constituted tripping hazards. Mr. McKnight said that he had already talked with Rob (Duncanson, Director of Right-of-Way) and the City Attorney had already approved the ordinance. Appellant told Mr. McKnight that he had not presented these items to them. Mr. McKnight "kind-of blew up like" and again said the ordinance had already been enacted and approved. He "yelled" for Appellant to be quiet, said they were not going to discuss this, and were going to move on. Appellant denies that the quote relayed in the allegations, concerning Mr. McKnight removing her from the Committee, is accurate. However, Appellant testified she did say something to the effect that Mr. McKnight's unwillingness to listen "has been the problem all along." Then Ms. Karny "stopped the argument" when she said something to the effect of, "Barb, we're not going to resolve the dispute here." Appellant was sitting at the table the whole time. She did not stand up and did not point her finger at Ms. McKnight during the conversation. She became very frustrated that Ms. McKnight did not want to listen to the fact that there was a conflict. She expected the presentation to be either based on established fact, or else open for discussion and resolution. They could not enforce the ordinance as presented without being in conflict with the right-of-way ordinance.

18. Eleanor Garcia was in her second day as a Plan Review Technician. She was present at the training session on June 12, 2002. She testified as follows. Mr. McKnight was showing pictures of vegetation that needed to be taken out of the right-of-way. When discussing one of the pictures, Appellant said something to the effect of, "No Greg, it's not that way." Mr. McKnight "kind-of got upset and didn't want to hear it." Neither Mr. McKnight nor Appellant raised their voices. Mr. McKnight merely said something to the effect of "That's just the way it is." Appellant pointed out that Mr. McKnight was contradicting himself, and Mr. McKnight did not like that. He did not acknowledge the ordinance conflict. The discussion was quick because Mr. McKnight "cut it short." Ms. Karny, who was sitting right next to Ms. Garcia, did not say anything during the discussion. Ms. Garcia felt the argument was disruptive to class, and that Mr. McKnight caused the argument. The training was terminated after the discussion. It did not continue for the entire allotted time and was not complete. Ms. Garcia felt that they were near the end at that point; however, she wanted more information about the ordinance conflict. The entire training lasted from 1 ½ to 2 hours.
19. Zoning Specialist Inez Duran has known Appellant for five years and considers her to be a friend. She was present at the June 12, 2002 training session. She testified as follows. Mr. McKnight was showing slides to the staff to determine which ones had right-of-way violations. Mr. McKnight was "trying to explain something about the ordinance" and asked if there were any questions. Appellant raised her hand and had a question about the right-of-way issue. Mr. McKnight "got upset." He said something to the effect that it was not the time to talk about it, and that they would talk about it later. Appellant did not raise her voice and Ms. Duran feels she was not "out of line" during the discussion. Ms. Duran felt that Mr. McKnight "got more upset than he should have" and "basically told (Appellant) to be quiet." She felt he "could have handled it differently." The whole interaction took a couple of minutes. Ms. Karny said nothing during the interaction. Ms. Duran's understanding at the beginning of the training session was that the ordinance had already been enacted, but during the training she came to believe that the ordinance was still in the draft process. Ms. Duran did not feel the discussion was "disruptive" to the training, but believed it was part of the training discussion. The entire training lasted a couple of hours. Ms. Duran felt there was "a lot of conflicting information" and still many unanswered questions when the training session ended. Other people had concerns about the ordinance conflict. Ms. Duran was left wondering why all the agencies were not "on the same page."
20. Appellant, Ms. Karny and Mr. McKnight met after the training session was over.
21. Mr. McKnight testified to the meeting after the training session as follows. They tried to discuss what happened. Appellant restated her belief that Mr. McKnight had a hand in her removal from the Committee. Mr. McKnight told Appellant he did not have a hand in the decision; instead, it was Ms. Donahue's decision, and he invited Appellant to ask Ms. Donahue about it. Appellant sarcastically said something to the effect of, "Yeah, sure, I will ask Cathy about that." (See, Exhibit 6.) Mr. McKnight sensed "anger and hostility" from Appellant during this discussion. Mr. McKnight does not recall Appellant apologizing to him.

22. Ms. Karny testified to the meeting after the training session as follows. Mr. McKnight asked Appellant where "all this" was coming from. Appellant responded that Mr. McKnight had wanted all the credit for the CPDA's Committee work. Mr. McKnight said he had put Appellant's name at the end of the slide show, and told Appellant he did not have her taken off the Committee. Appellant said something like "I'll ask Cathy about that." Appellant still seemed upset. Ms. Karny inferred that because Appellant had put a lot of time into the Committee work, she was personally invested. She cannot recall whether Appellant apologized to Mr. McKnight but does recall Appellant telling Mr. McKnight she respected him and his knowledge.
23. Appellant testified to the meeting following the training session as follows. Mr. McKnight asked her what was prompting all this. Appellant said they had gone over these issues during the Committee meetings. She said that she felt during the Committee meetings, as well as the training session, as though Mr. McKnight did not want to listen to things he disagreed with. Appellant apologized to Mr. McKnight and told him she had a lot of respect for him. But he could not present something that wasn't right, and he needed to verify it was correct. Mr. McKnight told Appellant that her removal from the Committee was Ms. Donahue's decision. Appellant said she had never heard that. Mr. McKnight told her she should ask Ms. Donahue, and Appellant responded that she would. Appellant did not intend to be sarcastic or mocking when she said this.
24. Mr. McKnight testified he did not review the new ordinance for conflicts with existing ordinances in preparation for the training presentations. He testified he assumed there were no major conflicts, since the new vegetation ordinance had been generated by a Committee with broad representation, approved by the City Attorney's Office, and adopted by City Council. Mr. McKnight testified that Appellant subsequently provided him with additional documentation evidencing the conflict between the two ordinances, and that when he researched the information, he confirmed that there was such a conflict. He testified that after the training session and meeting thereafter, he felt no lingering hostility from Appellant, when she provided this documentation to him or otherwise.
25. Mr. McKnight testified that he was able to cover all the materials he had prepared during the second and third training sessions, even though other participants had raised similar questions about the materials and there were discussions about those questions. He testified that this was because the participants in the other two training sessions did not become "combative" over the issue.
26. Other employees from the first training session complained to Ms. Karny and Mr. McKnight that they believed the employees in the second and third training sessions got more information about the ordinance change than they did.
27. Ms. Karny issued Appellant a written reprimand on June 14, 2002 (Exhibit 2). Ms. Karny testified that she felt a written reprimand was appropriate because Mr. McKnight is a supervisor and Appellant was "going at him" in front of other employees during a training presentation. Ms. Karny testified she felt Appellant had the right to bring up the apparent conflict in the ordinance, but felt that the manner in which Appellant did this was

inappropriate, particularly at that time and place. She felt that Appellant "just wouldn't let it go." Ms. Karny did not feel Appellant conducted herself professionally during the incident.

28. Appellant filed a first-level grievance of the written reprimand on June 21, 2002 (Exhibit 3), to which Ms. Karny responded, denying the grievance on July 1, 2002 (Exhibit 4). Appellant filed her second-level grievance on July 10, 2002 which the Agency denied on July 18, 2002 (Exhibit 5). This appeal timely followed on July 29 (Exhibit 1).
29. As of the time of the hearing, the ordinance in Exhibit A was still not being enforced due to lingering unresolved conflicts.

## DISCUSSION

### **1. Rules the Agency alleges Appellant violated.**

The Agency posits that Appellant's conduct constitutes violations of the following CSR rules (*see*, Exhibit 2):

#### Section 16-51 Causes for Progressive Discipline

- A. The following unacceptable behavior or performance may be cause for progressive discipline....
  - ... 4) Failure to maintain satisfactory relationships with co-workers, other City and County employees or the public.
  - ... 5) Failure to observe departmental regulations.

\* \* \*

CPDA Employee Policy and Procedures:

#### **Interpersonal Relationships**

Employees shall treat all co-workers, management, tenants, contractors, clients, and members of the general public in a polite, courteous and civil manner. Employees shall offer assistance to co-workers, management, developers, contractors, clients, and members of the general public whenever possible. At no time shall an employee use or exhibit rude, threatening, loud, harassing, or abusive language or behavior.

### **2. Analysis of the evidence.**

The accounts of what happened at the training session on June 12, 2002 vary considerably. It is unclear how long the training lasted, whether either Appellant or Mr. McKnight, or both, raised their voices, whether Appellant engaged in finger-pointing, whether others perceived either Appellant or Mr. McKnight's behavior as inappropriate, as becoming

upset or mad, and possibly as overreacting, and whether Appellant's actions were the cause of the training not being completed.

However, even if any of these issues had clearly been shown one way or the other, the hearing officer would have found none of them as critical as Appellant's alleged statement to Mr. McKnight: "That's why you pulled me off the Committee, so you wouldn't have to argue with me." All other considerations aside, this statement alone is an inappropriate accusation against a supervisor to make in the presence of other employees during a training session.

Appellant denies that she made the statement reiterated by Mr. McKnight and Ms. Karny during the training session. However, Appellant admits to saying something referencing Mr. McKnight's unwillingness to listen to her, stating that this had been "the problem all along."

The hearing officer is persuaded that Appellant did accuse Mr. McKnight of having her removed from the Committee during the training session for the following reasons. While Appellant asserts that she did not say it "like that," Appellant's own account of the surrounding events indicates that she did accuse Mr. McKnight of having her removed from the Committee. Appellant testified that during the meeting with Ms. Karny and Mr. McKnight after the training session, she said would check the issue of her removal from the Committee with Ms. Donahue. Appellant further admits saying this in response to a comment by Mr. McKnight, that he was not responsible for this decision.

The only explanation for Mr. McKnight making such a statement is in response to some such accusation by Appellant, that he did have something to do with her removal from the Committee. It is therefore clear that, at some point, Appellant likely said something to Mr. McKnight suggesting he was responsible for Appellant's removal from the Committee, causing him to speak out in his own defense. Additional evidence supports that the statement was made during the training session. First, this statement was in part the purpose for the meeting afterward, as evidenced by testimony from both the Agency and Appellant herself, indicating that Mr. McKnight began the meeting after the training session by asking Appellant where "all this" was coming from, and uncontroverted testimony from both Agency witnesses that Appellant confirmed her belief that Mr. McKnight had a hand in removing her from the Committee.

Furthermore, while the other participants did not testify one way or the other concerning whether Appellant made the statement, it was Mr. McKnight's and Ms. Karny's clear recollection that Appellant did make the statement during the training session. It is reasonable to assume that Ms. Karny, as Appellant's direct supervisor and therefore directly responsible for her conduct, was more inclined to pay greater attention to the details of questionable conduct than were Appellant's co-workers. Ms. Karny wrote a synopsis of events the day the incident in question occurred, when the events were still fresh in her recollection (Exhibit 6). Appellant's alleged accusation concerning her removal from the Committee appears in quotation marks, in the portion of Ms. Karny's synopsis describing the dispute during the training session. This is persuasive corroborative evidence that Appellant made the statement in question at that time.

Additional evidence tends to suggest that Appellant was motivated to react emotionally, and perhaps to overreact. She had been working on the Committee for two years and was invested in the Committee's work. She learned after the fact that they had unceremoniously

excluded her without even telling her. It had now come to her attention that the ordinance was passed, and Mr. McKnight, who was not responsible for enforcing the ordinances upon which he was professing expertise, was chosen over her, perhaps by his own influence. Yet the ordinance had lingering conflicts he had failed to recognize, that she would have brought to the Committee's attention had they not eliminated her from participating.

For all these reasons, the hearing officer concludes that during the training session on June 12, 2002, Appellant more likely than not made a statement to Mr. McKnight substantially to the effect of, "that's why you pulled me off the Committee, so you wouldn't have to argue with me."

Appellant presented testimony tending to suggest that it was Mr. McKnight who reacted inappropriately. A supervisor's conduct can be found sufficiently inflammatory to cause a spontaneous reaction of defense or indignation in a reasonable person, thus substantially mitigating a subordinate's otherwise inappropriate response. *See, e.g., In the Matter of Eric Ortega*, Appeal No. 97-02 (Decision entered 9/18/02). However, the evidence in this case does not support an allegation that Mr. McKnight's conduct rose to any such level. In the absence of evidence tending to clearly suggest that Mr. McKnight's conduct was so inflammatory as to cause a reasonable person to respond spontaneously in her own defense, Mr. McKnight's alleged inappropriate participation in the exchange is irrelevant to a determination of whether Appellant's conduct was inappropriate.

Appellant further argues that the conflict she pointed out in the ordinances was of legitimate concern, as evidenced by the Agency's admissions, and the facts that the conflict remains unresolved and the ordinance is still not being enforced. Appellant implies her feelings about the entire incident were further justified by the inappropriate handling of her membership on the Committee.

However justified Appellant's reaction to the ordinance conflict was, and however understandable Appellant's feelings about the series of events leading to the dispute about the conflicting ordinances might be, these considerations are separate from the issue of whether Appellant's actions during the training session were inappropriate. The totality of evidence tends to suggest that Mr. McKnight was trying to conduct a training session, that Appellant engaged in a persistent challenge of some of the information, that he tried to respond to the conflict but could not resolve it at that time, and that Appellant would not let the dispute drop, even after he repeatedly told her to drop it. All this caused him to lose track of his train of thought on the task at hand – the training session.<sup>2</sup> Furthermore, despite Appellant's beliefs and feelings about events leading to the adoption of the ordinance, nothing in the evidence warrants her accusation, in front of other employees, that a supervisor insidiously took actions against her interests for self-serving reasons. The inappropriateness of this act is underscored by the fact a simple private inquiry would have revealed to her that her suspicion, first uttered in front of those other employees, was inaccurate.

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<sup>2</sup> The hearing officer is mindful of the implication, behind Appellant's arguments, that the training presentation should not have continued in light of the apparently inaccuracies revealed during the dispute at issue. However, right or wrong, this was Mr. McKnight's decision to make, not Appellant's.

Finally, Ms. Karny testified she felt embarrassed by this whole exchange. She looked around the room and observed some others in attendance looking down at the table, also in apparent discomfort over the event. The hearing officer finds Ms. Karny's testimony additional credible, corroborative evidence that Appellant's conduct was inappropriate.

For the foregoing reasons, the hearing officer concludes that Appellant's actions during the June 12, 2002 training session constituted violations of CSR 16-51 A., subsections 4), failure to maintain satisfactory relationships with co-workers, and other City and County employees, and 5), failure to observe departmental regulations; namely, CPDA Employee Policy and Procedures: **Interpersonal Relationships**. Therefore, the Agency had just cause to discipline Appellant.

### 3. Severity of the discipline.

CSR 16, governing disciplinary actions, states as follows in relevant part:

#### 16-10 Purpose

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 shall take into consideration the employee's past record. The appointing authority or designee shall 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.)

The hearing officer must determine whether the degree of discipline is "reasonably related" to the seriousness of the offense. See, Leamon Taplan, *above*. It is a well-established principle of employment law that to be reasonably related, the discipline need only be "within the range of reasonable alternatives available to a reasonable, prudent agency administrator." See, In the Matter of William Armbruster, Appeal No. 377-01 (decision entered 3/22/02), *citing Adkins v. Div. of Youth Services*, 720 P.2d 626 (Colo. App. 1986). In determining whether the discipline is within the range of reasonable alternatives, the hearing officer will not substitute her judgment for that of an agency unless the discipline is clearly excessive, or is based primarily on considerations that are not supported by a preponderance of the evidence. See, *e.g.*, Armbruster, *above*; In the Matter of the Appeal of Dolores Gallegos, Appeal No. 27-01 (entered 3/21/01).

The most critical allegations supporting the Agency's determination to issue a written reprimand have been sustained by a preponderance of the evidence. Ms. Karny, the supervisor who issued the Written Reprimand, was present at the incident at issue. She heard Appellant make a comment that, to a reasonable person, was an inappropriate accusation against another employee in a public setting. Appellant has partially admitted to making a comment to this effect, and the hearing officer has concluded through a preponderance of the evidence that Appellant in fact made the comment, and concurs with the Agency that Appellant's behavior was in violation of the cited CSR rules.

As a first-hand witness to the incident in question, Ms. Karny was exercising her supervisory judgment not on what was reported to her, but what she herself experienced to be inappropriate behavior. Under the totality of these circumstances, the hearing officer finds that a written reprimand was within the range of reasonable alternatives, and will not disturb the judgment of the Agency in issuing Appellant the written reprimand.

### CONCLUSIONS OF LAW

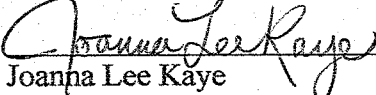
1. The Agency has demonstrated by a preponderance of evidence that Appellant engaged in
  - a) Failure to maintain satisfactory relationships with co-workers in violation of CSR 16-51 A. 4);
  - b) Failure to observe departmental regulations (specifically CPDA Employee Policy and Procedures: **Interpersonal Relationships**) in violation of CSR 16-51 A. 5).
2. The Agency has demonstrated just cause for disciplining Appellant by a preponderance of the evidence.
3. In light of the totality of evidence in this case, the written reprimand is reasonably related to the seriousness of the offense.

### DECISION AND ORDER

Based on the Findings and Conclusions set forth above, the Director's decision to issue a written reprimand to Appellant is **AFFIRMED**.

This case is hereby **DISMISSED**.

Dated this 27<sup>th</sup> day of November, 2002.

  
Joanna Lee Kaye  
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 OF FACT, CONCLUSIONS OF LAW AND ORDER** by depositing same in the U.S. mail, postage prepaid, this 14 day of October, 2002 addressed to:

Cheryl Hutchison  
AFSCME  
3401 Quebec St. Suite 7500  
Denver, CO 80207

Barbara Coleman  
6653 Marshall St.  
Arvada, CO 80003

I further certify that I have forwarded a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** by depositing same in the interoffice mail, this 14 day of October, 2002, addressed to:

Robert D. Nespor  
Assistant City Attorney  
Employment Law Section

Jennifer Moulton  
Community Planning and Development Agency

V. Garza