

**HEARING OFFICER, CAREER SERVICE BOARD  
CITY AND COUNTY OF DENVER, COLORADO**  
Appeal No. 98-09

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**DECISION AND ORDER**

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IN THE MATTER OF THE APPEAL OF:

**MICHELE D'AMBROSIO**, Appellant,

vs.

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

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The hearing in this appeal was held on Mar. 17 and 31, 2010 before Hearing Officer Valerie McNaughton. Appellant was present and represented by Cheryl Hutchison of AFSCME Colorado. The Agency was represented by Assistant City Attorney Andrea J. Kershner. Having considered the evidence and arguments of the parties, the following findings of fact, conclusions of law and order are entered herein.

I. INTRODUCTION

Appellant Michele D'Ambrosio is a Landside Services Agent II for the Denver Department of Aviation at the Denver International Airport (Agency). This is his appeal of his 40-hour suspension dated Oct. 28, 2009. The parties stipulated to the admissibility of Agency's Exhibits 1 – 3, and 5 – 9, and Appellant's Exhibit F. Agency Exhibits 4 and 5, and Appellant's Exhibits A – E and G – P were withdrawn.

The issues presented in this disciplinary appeal are 1) whether the Agency proved the cited rule violations by a preponderance of the evidence, and 2) whether a 40-hour suspension was an appropriate discipline for the proven misconduct.

II. FINDINGS OF FACT

Appellant was hired in April 2008 as a Landside Services Agent (LSA) II. LSAs act as agents for the airport parking office to monitor parking facilities and ensure compliance with parking procedures. He was given a 40-hour suspension in Oct. 2009 based on conduct alleged in three customer complaints within three months. After investigations into the complaints and a pre-disciplinary meeting, the Manager of Landside Services found that 1) Appellant struck a vehicle and swore loudly at customers on May 20, 2009; 2) Appellant was aggressive and confrontational with a customer on July 31, and directed him to drive in violation of traffic signals, and 3) he

was threatening, demeaning and domineering with a towing contractor's employee on July 30, 2009. [Exh. D.]

### 1. Customer Complaints

On July 31, 2009, Ms. Brum received a written complaint about Appellant from Manager Kelli Marso of Standard Parking, the DIA parking contractor. Ms. Marso stated that she contacted Appellant in the Parking Office at 11:15 pm on July 27<sup>th</sup> to report a customer at the exit booth who had no money, identification or vehicle registration with him. Under its contract with the city, Standard Parking is required to verify the identity of customers through the police if they cannot pay parking charges and present no identification. Standard's supervisor must first call the Parking Office in such a situation, but the role of the LSA is merely to observe and assure that city procedures are followed.

Appellant informed Ms. Marso that he would meet her at the booth. Ms. Marso went to the exit booth and introduced herself to the customer, who explained that he was driving a friend's car to his home for him. She told him she would call the police to verify his identity. Appellant drove across the field next to the employee walkway in a parking vehicle, and told Ms. Marso he would call the police. [Exh. F.] Appellant then introduced himself to the customer, who confirmed that he left his wallet and driver's license at home. Appellant told him he could not badge him out. The customer expressed surprise, and asked him why Ms. Marso had not told him that. He then asked Appellant what he could do. Appellant advised him to go find an ATM, but that he could not get out through the gate. When told that Appellant was getting off in a half-hour at midnight, and that he may have to stay overnight in the garage, the customer became frustrated. Appellant told the customer that he was wasting their time, and that he could have him arrested for not having his license with him. The customer reacted in shock, and leaned away from Appellant farther into his car. He said, "Dude, I forgot my wallet." Appellant then told him he could have the car towed. The customer put his arms up, and said, "Okay, I'll go park the car." He backed up against the flow of traffic, drove the wrong way on a one-way street, and parked the car.

Ms. Marso testified that before Appellant arrived, the customer was cooperative and the situation was under control. Ms. Marso intended to contact the police to obtain identification of the customer. "Then we would have gotten permission from the owner for him to drive the vehicle." She heard only part of the conversation, but said she had never heard a city employee speak to a customer in that manner. She believed she had no authority as a city contractor to intervene. Ms. Marso told her employee who had heard Appellant, "I don't ever want to hear you talking to a customer that way." Ms. Marso would not have permitted the customer to drive a car for which they have no registration, or to back up from the gate and drive the wrong way down the exit lane, as that may create liability for her company. Ms. Marso was also concerned that the customer might complain about Standard Parking as a result of the incident, since airport customers can easily confuse city employees from the Parking Office with

employees of the parking contractor. As a result of this incident, Ms. Marso's trust in Appellant has decreased.

The Agency received a second complaint about Appellant on Aug. 5<sup>th</sup> from airport customer Jill Reiter, who testified by phone that on May 20, 2009, she drove to DIA to pick up family members for her son's graduation. She was the second car in a long line waiting at the gate of the 45-minute waiting lot at DIA. A white jeep circled inside the parking lot, pulled up to the gate and closed it, then continued to drive in a circle inside the lot. The driver of the jeep, later identified as Appellant, came back to the gate and started writing a ticket to the first car in line. The driver of that car turned his wheels slightly, then stopped. Appellant hit the hood of the car with his fist and started screaming at the driver, stating that he was the police, the man was getting a "fucking ticket, don't fucking move, everyone is getting a ticket." When he approached Ms. Reiter, she said, "Sir, I've never been here before, just tell me where to move, I'm sure we'll all move. I thought you were coming back to open the gate." Appellant angrily told her to "shut up", that she was getting "a fucking ticket", and continued to yell. The man in the car behind her got out and asked Appellant, "What's going on?" Appellant became even angrier, and screamed at him that he was going to be arrested.

Ms. Reiter is a licensed clinical social worker in private practice specializing in high-conflict divorce. She has worked at Denver Health's in-patient psychiatric unit. Ms. Reiter was shocked that a public employee would have such a loud and angry reaction to a parking issue, having once been a public employee herself. She decided not to continue the conversation, but to take the ticket and get away from him. Ms. Reiter momentarily wondered if he had a gun, and if he was indeed a police officer. As Appellant continued to shout, Ms. Reiter silently planned to hit him with the door of her car if he attacked her. Her concern at that time was to get away, since she had her seven-year old daughter in the car, who asked her, "Why is he so angry?" She answered that they would talk about it later, "because I didn't know if that would set him off more."

After Ms. Reiter received the ticket, she drove to the arrival area, and found a police officer. Ms. Reiter told the officer "the parking guy is out of control", and asked him what she should do. He directed her to the Parking Office to report the incident, and apologized that it had happened to her.

After the graduation and the departure of her guests, Ms. Reiter went to court, pled not guilty, set a date for trial, and filed a complaint about Appellant's behavior. On the day before her court date for the ticket, Ms. Reiter called the Parking Office to ask for the name of the parking lot employee who had issued the ticket. Melissa Brum returned her call. Ms. Reiter explained why she was contesting the ticket, describing Appellant's behavior as "rageful". Ms. Brum told her she would move for dismissal of the ticket, and asked her to send a written statement detailing the incident. Ms. Reiter delivered her statement shortly thereafter. [Testimony of Ms. Reiter, Ms. Brum; Exh. 7.]

Appellant testified that he received a call that day from the Parking Office to close the lot, as it appeared to be full. The sign visible on the closed gate directs drivers to the main terminal if the lot is closed. It is Appellant's practice to count the vacant spaces and reopen the lot if there are at least 35. After closing the gate, Appellant began his count, and signaled the waiting drivers to move away. When no one did, he gave tickets to the first two cars in line, and the rest of the cars "disappeared". He denied that he struck a vehicle, swore, or that anyone got out of their car. He was first informed about this complaint in the notice of contemplation of discipline letter.

On Aug. 10, 2009, Parking Administration received a third complaint, this one from an employee of the city's towing contractor. Extreme Towing tows cars on airport property upon request from airport police and the Parking Office, and assists customers locked out of their cars. On July 30, 2009, a few weeks after Nicholas Gomez started as a tow truck driver for the company, he was called to remove a car in the inside parking garage. Appellant was at the car when Mr. Gomez arrived, and introduced himself. Appellant asked him about the previous tow driver, and Mr. Gomez told him he was let go for performance problems. Appellant then said, "I've seen you guys before . . . The guys that just come and go." He told Mr. Gomez that his job was to do what Appellant told him to do, without questioning it, even if he is working on a job for the Denver police. Appellant added that he would be watching him very closely, and would call Mr. Gomez's boss and the police if he saw him speeding.

Mr. Gomez felt belittled by this exchange, and thought Appellant had questioned his competence, although he testified Appellant didn't tell him he had done anything wrong. Mr. Gomez called Ms. Brum in the Parking Office to report the matter. At Ms. Brum's request, he emailed a statement describing his encounter with Appellant because he "felt that he was very out of line and this should be brought to your attention." [Exh. 6.] He avoided Appellant as much as possible thereafter, and only saw him a few times. This experience was one reason why Mr. Gomez decided to take a less desirable work assignment away from the airport about six months later. When asked to read the disciplinary letter's summary of the incident, he testified that the facts were correct except that he never told anyone he had considered filing harassment charges against Appellant. He felt that Appellant had threatened his job. "I just felt like I had a monkey on my back and I had to be careful." [Testimony of Mr. Gomez; Exh. 2-4.]

Appellant recalled the event differently. He waited 30 minutes at the car to be towed for Mr. Gomez, then introduced himself and told him where the car was to go. "As soon as we got on level five, [he] almost hit a parked vehicle." When they got out of their vehicles, Appellant pointed out that it took him 30 minutes to get there, Mr. Gomez nearly hit another car, and he wasn't wearing his badge. "He didn't like it. I felt it was my duty to let him know that." Appellant asked him his name for his report, and reviewed the rules with him. "I was giving him a heads up." [Testimony of Appellant, 3/31/10, 9:26 am.]

## 2. Employment and Disciplinary History

Landside Services Supervisor Carolee Harmes has been Appellant's direct supervisor since he was hired in 2008. Appellant was given new employee training when he began, which included Executive Order (E.O.) 112, the city's violence in the workplace policy. His duties as an LSA are to inspect all parking facilities for cleanliness, structure and safety, and assure that contractors are following city, DIA, and federal procedures governing airport operations. During his probationary period, his supervisors and manager discussed with him feedback from a co-worker with seven years' experience on the job, who complained that Appellant was telling her how to do her job. He also became focused on morale issues within the contractor's organization. Ms. Harmes noted that the city was about to change contractors at this time. Appellant was instructed to concentrate on performing his duties, and given additional feedback on his progress. Parking Manager Melissa Brum extended his probation for three months to Jan. 2009 because of concerns about his interactions with customers and co-workers. As a part of the extension, Appellant was ordered to complete training in citation-writing, communication skills, and diversity issues. [Testimony of Ms. Brum; Ms. Harmes.]

In June, 2009, a customer called to complain about Appellant's alleged threat to call the police and add additional violations during the issuance of a parking citation. Based on procedural defects in the citation, his daytime supervisor Vance Wolverton told Appellant to write the parking magistrate and ask that the ticket be cancelled. Appellant "was not happy about it", and asked him what would happen if he didn't do it. Mr. Wolverton told him it was not a request, it was an order. Three weeks later, Appellant still had not sent the letter. After being again ordered to do it, Appellant stated he didn't know how to ask the court to dismiss the citation. Mr. Wolverton sent him a sample letter, and Appellant then wrote the magistrate asking that the ticket be cancelled. [Testimony of Mr. Wolverton.] An informal<sup>1</sup> verbal warning for insubordination was delivered to him on Aug. 4, 2009. [Exh. 8.] The Agency related the incident in the disciplinary letter, but asserted in its opening statement that it was included only to prove that he was given training about good customer service, and disobeyed his supervisor's order to cancel the ticket.

Based on the Agency's receipt of three complaints within a week indicating Appellant was angry, swearing, and threatening to add violations or call police, Ms. Brum became concerned about the safety of both customers and Appellant himself, since his anger could escalate a situation into violence. Appellant was placed on investigative leave on Aug. 23, 2009, and a pre-disciplinary letter was issued on Sept. 22, 2009. [Exhs. 5; B.]

At the pre-disciplinary meeting, Appellant denied that he struck a vehicle with his fist or swore at customers during the May 20<sup>th</sup> incident. He admitted he drove on a dirt road on July 27<sup>th</sup>, but denied he had an "animated conversation" with the customer. As

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<sup>1</sup> Ms. Brum did not intend the verbal warning to be official discipline under the Career Service Rules, and thus did not place it in Appellant's CSA personnel file. [Testimony of Ms. Brum, 3/17/10, 3:24 pm.]

to the complaint by Mr. Gomez, Appellant stated he saw Mr. Gomez driving 35 mph in the garage. He told Mr. Gomez to slow down, and reminded him that he needed to wear his badge. "He made an angry face at me and left. I didn't say I was above him" or a higher priority than the Denver police. Appellant told the disciplinary panel that he did not report Mr. Gomez because he was new to the job, and Appellant assumed that talking to him about the violations would correct the problems. [Exh. 3.]

### 3. Disciplinary Decision

Parking Manager Herald Hensley made the disciplinary recommendation along with Ms. Brum, Ms. Harnes, and Mr. Wolverton after reviewing the customer complaints and the information presented at the pre-disciplinary meeting. Manager of Landside Services Dorothy Harris accepted the recommendation, and informed Appellant that he would be suspended for 40 hours and given additional training based on the Agency's findings that he violated CSR § 16-60 J, M<sup>2</sup>, O, Y and Executive Order 112. [Exh. D.]

The Agency found that Appellant failed to comply with lawful orders under § J based upon his failure to cancel the May 26<sup>th</sup> citation, as ordered by Mr. Wolverton on June 9, 2009. Mr. Hensley testified that the finding was also based on Appellant's failure to do his assigned work to close the waiting area gate in a manner consistent with customer service on May 20<sup>th</sup>, driving on the sidewalk and taking control of the situation at the exit booth on July 27<sup>th</sup>, and failing to oversee the towing contractor in a pleasant, harmonious manner.

Appellant was determined to have abused Mr. Gomez in violation of § 16-60 M by telling him that "he is under him, you are above him, and that he is a nobody." The Agency found an additional violation of § M when on May 20<sup>th</sup> he struck a customer's car, and intimidated drivers in line at the 45-minute waiting area by yelling and swearing at them. Those same actions are also the basis of the Agency's finding that he violated § O by failing to maintain a satisfactory work relationship with city contractor employee Mr. Gomez, and two members of the public, Ms. Reiter and the customer at the exit booth on July 27<sup>th</sup>, 2009.

The violation of 16-60 Y and Executive Order 112 were based on the Agency's determination that Appellant issued a threat to Mr. Gomez by stating, "Do what I tell you to do, or I'm telling." [Testimony of Mr. Hensley, 3/17/10, 4:19 pm.]

The Agency found the cumulative effect of three similar complaints within a very short period of time very convincing evidence that discipline was needed to convince Appellant that it was serious about enforcing the airport's standards of customer service. The fact that two different city contractors and one customer used the same language to describe Appellant's behavior was additional evidence that action and additional training was required to give Appellant the tools he needed to do his job. [Testimony of Ms. Harris, Ms. Hensley.]

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<sup>2</sup> The parties stipulated at the commencement of the hearing that the disciplinary letter's citation of § 16-60 K was in error, and should be corrected to § 16-60 M.

### III. ANALYSIS

#### A. Disciplinary Violations

The Agency bears the burden to establish that Appellant violated the Career Service Rules and Executive Order 112 as cited in the letter of discipline by a preponderance of the evidence.

##### 1. Failure to Comply with Orders or Do Assigned Work under § 16-60 J

The disciplinary decision indicates that the suspension was based on four incidents. However, the Agency conceded at the outset of this hearing that it has already imposed a verbal warning on Appellant based on the first incident: his failure to follow his supervisor's June 9<sup>th</sup> order to cancel a citation. [Exh. 8.] By virtue of the city charter's requirement that discipline may only be imposed for good cause, an agency is also prohibited for disciplining an employee twice based on the same conduct. See In re Roberts CSA 179-04, 7 (6/29/05). The June 9th incident is only considered in this appeal on the issue of Appellant's notice of Agency standards regarding obedience to orders. Therefore, the Agency's finding that this incident supports a violation of this rule is found to be without merit.

The Agency also based its discipline under this rule on a conclusion that Appellant failed to perform his duties consistent with an attitude of customer service. The rule requires proof that an employee failed to do the assigned work at all, in contrast with an allegation that the work was performed inadequately in some respect. See In re Galindo, CSA 39-08, 9 (9/5/08); In re Mounjim, CSA 87-07, 7 (7/10/08). The phrase "customer service" may mean different things to different agencies, supervisors, and employees within each agency. The words of the rule target the failure to perform work. In addition, there is already a rule prohibiting careless performance of work which addresses work done in an inadequate or improper manner. CSR § 16-60 B. Since each provision of a statute must be presumed to have a purpose and use, the Career Service Board is presumed to have reenacted these two rules in 2006 to address separate performance issues. See Colorado State Civil Service Emp. Ass'n v. Love, 448 P.2d 624 (Colo. 1968). The Agency failed to establish that Appellant was advised by job description or other means that work done with inadequate customer service was work not performed at all under this rule.

##### 2. Threatening, Intimidating or Abusing Members of Public under § 16-60 M

Next, the Agency found that Appellant had threatened, intimidated or abused members of the public based on his actions in all three customer complaints.

A threat is "a communicated intent to inflict harm or loss on another or on another's property". Black's Law Dictionary (8th ed. 2004); see also In re Katros, CSA 129-04, 7 (3/16/05). The Agency proved that Appellant told the drivers in line on May 20<sup>th</sup> that he was going to give them tickets. He told Mr. Gomez that he would report him to his boss if he saw him speeding. As a result, Mr. Gomez feared his job could be in

danger, but denied he felt physically threatened. Appellant told the customer at the exit gate that he could have him arrested for not having his license with him, and could have his car towed. Those statements by themselves are not threats of bodily harm.

However, words that are reasonably perceived to be threats of physical harm are also prohibited under this rule. Appellant's actions in banging the hood of a car with his fist, and screaming and swearing in a "rageful" manner, caused Ms. Reiter, a clinical social worker with extensive experience in high-conflict situations, to fear Appellant would attack her based on his extreme response to a simple parking issue. She thought about whether he had a gun, and decided she could hit him with her door if he tried to assault her. Appellant denied all of this behavior, but the detailed and vivid testimony of a disinterested customer who made this complaint at the cost of her own time was more convincing than Appellant's denial. Under these circumstances, the Agency established that Appellant violated this rule by his behavior on May 20, 2009. In addition, Appellant's statements to the customer at the exit booth that he could have his car impounded or have him arrested for not having his license on him were not within his authority and were thus threats to inflict losses on him and his property, in violation of the rule. On the other hand, his statement to Mr. Gomez that he would report him if he saw him speeding was well within his authority as overseer of the contractor's compliance with airport procedures and rules, and thus not a threat.

Intimidation is an unlawful threat intended to coerce another. Black's Law Dictionary (8th ed. 2004). The Agency asserted that Appellant intimidated Mr. Gomez by his statement that he would be watching him. Mr. Gomez testified that it made him feel incompetent and caused him to worry about his job, but he conceded that an LSA has the right to report a tow truck driver if he is doing something wrong. Mr. Gomez denied that Appellant criticized anything he did. However, Appellant's statements at the pre-disciplinary meeting and at hearing were consistent: he saw Mr. Gomez driving too fast, and noticed he didn't have his badge on. All of the Agency witnesses view Appellant as a conscientious employee who is serious about his job. It is more likely that Appellant took a critical tone with Mr. Gomez because he observed him commit a procedural violation, and it is his job to oversee the towing contractor. While Appellant's tone may have been unduly harsh, the Agency did not prove that Appellant's statement that he would call Mr. Gomez's boss if he observed a violation was beyond his authority or improper for any other reason.

Mr. Hensley also believed Appellant was abusive in all three complaints. Abuse has been defined as physical or mental maltreatment, often resulting in mental, emotional, sexual, or physical injury. Black's Law Dictionary (8th ed. 2004). Specifically, the Agency asserts that Appellant was abusive when Appellant told Mr. Gomez he was above him, and that "he is a nobody." I find that Mr. Gomez did not tell Ms. Brum that Appellant said those words to him. Instead, he made a similar statement to convey to her how the conversation made Mr. Gomez feel. I make this finding for three reasons: Mr. Gomez's own contemporaneous statement makes no mention of these words, but instead says Appellant told him "what he tells me is all I'm [supposed] to listen to and he has authority over me . . . his words made me feel very degraded

with [incompetence].” [Exh. 6.] If Appellant told him he was “a nobody”, the insult would have been so clear that Mr. Gomez would have recalled and quoted the words with precision in his statement. He confirmed at hearing that his statement included everything that Appellant said to him; “it was fresh in my mind then.” Secondly, Mr. Gomez did not testify that Appellant said those words. Third, Mr. Gomez denied he said the sentence which followed, in which the Agency claimed Mr. Gomez said he “felt this was serious enough that he was considering filing harassment charges against [Appellant.]” [Exh. 2-4; testimony of Mr. Gomez, 3/17/10, 10:05 am.] It is apparent that the summary included in the disciplinary letter was an inexact recollection of the conversation between Ms. Brum and Mr. Gomez.

Next, the Agency asserts that Appellant was abusive to the customer in the exit booth in threatening to have him arrested and the language he used. There was no evidence that Appellant used improper language in his exchange with that customer. The only evidence of the customer’s reaction to the threat was that he raised his hands, told Appellant he would move the car, backed it up, and parked. That indicates frustration rather than mental or emotional injury arising from the event, and therefore the Agency failed to prove Appellant was abusive on July 27, 2009.

### 3. Failure to Maintain Satisfactory Work Relations with Public under § 16-60 O

An employee violates this rule by conduct that is harmful to another person or has a significant impact on his working relationship with that person if a reasonable person would have known his conduct would have that effect. See In re Burghardt, CSB 81-07, 2 (8/28/08.)

The Agency claims that Appellant violated this rule by damaging his relationships with contractor employee Mr. Gomez and two customers: Ms. Reiner and the unnamed customer at the exit booth on July 27. The conduct at issue in the exchange with Mr. Gomez was the allegation that he was “under [Appellant] and a nobody”. Based on the above finding that Appellant did not make that statement to Mr. Gomez, I find the Agency did not prove a violation of this rule, despite Mr. Gomez’s later decision to leave the airport based in part on his exchange with Appellant.

Appellant’s behavior on May 20, 2009 at the waiting area is the second basis for the asserted rule violation. Appellant banged his fist on the hood of the car in front of Mr. Reiter, screamed obscenities at her and two others parked in front of the lot, told her to “shut up”, and threatened to have the driver behind her arrested if he did not get back in his car. This behavior was shocking to Ms. Reiter because Appellant was a public employee and his anger was out of proportion to the situation. As a result, Ms. Reiter stopped all efforts to try to explain herself to Appellant, put off her 7-year old daughter’s question about why he was so angry, and made a plan to defend herself with her car door if Appellant tried to attack her. Ms. Reiter was afraid for her daughter, and experienced a “fight or flee” impulse. As soon as she could get away, she found a police officer to report the incident, and thereafter filed a complaint with the Agency. Her testimony makes it clear that her relationship with Appellant as a customer of the

airport was adversely affected by the incident, and that a reasonable person in Appellant's position would have known the conduct would have that effect. I find that the Agency proved Appellant violated this rule by virtue of his behavior toward Ms. Reiter on May 20, 2009.

Mr. Hensley also testified that his recommendation of discipline was based on Appellant's threat to arrest the customer at the exit booth on July 27<sup>th</sup>. The only testimony supporting this allegation is that the customer put up his hands and backed away from the gate. I find that this is insufficient to support a conclusion that the threat had an adverse effect on his relationship with the customer.

#### 4. Violation of Executive Order 112 under § 16-60 Y

Violence is defined in the relevant portions of the Executive Order as an actual or attempted physical assault, threatening behavior, verbal abuse, intimidation, harassment, swearing at, shouting at, or stalking. E.O. 112, 3.0. "[W]ords grouped in a list should be given related meaning." S.D. Warren Co. v. Maine Bd. of Environmental Protection, 547 U.S. 370, 378 (2006). "This rule we rely upon to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress." Gustafson v. Alloyd Co., Inc., 513 U.S. 561, 575 (1995) (internal quotations deleted). Thus, the examples of conduct on the list in E.O. 112 are actions that may subject an employee to discipline if performed in a violent manner.

The Agency supported its finding under this rule by citing Appellant's statement to Mr. Gomez that he would tell his boss unless Mr. Gomez did what he told him to do. [Testimony of Mr. Hensley, 3/17/10, 4:19 pm.] Based on the above finding that such a statement is not a threat, I find the Agency did not prove Appellant violated this rule.

#### B. Appropriateness of Penalty

The Agency established that Appellant violated CSR § 16-60 M by his threatening behavior to Ms. Reiner on May 20<sup>th</sup>, and by his threat to the customer at the exit booth to have him arrested and have his car towed. It also proved that Appellant failed to maintain a satisfactory relationship with Ms. Reiner, an airport customer. Appellant's probation was extended in Oct. 2008 as a result of previous issues involving interpersonal communication and relationships, and Appellant had just completed three substantive training courses on the subject intended to "give him the tools he needed" to do the job, according to Manager Harris. Two months before the first complaint, Appellant had been given an order to dismiss a citation he issued to a customer who complained he was arrogant and appeared irritated. As a result of his failure to do so, he was issued a verbal warning.

The Agency readily conceded that it did not consider termination based on the most recent complaints because Appellant is a good worker, and since his return he has shared a pleasant relationship with his co-workers. Under the circumstances, it appears that the 40-hour suspension had the desired effect of correcting Appellant's misconduct.

I conclude that the Agency did not act in an arbitrary or capricious manner in determining it could not correct Appellant's behavior by lesser discipline.

IV. DECISION AND ORDER

Based on the foregoing findings of fact and conclusions of law, the Agency's suspension action dated Oct. 28, 2009 is AFFIRMED.

Done this 7<sup>th</sup> day of May, 2010.

  
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, in accordance with the requirements of CSR § 19-60 *et seq.*, within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the decision's certificate of delivery. 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 with the:**

Career Service Board  
c/o CSA Personnel Director's Office  
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

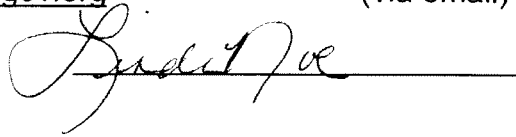
Career Service Hearing Office  
201 W. Colfax, 1<sup>st</sup> Floor  
Denver, CO 80202  
FAX: 720-913-5995  
EMAIL: [CSAHearings@denvergov.org](mailto:CSAHearings@denvergov.org).

AND

Opposing parties or their representatives, if any.

I certify that on May 7, 2010, a copy of this Decision and Order was delivered to the following in the manner indicated:

Michele D'Ambrosio, 6782 North Hillpark Ave., Parker CO 80134 (via U.S. mail)  
Cheryl Hutchison, [chutchison@afscmcolorado.org](mailto:chutchison@afscmcolorado.org) (via email)  
City Attorney's Office, [Dlefilng.litigation@denvergov.org](mailto:Dlefilng.litigation@denvergov.org) (via email)  
Shaun Spade, HR, [Shaun.Spade@denvergov.org](mailto:Shaun.Spade@denvergov.org) (via email)

A handwritten signature in cursive script, appearing to read "Shaun Spade", is written over a horizontal line.