

**HEARING OFFICER, CAREER SERVICE BOARD  
CITY AND COUNTY OF DENVER, COLORADO**  
Consolidated Appeal Nos. 56-08, 57-08, 58-08, 59-08

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**DECISION AND ORDER**

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IN THE MATTER OF THE CONSOLIDATED APPEALS OF:

**ERNEST COMPOS, DAVID S. HERRERA, GENE SANDLER and  
RICHARD J. SENA, Appellants,**

vs.

**DEPARTMENT OF FACILITIES PLANNING AND MANAGEMENT, and the City and  
County of Denver, a municipal corporation, Agency.**

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The hearing in these consolidated appeals was held on October 27, 28 and 29, 2008 before Hearing Officer Valerie McNaughton. Appellants were present throughout the hearing, and were represented by Michael O'Malley, Esq. The Agency was represented by Assistant City Attorney Robert Wolf. Having considered the evidence and arguments of the parties, the Hearing Officer makes the following findings of fact, conclusions of law and enters the following order:

**I. STATEMENT OF THE CASE**

Appellants Ernest Compos, David S. Herrera, Gene Sandler and Richard J. Sena filed separate appeals pursuant to Career Service Rule (CSR) § 19-10 A.1.b of their twenty-day suspensions imposed by their employer, the Department of Facilities Planning and Management of the City and County of Denver. The appeals were ordered consolidated for hearing on Appellants' unopposed motion based upon the similarity of facts and issues and considerations of administrative efficiency.

The parties stipulated to the admissibility of Agency Exhibits 1 – 52 and 66 – 78, and Appellants' Exhibits A, C, D, F – J, L, and N. Agency Exhibit 79, 86 and Appellants' Exhibit M were admitted without objection. Appellants' Exhibit K was admitted over objection.

**II. ISSUES**

The issues in this appeal are as follows:

- 1) Did the Agency establish by a preponderance of the evidence that Appellants' conduct justified discipline under the Career Service Rules, and

2) Did the Agency establish that twenty-day suspensions were within the range of penalties that could be imposed upon Appellants by a reasonable administrator for the violations proven, in compliance with the Career Service disciplinary rules?

### **III. FINDINGS OF FACT**

Appellants Compos and Herrera are Electricians employed by the Facilities Planning and Management Department. Appellants Sandler and Sena hold the position of HVAC (heating, ventilation and air conditioning) Mechanics in the Agency. Appellants Compos, Herrera and Sandler are assigned to Team C under the supervision of Multi-trades Supervisor Dan Conway. Appellant Sena is assigned to Multi-trades Supervisor Gary Martinez.

On July 31, 2008, Agency Director James Williamson issued 20-day suspensions to Compos, Herrera and Sandler based upon absences from their work locations on specified days in January and February. On August 8, 2008, Mr. Williamson gave Appellant Sena a 20-day suspension for the same reason. All four disciplinary actions were based on a comparison of the employees' daily logs with the results of surveillance on those days by a private investigator hired by the city.

At the beginning of 2008, Team C developed a new activity log to allow its members to keep track of their daily travel and work. The team's supervisor, Mr. Conway, informed his employees, including Messrs. Compos, Herrera and Sandler, that they could round off their time to the quarter hour, but the log should give him "the basic idea of where they were." [Testimony of Conway, Compos, Tucker; Exh. 55.] Mr. Conway testified that Mr. Compos' daily log for Jan. 18<sup>th</sup> "looks good" except for the inaccurate building number. [Exh. 4.]

Mr. Conway has permitted his employees to fill out their logs at the end of the day, as long as they "pretty much reflect what they were doing." The quality of the logs produced by the unit's employees varies. Mr. Conway has asked them to fill in missing building numbers or other data, or given them direction on how to record certain work. Mr. Conway did not object to the timing of his employees' breaks and lunch, as long as the employees could make a logical case for them, and they did not exceed the maximum set in the Agency's administrative policies signed by each Appellant. [Exhs. 66 – 69.] Mr. Conway testified there was nothing wrong with employees taking breaks and lunch during their travel time if they were en route to a work location. Agency policy stated that employees assigned to a vehicle may take lunch within a two-mile radius of the job site, but travel time is included in the lunch break. [Exhs. 66-2, 67-2, 68-2, 69-2.]

## 1. Appellants Compos and Herrera

Compos and Herrera both testified that their supervisor Mr. Conway assigned them as an electrical team based on their experience and considerations of efficiency. They work with engineers to design work and obtain permits, and do installations, replacements, troubleshooting and repairs of complex electrical projects. As a team, they have re-designed the plans of licensed engineers considered too expensive to implement, and therefore they have proven their value as a team to their supervisor. Mr. Conway has approved their joint travel to vendors to save fuel and allow them to reconfigure designs while at suppliers based on the materials available from vendors. [Testimony of Conway, Compos, Herrera.]

On about four occasions, Mr. Conway checked on Messrs. Compos and Herrera at job sites, and found that they were always working. He has given Mr. Compos exceptional reviews based on his satisfactory completion of time-sensitive jobs, as well as verbal and written commendations from customers. [Exhs. D-1 to D-43.] On Feb. 14, 2008, Mr. Compos was nominated by Derek Brown for the 2008 5281 Award for exemplary achievements. [Exh. D-29.] Mr. Herrera also received exceptional reviews from Mr. Conway, and was likewise nominated for a 2008 5281 Award. [Exh. D-88.] In Feb. 2007, Project Team C, which includes Appellants Compos, Herrera and Sandler, was nominated by Facilities Superintendent Candace Lothian as a team candidate for STARS 5281. [Exh. D-109, D-110.] Mr. Conway states he was not asked his opinion about this disciplinary action. [Testimony of Conway.]

James Williamson, Agency Director and the decision-maker in the actions challenged by these appeals, testified that he disciplined Messrs. Compos and Herrera because they did supply runs together, contrary to the Agency's 2007 directive to work separately using their own trucks, and that there were an excessive number of supply runs. The disciplinary letter identified several more issues: 1) the daily log for Jan. 18<sup>th</sup> stated they began their day at the Roslyn facility, while the investigation showed they started at home base, 2) the log showed three trips to vendors, and the investigation revealed four such trips, 3) travel time was 30 minutes less than represented in the logs, 4) actual time spent at Roslyn was 30 minutes less than stated in the logs, and 5) the log showed only 15 minutes was spent at home base, whereas the investigation showed that was 15% of the time they actually spent at home base. [Exh. 1-3, 1-4.]

Richard Janowski of Mountain States Investigations, Inc. is a private investigator who was hired by the Agency to investigate Appellants' work and travel time. He testified that he observed Ernest Compos and David Herrera on Jan. 18 and 24, 2008, and wrote a report detailing the results of his observations. [Exh. 3.]

a) January 18, 2008

On Jan. 18, Mr. Janowski documented that he observed pickup GL 10, later identified as Mr. Herrera's assigned vehicle, running in the parking lot at the Park Avenue Warehouse, Appellants' home base. Messrs. Compos and Herrera left together in GL 10, stopped two blocks away for three minutes at Avalos restaurant, and traveled to the 56<sup>th</sup> and Roslyn facility, where they stayed for 44 minutes. They left to go to two supply stores, Aviation Industrial Supply and Denver Distributors, and drove back to Roslyn. The round trip to the stores consumed an hour and 43 minutes. Mr. Compos left the Roslyn building alone for ten minutes to purchase something at a Diamond Shamrock, and returned. At 1:50 p.m., both traveled back to the same two supply stores, and returned to home base at 2:40 p.m. Surveillance was then discontinued. [Testimony of Janowski; Exh. 3.]

The Daily Activity Logs for Mr. Compos and Mr. Herrera show that they arrived at work at 7 a.m. and spent a half-hour installing electrical panels on each floor. They replaced transformers in the wash bay in Building D, then installed shelving for material storage in Building C. [Testimony of Compos, Herrera, Corcoran.] After a 15-minute break, they picked up parts and continued installation of the storage shelving. They took a half-hour lunch, picked up more shelving and transformer parts on order at two supply stores, and returned to home base. A receipt from AIS lists ten types of shelving supplies that were purchased at 2:08 p.m. [Exhs. A-1 to A-3.] The two men spent the next half-hour completing paperwork and taking their final break. The log shows four hours and 45 minutes spent working, and two and a half hours travelling. Lunch and breaks consumed another hour. [Exhs. 4, 12.]

Both employees testified that they started the day at home base, where they spoke to their supervisor Dan Conway about upcoming projects, and did the work noted on their logs for Buildings C and D. Compos acknowledged that his log mistakenly lists Facility No. 260, the Fire Academy at Roslyn, as his location from 7:30 to 8:30. [Exh. 4.] He testified that Mr. Conway instructed them to charge work to the building for which it was done, rather than their physical location. Thus, design work for Building C that is performed at home base should be charged to Building C, not home base. In contrast, the log should have accurately reflected his physical location rather than the building to which the work was charged. Both Compos and Herrera admitted that they were wrong in stopping at Avalos Restaurant to pick up breakfast burritos, but stated the stop was brief and was only one block out of their way.

b) January 24, 2008

Mr. Janowski also observed Compos and Herrera on Jan. 24<sup>th</sup> between 7 and 11:30 a.m. He reported that on that date, the men spent two hours at the Roslyn facility, and one hour and 23 minutes traveling and visiting the Tamale Kitchen, Subway Sandwich Shop, Home Depot, and vendor AIS. [Exh. 3-3, 3-4.]

The disciplinary letter states that their logs show they spent four hours and 15 minutes at Roslyn working. [Exhs. 1-5, 3-3, 5-1.]

Mr. Compos' log reports that he installed shelves for materials storage at Roslyn for three hours, then went to pick up supplies. [Exhs. 5-1, A-5 to A-7.] Mr. Herrera's log shows that he worked installing shelves at Roslyn for four hours and 15 minutes. [Exh. 13-1.] Both men admitted they were wrong to stop at the Tamale Kitchen that day, but stated that the Home Depot and AIS trips were for city business, and the Subway stop was a part of their lunch break.

Mr. Compos testified that they were having trouble that day in deciding the parts to use for an installation of panel risers in Building 5, since an electrical engineer had recommended use of parts they did not believe were appropriate. They set up a meeting to talk to their supervisor Mr. Conway, who called them to cancel it while they were en route. Compos and Herrera decided to discuss the problem during lunch. They turned around and drove to the Tamale Kitchen 14 minutes away.

Mr. Herrera testified that they turned around "to regroup" because they wanted to discuss their recommended course of action before speaking to Mr. Conway. The restaurant stop plus travel consumed 51 minutes, which exceeded their lunch period by 21 minutes. In addition, the trip exceeded the two-mile length authorized by the administrative policies. Mr. Herrera spent an additional seven minutes that day at Subway on a personal errand. [Exh. 11-4.] Thus, breaks and lunch on Jan. 24<sup>th</sup> totaled 58 minutes, two minutes less than that allowed by the Agency for lunch and breaks. Mr. Herrera's log shows he took morning and afternoon breaks of 15 minutes each at 9 am and 4:15 pm. [Exh. 13-1.] However, he testified that he did not actually take breaks at those times on Jan. 24<sup>th</sup>. Both Compos and Herrera testified that they often logged the same time for lunch and breaks on their logs, regardless of when those breaks were actually taken. Their supervisor Mr. Conway acknowledged that this was a common practice within the unit.

c) February 5, 2008

The Agency claims that Compos and Herrera spent 33 minutes at the Red Rooster Restaurant on Feb. 5<sup>th</sup>, while reporting the interval as work time. [Exhs. 1-5, 9-5.] Both employees admitted this conduct during their testimony.

d) February 13, 2008

Finally as to these two employees, the Agency based its discipline as well on their arrival at the Roslyn facility approximately one hour after their reported arrival time of 7:30 a.m. [Exhs. 1-5, 9-5.] Mr. Compos stated he did not recall that day, but that they may have arrived at Roslyn later that day because it took longer to warm up their truck, or because Mr. Conway stopped them to talk about

current projects. Mr. Herrera believed that was the day they were discussing CIP projects with Mr. Conway, and they may have also waited their turn to check their email at home base.

The Agency assessed twenty-day suspensions against Appellants Compos and Herrera based on the above incidents. Mr. Williamson was the sole decision-maker in these matters. He testified that he found Mr. Compos negligent based on his failure to be where his log stated he had been, and determined that he had not honestly recorded his activities on the dates in question. Mr. Compos' failure to take breaks and lunch at the scheduled times was considered to be disobedience to a supervisor's order. His use of an indirect route to get to the Roslyn facility, and failure to proceed from one job to another in a timely manner was deemed to be failure to comply with his STARS performance standards. Mr. Compos' presence in a restaurant during work hours was deemed an unauthorized absence from work. Finally, Mr. Williamson found that Mr. Compos' failure to work efficiently was prejudicial to the city's taxpayer-funded budget, in violation of the trust and honesty expected of city employees. Mr. Williamson found Mr. Compos' admission that he was wrong at the pre-disciplinary meeting demonstrated a lack of forthrightness. He also concluded that Mr. Compos had developed bad work habits. Balanced against that was Mr. Williamson's belief that Mr. Compos is a good and productive electrician who works on weekends. This is the first disciplinary action taken against Mr. Compos during his 16 years of employment with the city.

Mr. Williamson testified that his 20-day discipline of Mr. Herrera was based on the same facts, statements and disciplinary history. Mr. Herrera has been working for the Agency for the past 14 years.

## 2. Appellant Gene Sandler

HVAC mechanic Gene Sandler was suspended for 20 days for detouring in a city vehicle to a Russell Stover candy store on his way from Roslyn to his home base, and falsely claiming on his log that he was at Associated Dealers, a city vendor. [Exh. 17.]

The report of Mountain States Investigations, Inc. shows that on Feb. 13, 2008, at 7:20 a.m., Mr. Sandler arrived at Roslyn after a ten-minute drive from his home base, the Park Avenue West facility. At 2:31 p.m., he left Roslyn and went to the candy store at 625 Colorado Boulevard, where he spent 12 minutes, leaving at 3:04 p.m. The next, and last, entry is at 3:26 p.m, and states that Mr. Sandler returned to home base, "and surveillance was discontinued." [Exh. 19-1.] Private investigator Richard Quiroga testified that he was the second man in the two-man surveillance, whose role was to follow Mr. Sandler and convey his observations to Mr. Janowski for the investigative report. Mr. Quiroga recalled seeing Mr. Sandler entering and leaving the candy shop, losing him for no more than a few minutes, and spotting him again driving on Colorado Boulevard. His

testimony was based on the facts contained in the report, which stated that Mr. Sandler traveled next to Park Avenue West, his home base. However, on cross-examination, he was less sure, admitting that Associated Dealers on Walnut Street "sounds familiar; we did follow numerous individuals to several supply places. We went to a lot of different locations."

Mr. Sandler testified that his routine was to start his day at home base, where he discusses his work orders with his supervisor Mr. Conway, and checks his email. Mr. Sandler's handwritten daily log for Feb. 13<sup>th</sup> states that he worked on five different work orders that day. The log shows he began at Roslyn (Building 707), spent from 9:00 a.m. to 3:00 p.m. at home base (Building 921), traveled to Associated Dealers, and returned to home base at 4:00 p.m. [Exh. 20-1.] Mr. Sandler testified that he made mistakes on the log, which he filled out at the end of the day, because he was concentrating more on inserting the correct work order references to the log. His work that day included equipment shutdowns, dust in the duct work, and physical checks of the smoke dampers in every office at Roslyn.

Mr. Sandler then left a message for Daniel Beck, Residence Manager for Cableland, a large city property at Alameda and Colorado Boulevard used for events and meetings, to advise him he would be stopping by to make a list of parts needed for Cableland's monthly preventive maintenance work order. [Exh. L.] Mr. Sandler had been advised by his supervisor to arrange meetings in a "light set" form to avoid overcharges if the meetings did not occur. Upon Mr. Sandler's arrival at Cableland, he hit the call button at the gate, but received no answer.

Mr. Beck testified that Mr. Sandler was working on repairs to a fan in the boiler room during this time period. They had "a lot of conversations" about sourcing pieces of equipment needed for that job. Mr. Beck is at the property every day, but often misses vendors and repairmen when he is off site on errands. Mr. Sandler has serviced HVAC equipment at Cableland for four years, and Mr. Beck believes his work has been "fantastic." He has sent complimentary letters to Mr. Sandler's manager about his performance. [Exh. N-1.] He can no longer recall whether he received a call from Mr. Sandler on Feb. 13<sup>th</sup>, but submitted his date book entries for that day, which shows that Mr. Beck had set an appointment for 2:30 – 3:30 p.m. with "Gene from City (Call to resched!)". [Exh. L.]

After the Cableland stop, Mr. Sandler proceeded to the candy store for his break at approximately the time indicated on his activity log. [Exh. 20.] He then drove to Associated Dealers to pick up several plumbing supplies. He signed and dated a ship ticket for those supplies at 3:29 p.m. [Exh. M.]<sup>1</sup> The city

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<sup>1</sup> The ticket shows a time stamp of 16:29:29 p.m. because the company uses central military time rather than local time. On Feb. 13, 2008, 16:29:29 central

invoice issued for this purchase indicates that the items were "picked up and delivered to 5440 Roslyn, Bldg E #708." [Exh. A-4.]

In rebuttal of Exhibit M, the Agency offered a ship ticket issued to Mr. Conway for an 82-cent purchase he made on Oct. 27, 2008, the first day of hearing in this appeal. [Exh. 86.] The ticket is initialed as paid, but was not signed by the customer, unlike Mr. Sandler's Feb. 13<sup>th</sup> ticket. [Exh. M.] Mr. Sandler's purchase was for the city, and so an invoice was issued the next day and sent to Public Office Building at the city office address. [Exh. 76-1.] Mr. Conway testified that he paid for his purchase immediately. Both tickets list the same date as the order date and ship dates, and list "WILL CALL" as the method of delivery under the space designated "Ship Via". Both Mr. Sandler and Mr. Conway testified that they took immediate delivery of the merchandise listed on the invoices.

The Agency presented Mr. Sandler's cell phone records, showing that he placed no calls on Feb. 13, 2008, contrary to Mr. Sandler's statements at the pre-disciplinary meeting. [Exh. 22.] However, the Agency did not hold a later pre-disciplinary meeting to charge those statements as misconduct, as required by CSR § 16-40. Therefore, Appellant's statements at the pre-disciplinary meeting that he had called Mr. Beck again while en route cannot be deemed as separate misconduct supporting this discipline, and will be considered only on the issue of whether Mr. Sandler actually traveled to Cableland on Feb. 13, 2008.

Mr. Conway testified that he has always given Mr. Sandler exceptional reviews, and gets compliments about him "all the time." [Exh. N.] Mr. Conway believes Mr. Sandler is honest, and is a good employee. [Testimony of Mr. Conway; Exhs. D-93 to D-122.] On Feb. 14, 2008, Mr. Sandler was nominated for the 2008 5281 Award for exemplary achievements. [Exh. D-123.] Mr. Conway permitted Mr. Sandler to take a half-hour lunch "or as job dictates." [Exh. 67-1.] On Appellant's April 2008 performance review, Mr. Conway noted, "Mr. Sandler completes all his paperwork and turns it in to me on a daily basis. All of Mr. Sandler's paperwork is legible, accurate and complete. I rarely have a reason to return paperwork back to Mr. Sandler for he approaches this task with the same intensity as he does all tasks that he is assigned." [Exh. D-118.] Mr. Sandler earned an "exceptional" rating in the category of productivity/problem solving, where his supervisor commented, "[h]e plans his day to complete assigned tasks in the most efficient manner. He saves time and money by plotting the best routes to take and by limiting his travel time to the parts warehouse." [Exh. D-119.] Mr. Sandler's overall rating in April 2008 was "exceptional". [Exh. D-112.]

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military time was 3:29 p.m. mountain standard time in Denver, Colorado.  
[Testimony of Charles McFarland.]

Mr. Williamson assessed a 20-day suspension against Mr. Sandler. He testified that he relied on the absence of phone records confirming his claimed calls to Daniel Beck at Cableland in support of his conclusion that Mr. Sandler improperly used a city vehicle to travel from the Roslyn facility to the candy store, in violation of their rule regarding off-site breaks [Exh. 67-2], and that the trip was solely personal. He considered termination, but did not impose it because "I've seen him working. I hear a lot about all four employees, and never heard anything negative."

### 3. Appellant Richard Sena

HVAC Mechanic Richard Sena, who was assigned to the Police Buildings under Multi-Trade Supervisor Gary Martinez, was given a 20-day suspension based on his activities on Feb. 26 and 27, and for having no valid driver's license from March 25 to June 20, 2008. [Exh. 25.] Mr. Martinez devised the Vehicle Usage Log and instructed his employees to round their time entries off to the nearest 15 minutes. Breaks and lunch were governed by the administrative policies. [Exh. 66.]

#### a) February 26, 2008

Investigator Richard Janowski conducted surveillance on Mr. Sena's movements from 9:07 a.m. to 3:01 p.m. on this date. Based on his report, the Agency concluded that 1) he inaccurately reported that his travel time was one hour longer than he actually used, 2) he exceeded his allotted lunch time by 35 minutes, and improperly used a city vehicle to travel to lunch, and 3) he illegally parked his truck on a sidewalk in front of a city building. [Exhs. 25, 28.]

A comparison of Appellant's Vehicle Usage Log and the investigator's report reveals the following differences:

1) Mr. Sena reported working at the Police Administration Building (PAB) for 1.5 hours, although the investigator recorded he was at that building only 26 minutes. Mr. Sena explained that he "combined the time spent in vehicle doing paper work and time in the Police Administration rounded to the nearest quarter 1.5." [Exh. K-1.] He testified that he called Mr. Sloan and Mr. Mallard during this time to discuss problems with a rooftop unit, and considered that as time spent at the PAB.

2) The log reports a 30-minute lunch, and the investigation shows that Mr. Sena's lunch and travel consumed 69 minutes.

3) The log does not report two lengthy side trips: the first a 21-minute stop at the District 3 Police Station, and the second 25 minutes spent at the Bicycle Bureau. [Exh. 28-2, 28-3.] Mr. Sena testified that his log combined the time spent at District 3 and District 4. His statement admitted he did not log the trip to

the Bicycle Bureau, where he stopped to look for prints for a job he was to do. [Exh. K-2.]

Mr. Sena admitted in his statement and testimony that he was wrong to take his city vehicle to the Chuck Wagon, more than two miles from his work location, and that he exceeded his lunch period by 39 minutes. [Exh. K.] He explained at hearing that he arranged an early lunch with Class A HVAC Mechanic Darnell Mallard to discuss replacement of a rooftop cooler unit so that Mr. Mallard could apply for and obtain the city permit Mr. Sena needed to do the job.

Mr. Sena testified that his supervisor, Gary Martinez, corrected his logs by adding the details he had forgotten, but that Mr. Martinez did not specifically talk to him about his log for this day.

b) February 27, 2008

Investigator Richard Janowski conducted surveillance on Mr. Sena's movements from 8:24 a.m. to 3:21 p.m. on this date. Based on his report, the Agency concluded that 1) he spent an hour at an A & W restaurant, reporting inaccurately that he was at vendor Alpine Roofing at that time, 2) he spent three hours at home base, but reported he spent an hour and 45 minutes there, and 3) he illegally parked his truck on a sidewalk in front of a city building, and sat in the truck for 17 minutes while parked. [Exhs. 25-5, 28-4, 28-5.]

Mr. Sena's vehicle log and statement to the Agency during the pre-disciplinary process indicate that he went across the street to the A & W restaurant, picked up lunch, then stopped at Ruby Hill to eat. Mr. Sena claims that his travel to Ruby Hill was on the way to his next stop, Western Interiors. He spent six minutes at A & W, traveled for five minutes, and was observed for 33 minutes at Ruby Hill, for a total of 44 minutes. The investigative report shows no other personal breaks that day. [Exh. 28-4.] Mr. Sena stated he combined his lunch and breaks that day to cover the extra minutes and travel time associated with lunch. He testified that he took no other lunch or breaks that day, but that he did not correct his log to remove the noon entry for lunch. At the time Mr. Sena was observed getting and eating lunch, his log indicates that he was at District 4. At the time his log shows a lunch break, Mr. Sena was at Burke Engineering and Western Interior Supply. [Exhs. 30, 28-4, 28-5.] Mr. Sena admitted that the trip to McNichols was a personal errand to check on his payroll. When that 17 minutes is added to the 44-minute lunch, Mr. Sena's lunch, breaks and personal errands total 61 minutes for the day. [Exh. 28-4.] The Facility Management Administrative Policies signed by Mr. Sena show he was entitled to a half-hour lunch and two 15-minute breaks at 10 am and 2 pm, "subject to change due to work load." [Exh. 66-1.]

The Agency next contends that Mr. Sena spent three hours at home base, but reported spending only an hour and 45 minutes there. The log shows 1.5 hours in the morning, and a half-hour in the afternoon at home base. [Exh. 30.] Mr. Sena testified that he did paperwork for an hour after his return. The log indicates that Mr. Sena claimed to be at home base for a total of two hours that day. The investigator's first sight of Mr. Sena that morning was not until 8:24 a.m., as he left the Park Avenue West facility that serves as Mr. Sena's home base. At 3:21 p.m., Mr. Janowski saw Mr. Sena return to the facility, and "surveillance was discontinued." [Exh. 28-5.] Since the investigator could only presume Mr. Sena's work times at Park Avenue based on his shift start and stop times, Mr. Sena's testimony is more persuasive on this issue.

Mr. Sena admitted that he parked on the sidewalk at the McNichols Building, but claims that is an accepted practice for city vehicles. His supervisor, Mr. Martinez, testified that he parks in the same location while on city, not personal, business.

The disciplinary letter also contends that Mr. Sena's log inaccurately claimed he visited two vendors, but that he had been observed at only one. [Exh. 25-6.] Appellant stated at the pre-disciplinary meeting and at the hearing that he had spoken by phone to the contractor from Alpine Roofing while at the Combined Communication Center. "My supervisor Gary Martinez wants us to list the name of Company Contractor on our log sheet." [Exh. K-4.] Mr. Sena interpreted that to mean he was to list vendors on the log if he spent time talking to them about the selection of parts. In contrast, the log represents that Mr. Sena spent 30 minutes traveling to Alpine Roofing. [Exh. 30-1.]

Mr. Sena admitted that his logs "could have been more accurate", and were sometimes "very sloppy", but stated he was not trying to hide anything. Mr. Sena testified that in June or July, Mr. Martinez informed him that his logs were not detailed enough. Mr. Martinez testified that he devised the Vehicle Usage Logs so employees could "record exactly how much time they spent at locations, whether for service calls or preventive maintenance, and an overview of the amount of time it takes to travel from one location to another." Employees were permitted to round their entries to the nearest quarter hour. Mr. Martinez reviews Mr. Sena's logs on a daily basis, and frequently makes corrections and additions. He has told Mr. Sena to "be more descriptive", and given him a written reminder of what he was looking for. On the other hand, Mr. Martinez has supervised Mr. Sena for 12 years, and testified that "I always felt he's been honest with me – up front." He admits he did not sit down with Mr. Sena about the time entries subject to this discipline.

c) No driver's license

Finally, the Agency asserted in its disciplinary letter that Mr. Sena fraudulently attested on his May 29, 2008 PEPR form that he had a valid driver's

license, when in fact his license had been suspended on March 25, 2008. [Exh. 25-5.] Mr. Williamson testified that he considered the conduct a violation of policy, but that he did not impose additional punishment based on this incident.

Appellant testified that he paid the fine for a traffic ticket on Feb. 5, 2008. After signing a release to have his driver's license verified in May, the Agency's safety officer received a notice that Mr. Sena's license had been suspended on March 25<sup>th</sup>. Mr. Sena went back the Denver County Court Traffic Division to resolve this matter, and learned that the court had not reported his payment of the fine to the Colorado Motor Vehicle Department. The court clerk printed a courtesy clearance showing his February payment, and waived the \$60 reinstatement fee. [Exhs. 35-1, 36-1.] Mr. Sena's motor vehicle record shows that he was eligible for reinstatement on Feb. 5, 2008. [Exh. 34-1.] Mr. Sena did not know of this court error until July 23, 2008, the date the court issued its courtesy clearance. Thus, Mr. Sena did not fraudulently sign the box on his PEPR on May 29, 2008 certifying that he had a valid driver's license, as alleged in the disciplinary letter.

Mr. Williamson stated that he imposed a 20-day suspension because Mr. Sena's excessive supply trips showed he was not making the best use of his work hours. Mr. Williamson found that the wasted travel time indicated gross neglect. He believed dishonesty was shown by the fact that his activity card did not match the actual activities tracked by the investigation. Mr. Williamson also concluded that Mr. Sena violated his performance standards by the time spent in his truck, and his failure to get from one building to the next in an efficient manner. Lastly, he determined that Mr. Sena's failure to be in the places he was expected was conduct prejudicial to the city. Mr. Sena's status as an acting supervisor caused Mr. Williamson to have higher expectations of him, he testified. He noted that Mr. Sena had four previous verbal reprimands for similar instances of not being where he was supposed to be or failing to accurately reflect his location on his log. The disciplinary letter lists one verbal reprimand in 2003 for conducting business on personal time. The three remaining reprimands were for different offenses. [Exh. 25-5.] Mr. Williamson considered termination, but assessed the 20-day suspension instead based on Mr. Sena's good work as one of the premier and most experienced HVAC mechanics at the Agency.

The suspensions were intended as an attempt to get the attention of all four of the employees for behavior that was "over the top."

In support of its argument that the penalties were too severe, Appellants presented the testimony of Electrician Spencer Tucker, who has been employed by the city for 17 years. Mr. Tucker is a fellow member of Team C, and is supervised by Mr. Conway.

Mr. Tucker testified that he received a written reprimand from Mr. Williamson for being at a restaurant during work hours for over 30 minutes, and

not reflecting that on his log. "We're not actually told how to fill [the logs] out." The team used different log forms until Dec. 31, 2007. After that, "they created a Team C form, and individuals fill them out differently." They were told they could round them off to a quarter hour or a half hour. Mr. Tucker fills his log out at the end of the work day. Although they have work order numbers for paperwork and shop time, "some of us don't fill [the work order numbers] out." He has sometimes been told by supervisors not to log a separate building number for work such as a five-minute power check in that building. "I bounce around," and requiring separate log entries would make the log too long. Mr. Conway has talked to him about his logs, but "mostly about my penmanship." Mr. Tucker had no discipline prior to the June 2008 written reprimand.

#### IV. ANALYSIS

The Agency bears the burden to prove that the imposition of discipline was appropriate under the Career Service Rules, and that the level imposed was within the range that could be issued by a reasonable administrator.

##### 1. Compos and Herrera

###### a) Joint travel

The Agency first asserts that Appellants violated an Agency directive by traveling together to supply stores. The STARS work program quoted in the disciplinary letter states, "[u]nless approved by the supervisor, unrelated or unnecessary trips to other locations will be considered unproductive." [Exhs. 2-1, 9-1.] Their supervisor Mr. Conway testified that Appellant had his permission to work as a team to accomplish special and complex electrical projects, including traveling together to vendors in order to consult on the parts needed to complete the projects. Based on the evidence of Mr. Conway, the Agency failed to prove the joint trips to vendors violated Appellants' standards of performance or any other rule cited in the discipline.

###### b) Jan 18, 2008 Log Entries

The disciplinary letters claim that the investigation contradicted their logs in that the men actually started their day at home base, despite their log entries that showed their location at 7 a.m. as the Roslyn facility. Mr. Compos' log lists his location as Building 707, which is at Roslyn. [Exh. 4.] Mr. Herrera's log shows no facility number for his first activity, "install elect. panels on each floor." [Exh. 9.] Mr. Compos admitted at hearing that he mistakenly wrote on the log the building number of the facility for which the work was done, rather than his physical location. He also admitted that, on the next entry for that day, he mistakenly gave the number of the Fire Academy rather than Building D at Roslyn, where he was actually working at that time. In contrast, Mr. Herrera listed no building numbers on his log.

Four other log errors were noted: 1) the logs showed three, not four, trips to vendors, 2) travel time was overstated by 30 minutes, 3) time at Roslyn was overstated by 30 minutes, 4) and time at home base was overstated by 15 minutes.

It is first noted that Mr. Herrera's log appears to accurately indicate that they visited two vendors in each of their two trips that day. [Exh. 12.] Mr. Compos' log shows only three trips, but he testified that they went from AIS directly to Denver Distributors in both the morning and the afternoon.

The undisputed evidence is that there was a wide variance in the quality and accuracy of the logs produced by the team during the first several months of its use. Mr. Conway testified that the new Daily Activity Log distributed on January 1<sup>st</sup> was intended to give him "the basic idea of where they were", and "pretty much reflect what they were doing." Mr. Conway sometimes made suggestions about how their work was to be reported, but did not criticize the contents of their logs. Team members were not notified that strict accuracy was expected until the issuance of these disciplinary letters on June 23, 2008. There was no evidence presented that the Agency gave Compos or Herrera notice that mistakes in their logs alone could subject them to discipline.

The Agency asserts that the inaccurate log entries violated six Career Service Rules: § 16-60 A, neglect of duty, E, dishonesty, J, disobedience to a supervisor's order, K, failure to meet performance standards, S, unauthorized absence from work, and Z, conduct prejudicial to the order and effectiveness of the Agency.

Negligence is established by proof that an employee has an important work duty and failed to perform that duty, resulting in significant potential or actual harm. In re Sienkiewicz, CSA 10-08, 15 (7/14/08). The Agency must communicate the importance of the work duty to the employee in such manner that a reasonably astute employee would be aware of it. In re Mestas et al., CSA 64-07, 24 (5/30/08). Here, the Agency through Appellants' supervisor communicated that the log had a limited function: to generally reflect where employees were and what they were doing. The log was in use a mere three weeks before this incident occurred. During that time, the Agency did not modify this instruction, despite supervisory review of the logs on a daily basis. I find that the Agency failed to prove that inaccurate log entries constituted neglect of duty.

Next, the Agency argues that Appellants repeatedly falsified city documents, in violation of § 16-60 E. 3. To establish a violation of this rule, the Agency must establish that an employee supplied incorrect information to a superior, knowing that information was false. In re Mounjim, CSA 87-07, 6 (7/10/08). There is no evidence that the supervisor or Agency were misled about the work performed by Compos or Herrera the morning of Jan. 18<sup>th</sup>, or that

Appellants' errors were anything more than clerical carelessness on a matter of minor importance. Their pay remained the same, regardless of whether they were installing the panels at home base or Roslyn. Appellants both testified credibly as to why the mistakes were made, and that they now fill out their logs during the day to assure their complete accuracy. In short, there was no evidence of any intent to deceive or knowledge of the falsity of the information contained on the logs.

The Agency also based its discipline on its belief that the inaccurate logs constituted a failure to comply with a supervisor's order. Mr. Conway testified that the logs came into use at the beginning of January, a few weeks before the first incident in this disciplinary action. He instructed Appellants to use their daily activity logs to allow him to get the general idea of where they were and what they were doing. On March 12, 2008, Mr. Conway commented in Mr. Compos' Performance Enhancement Program Report (PEPR) that "Mr. Compos' departmental logs are accurate, legible and complete." [Exh. D-26.] He made the same comment about Mr. Herrera's logs in his May 2008 PEPR. [Exh. D-86.] Therefore, this violation was not proven.

The Agency alleges that the inaccurate logs violated Appellants' standards of performance; specifically, the duty that "[d]epartment logs and reports shall be accurate, legible, and complete." [Exhs. 1-1, 9-1.] Appellants' supervisor testified that the accuracy he expected was that the logs give him the basic idea of Appellants' location and work. In Appellants' 2008 PEPRS, their supervisor and manager reported that their logs were accurate, legible and complete, a few months after these incidents. [Exhs. D-26, D-86.] Moreover, minor inaccuracies in two days' activity logs does not prove circumstances demonstrating willfulness where the supervisor reviewed those logs on a daily basis, and expressed no dissatisfaction with their contents. Id. Therefore, the Agency failed to prove a violation of § 16-60 K.

It is also asserted that the logs' inaccurate reporting of their work, precise location, and travel time proved an unauthorized absence from work. Appellants testified that at all times covered by the logs, they were either at an assigned location doing work assigned by their supervisor, or on an authorized lunch or break. The Agency did not rebut this testimony. I find that the inaccurate logs did not establish a violation of § 16-60 S, which requires an actual absence from work. See In re Blan, CSA 40-08, 6 (7/31/08).

Finally as to this allegation, Mr. Williamson testified that the discipline was based on his conclusion that Appellants' failure to work efficiently was dishonest, and thus prejudicial to taxpayer dollars in the city budget. An agency's work is prejudiced under the first part of this rule if it hindered its ability to perform its mission. In re Catalina, CSA 35-08, 8 (8/22/08). The Agency presented no evidence supporting a finding that its mission was in any manner affected by these errors in Appellants' logs. The second part of this rule is violated only if there is actual injury to the city's reputation or integrity. Id. The Agency made no showing of any such injury, and therefore this rule was not violated by the above errors in Appellants' logs.

c) Jan. 18<sup>th</sup> Stop at Avalos Restaurant

Appellants admit they were wrong in stopping three minutes for breakfast burritos one block off their route from one destination to another. Mr. Conway testified that employees who drove city vehicles were permitted to stop for breaks while en route to work assignments. While a reasonable person may interpret this standard in slightly varying ways, and a one-block detour does not appear unreasonable, it is persuasive that Appellants apparently believed that their stop exceeded their permission. Therefore, I find that Appellants violated departmental policy related to breaks on Jan. 18, 2008.

d) Jan. 24, 2008 Log Error

The Agency claims that Appellants violated the above rules by claiming in their logs that they spent over four hours working at home base on Jan. 24<sup>th</sup>, when the investigation showed they only worked there for two hours. Both logs show that they were at home base, facility number 921, known as the Park Avenue Warehouse, from 3:00 p.m. to 4:30 p.m. The investigation reported a direct sighting of Appellants emerging from home base at 7:15 a.m., and an observation of their vehicle at home base at 3:28 p.m. Based on this evidence, I cannot conclude that Appellants' Jan. 24<sup>th</sup> logs were inaccurate in any respect. Therefore, the Agency failed to prove Appellants violated any of the cited rules based on the claimed error.

e) Stops at Tamale Kitchen, Subway, and Home Depot

The Agency contends that Appellants spent an hour and 23 minutes on personal errands at Tamale Kitchen, Subway Sandwich Shop, and Home Depot. The Agency acknowledges in its disciplinary letter that all four employees may take their lunch break "when it is convenient in relation to the project/s you are working on." [Exhs. 1-2, 9-2, 17-2, 25-2.]

The investigation revealed that both men started their day at home base, then traveled to the Roslyn facility. At 8 a.m., they drove to Tamale Kitchen together, then returned to Roslyn at 8:52 a.m. They left there at 10:35 a.m. for Home Depot, spending 42 minutes in the store. They stopped at a Subway for seven minutes, where Compos left with a bag of food. They proceeded to vendor AIS, thereafter went to Roslyn, and ended their day at home base. [Exh. 11-3, 4.]

Compos and Herrera testified that they spent the day together in joint projects, including shelf installation at Roslyn, and design work on some panel risers and a transformer. Their logs are nearly identical, with the exception of a one-hour trip to a vendor noted on Mr. Compos' log but absent from Mr. Herrera's. Both men showed a 30-minute lunch at noon, and two 15-minute breaks in the morning and afternoon. They testified that they drove back to home base to discuss the panel design with their supervisor, but turned around when that meeting was canceled, and traveled 14

minutes to Tamale Kitchen for their lunch break. Later, they went to Home Depot to buy special hooks for the shelving project. Mr. Compos made a personal purchase while Mr. Herrera waited at the contractor desk to complete the department's order. Mr. Compos' purchase did not delay their departure, since the investigation showed that he placed his bag into their truck 16 minutes before they left the store together. [Exh. 11-4.]

Appellants claim their trips to Tamale Kitchen and Subway were their sole lunch and daily breaks, and that their supervisor and Agency policy permit them to take those breaks at a specified time, "or as work allows." [Exh. 69-1.] The investigative report shows that they were at Roslyn during the times shown on their logs as the morning break, somewhere between AIS and Roslyn during the lunch break, and at home base during the afternoon break. Both testified they added the scheduled break and lunch times automatically on their logs, but actually took their breaks when it was most convenient based on their work load and travel. The Tamale Kitchen break consumed 52 minutes, including travel. When the seven-minute stop at Subway is added to that time, breaks for the day totaled 59 minutes, one minute less than the one hour permitted by Agency policy. Thus, the Agency did not prove that Appellants exceeded their allotted break times.

However, Agency policy requires that employees assigned vehicles may drive them to lunch "as long as they remain within a two mile radius of the job side and are able to drive to a restaurant, eat and return to work within their authorize 30- or 60-minute lunch period." [Exhs. 68-2. 69-2.] Appellants admitted that they violated this policy by their 28-minute round-trip detour to Tamale Kitchen. Thus, the Agency proved that Appellants failed to comply with the lawful orders of their supervisor, in violation of § 16-60 J.

f) Feb. 5 and 13, 2008

Finally as to these Appellants, the Agency contends their logs were inaccurate on Feb. 5<sup>th</sup> based on their unreported 33-minute visit to the Red Rooster Café, and their one-hour delay in arriving at the Roslyn facility. The Agency presented no evidence as to these allegations. However, Appellants admitted that they exceeded their lunch break by three minutes on Feb. 5, 2008. Therefore, Appellants violated departmental policy in that respect on that date.

## 2. Gene Sandler

The Agency asserts that Appellant's log was inaccurate as to his movements on Feb. 13, 2008, and that he violated Agency policy by driving his city vehicle 21 minutes from Roslyn to Colorado Boulevard to do a personal errand at the Russell Stover Candy Shop.

The Agency's witness, investigator Richard Quiroga, did not testify that he followed Mr. Sandler from Roslyn to the candy store. Appellant's testimony that he

stopped at Cableland was corroborated by the Day Book of its Residence Manager Daniel Beck, and Mr. Beck's testimony that Mr. Sandler was handling an ongoing project at Cableland during that time. Appellant's ability to further reconstruct that February day was hindered by the passage of four months from the date in question to the date Appellant was first notified of the issue, on June 23, 2008. [Exh. 18.]

Mr. Quiroga further testified that he followed Mr. Sandler from the candy store to Park Avenue West at the times noted by his partner in the investigative report. His memory of that date was often tentative. On cross-examination, he conceded that he had followed many employees to supply stores, and that Associated Dealers on Walnut "sounded familiar."

In support of the accuracy of his log entries, including his visit to Associated Dealers, Mr. Sandler produced a signed ship ticket from that vendor for purchases made at 3:29 p.m. that day, and the materials slip he prepared at home base directly after the purchase. [Exhs. M, A-4.] Mr. Sandler testified that he picked up the purchases at that time and signed the ship ticket at the store located at 3201 Walnut Street. He used that information and parts numbers to complete his material orders slip dated Feb. 13<sup>th</sup>, which is signed by both Mr. Sandler and his supervisor Mr. Conway. Thereafter, in keeping with Agency practice, the vendors use the purchase order number issued by the city to send an invoice to the Division for payment. Charles McFarland of Associated Dealers verified in his testimony that customers sign the ship tickets if they are physically present at the store, and their employee, in this instance Matt, fills their order and signs the ticket above the customer signature.

The City countered with the invoice sent by Associated Dealers the next day, which indicated an order date of 2/13/08, and a ship date of 2/14/08. [Exh. 76.] Mr. Conway also testified that he was not required to sign a ship ticket for his purchase at the same vendor. [Exh. 86.] The Agency argues that Exhibit M is consistent with an order made by phone on Feb. 13<sup>th</sup>, the day of the stop at the candy shop, but that the materials were actually picked up and invoiced the next day, Feb. 14<sup>th</sup>.

I find that the difference in the ship tickets may be easily accounted for by the fact that Mr. Sandler's purchases were to be paid for later by means of invoice to the city, requiring verification by employee signature, whereas Mr. Conway's ticket was an 82-cent cash purchase which was completed at the time of delivery. The Agency's theory requires that I credit Mr. Sandler for an elaborate scheme to conceal his whereabouts at a time when it was not in question. The Agency has failed to present any evidence to support a conclusion that Mr. Sandler was dishonest in the completion of his everyday tasks. In fact, Mr. Conway noted Mr. Sandler's trustworthiness in his performance evaluation two months after this incident. [D-116.]

On the strength of similar contemporaneous documents, I also find that Mr. Sandler did attempt to visit Cableland when he left Roslyn. [Exh. L.] Since that trip was authorized by his supervisor to complete tasks needed for the preventive maintenance work order, the 11-minute side trip to the candy store is permissible as a break under

the work rules established by Mr. Sandler's supervisor, who testified that it was not improper for employees assigned a vehicle taking breaks while en route to their work locations. The Agency presented no evidence that the trip exceeded that permissible under Agency policies or practices. Therefore, the Agency failed to prove any of the violations alleged in the disciplinary letter against Mr. Sandler.

### 3. Richard Sena

The Agency contends that a) Mr. Sena's Vehicle Usage Log was inaccurate in several respects on Feb. 26 and 27, 2008, b) Mr. Sena took a long lunch on Feb. 26, c) he illegally parked his truck on a sidewalk on both days, and d) he attested that he had a valid driver's license when it was in fact suspended.

#### a) Inaccurate Logs

A comparison of Mr. Sena's Feb 26<sup>th</sup> log to the surveillance report for that day, the accuracy of which Appellant does not challenge, reveals that Mr. Sena overstated his travel time by one hour, and failed to record four stops on his log: the Wellington Webb Building, District 3, the Osage Transfer Station, and the Bicycle Bureau. He stated that he combined the Webb Building stop, which was a short personal errand, into his work at the Police Administration Building. [Exh. K-1.] He testified that he combined the District 3, Osage and Bicycle Bureau stops with other entries that afternoon.

On Feb. 27<sup>th</sup>, Mr. Sena's log reflected two hours at home base. I find that the surveillance did not contradict that record.

For the same reasons given above as to the log entries of Compos and Herrera, I find that the inaccuracies in the Feb. 26<sup>th</sup> log did not establish neglect of duty, dishonesty, failure to comply with orders, failure to meet performance standards, unauthorized absence from work, or conduct prejudicial to the Agency or city under the rules cited in the disciplinary letter. The log was designed to record an employee's locations, work and travel time, rounded off to the quarter hour. The evidence revealed that, in practice, the logs were used as a work in progress, supplemented by supervisors' daily review and corrections. Log entry practices varied widely among employees, with differing habits as to records of mileage, work codes, travel times, locations, and the nature of work. [Exhs. 4, 29, 52, 70.] Mr. Conway testified that some work could be wrapped into other log entries in order to simplify the task of filling out the log. Given the variety of tasks and locations covered in the days covered by this surveillance, I cannot find that Mr. Sena's interpretation of his instructions violated the Career Service Rules.

b) Long lunches

Mr. Sena admitted he exceeded his lunch period on Feb. 26<sup>th</sup>, and by nine minutes on Feb. 27<sup>th</sup>. I find that the Agency established that Mr. Sena violated its administrative policy by taking long lunches on both Feb. 26 and 27<sup>th</sup>.

c) Illegal parking on sidewalk

The evidence was undisputed that employees were permitted to park their city truck on the sidewalk in front of the McNichols Building when they were on city business. Mr. Sena admitted that he went to the Webb Building to check on his pay, and considered that city business. The Agency presented no testimony to rebut that testimony, and therefore I conclude that this violation was unproven.

d) No valid driver's license

Mr. Williamson determined that Mr. Sena violated Agency policy by fraudulently attesting on his 2008 PEPR that he had a valid driver's license. The undisputed evidence was that Mr. Sena paid a traffic ticket in Feb. 2008, and did not learn that a court error resulted in suspension of his license until July 2008. Once the error was discovered, the court removed the suspension, effective back to the date of the court mistake, and waived the reinstatement fee. The Agency presented no evidence that Appellant was aware of the status of his driving privileges at the time he signed his PEPR. As proof of a fraudulent statement requires knowledge of the falsity of the statement, the Agency's evidence did not establish a violation of § 16-60 E. In re Mounjim, CSA 87-07, 6 (7/10/08).

4. Penalty

After a full hearing on the merits, I have found that Messrs. Compos and Herrera violated Agency policy on breaks and lunch on three different days: a one-block detour on Jan. 18, use of a city truck to drive 14 miles to lunch, and exceeding their lunch break by 21 minutes on Jan. 24, and exceeding their lunch by three minutes on Feb. 5, 2008. I find that this cluster of three relatively minor violations of Agency policy after 16 and 14 years of employment, respectively, merits a much less severe penalty than a 20-day suspension. Appellants' testimony about their work flow on the days in question largely mitigates the seriousness of the misconduct. In addition, I considered the evidence of the written reprimand issued to another employee from the same team with the same disciplinary history for being at a restaurant for over 30 minutes while reporting that time as work time.

On the other hand, the long suspension was intended by Agency to reverse what it saw as Appellants' development of bad work habits. In crafting a penalty both proportionate to the number and nature of the proven violations and also in keeping with the Agency's intent, I find that a five-day suspension is appropriate given the totality of the evidence presented, including Appellants' long and excellent work record, absence

of previous discipline, and immediate correction of any previous laxity after notice of this disciplinary action.

The Agency did not establish that Mr. Sandler violated any Career Service rule, and therefore his 20-day suspension much be reversed.

The Agency proved that Mr. Sena violated Agency policy in two respects on Feb. 26<sup>th</sup>: driving his city truck more than two miles to lunch, and exceeding his lunch break by 39 minutes, as well as exceeding his lunch break by one minute on Feb. 27, 2008. Mr. Sena has been employed by the Agency for 30 years, and it considers him one of the best and most experienced HVAC mechanics in its employ. While he has had four verbal reprimands, the only one similar to these offenses is one issued in 2003 for conducting business on personal time.

Similar to the evidence as to Compos and Herrera, the Agency proved three minor violations against Mr. Sena. The Agency is entitled to treat violations of its break policies with consistent seriousness, in view of the trust relationship between itself and employees who schedule their own work days with a great deal of independence. However, in the case of all three of these employees, their supervisors have made note of their extraordinary commitment to the job. Mr. Martinez rated Mr. Sena "exceptional" in the category of preventive maintenance, stating, "made an exceptional effort to further the agencies ability to meet their objective by altering one's own schedule . . . A) in early or stayed after hours, B) Altered one's lunch hour, C) Volunteered for over-time on very short notice." [Exh. D-140.]

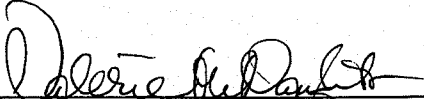
In determining the degree of discipline necessary to correct the situation and achieve the desired behavior, the seriousness of the offense and employee's past record must be considered. Here, the three offenses were relatively minor, but occurred within the space of two days, indicating the existence of a pattern. Given the Agency's need to set and enforce its own work rules, a five-day suspension is appropriate to the nature of the offenses and the employee's work record.

#### **IV. ORDER**

Based on the foregoing findings of fact and conclusions of law, the following orders are entered in this appeal:

1. The Agency's 20-day suspensions of Appellants Compos and Herrera dated July 31, 2008 are MODIFIED to five-day suspensions,
2. The Agency's 20-day suspension of Appellant Sandler dated July 31, 2008 is REVERSED, and
3. The Agency's 20-day suspensions of Appellant Sena dated August 8, 2008 is MODIFIED to a five-day suspension.

DATED this 15<sup>th</sup> day of December, 2008.

  
Valerie McNaughton  
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this decision within fifteen days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of delivery below. CSR § 19-60, 19-62. The Career Service Rules are available as a link at [www.denvergov.org/csa](http://www.denvergov.org/csa).

**All petitions for review must be filed by mail, hand delivery, fax OR email as follows to:**

Career Service Board  
c/o Employee Relations  
201 W. Colfax Avenue, Dept. 412, 4<sup>th</sup> Floor  
Denver, CO 80202  
FAX: 720-913-5720  
EMAIL: [Leon.Duran@denvergov.org](mailto:Leon.Duran@denvergov.org)

AND

Career Service Hearing Office  
201 W. Colfax, 1<sup>st</sup> Floor  
Denver, CO 80202  
FAX: 720-913-5995  
EMAIL: [CSAHearings@denvergov.org](mailto:CSAHearings@denvergov.org).