

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

Appeal No. 170-02, 181-02

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

JAMES GORDON, Appellant,
and
JULIE CHILDS, Appellant.

Agency: Department of General Services, Public Office Buildings, and the City and County of Denver, a municipal corporation.

By Order dated December 13, 2002, the above-captioned appeals were consolidated for hearing. Hearing in this matter was held before Michael S. Gallegos, Hearing Officer, on February 13, 2003, in the Career Service Hearings Office, 201 West Colfax, 1st Floor, Denver, Colorado 80202. Cheryl Hutchison represented Appellants, James Gordon and Julie Childs. The Agency was represented by Assistant City Attorney, Mindi L. Wright. Dan Barbee, Director of Public Office Buildings, was the Agency's advisory witness at hearing.

Within these Findings, the Hearing Officer refers to James Gordon as "Gordon" or "Appellant"; Julie Childs as "Childs" or "Appellant's supervisor"; the Department of General Services, Public Office Buildings as the Agency; Dan Barbee as the Agency's "Director" or the "Appointing Authority"; Yvonne Renee' Chavez, also known as Renee' Chavez, as "R.C." and the Career Service Rules as "Career Service Rules" or "CSR". The Career Service Rules are cited by section number and are those currently in effect unless otherwise indicated.

For the reasons set for the below, the Agency's five-day suspension of Gordon and demotion of Childs is **AFFIRMED**.

ISSUES FOR HEARING

Whether the acts or omissions on which the discipline was based occurred, whether there is just cause for the discipline imposed on each Appellant, including whether Appellant's actions constitute sexual harassment and/or harassment, and whether the degree of discipline is reasonably related to the severity of the offense for each Appellant.

BURDEN OF PROOF

The burden of proof is upon the Agency to show, by a preponderance of the evidence, that the acts or omissions on which the discipline was based occurred and that just cause warranted the discipline imposed. *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo.). Further, the burden is upon the Agency to show, by a preponderance of the evidence, that the degree of discipline is reasonably related to the severity of the offense for each Appellant.

PRELIMINARY MATTERS

Appellant's Exhibit A was accepted into evidence without objection. Appellant's Exhibit B was accepted into evidence over the Agency's objection that it is hearsay, duplicates/contradicts Childs' testimony and insufficient indicia of reliability/foundation. The Agency's Exhibits 1 through 18 were accepted into evidence without objection. The parties stipulated that there is no substantiation for the Written Reprimand indicated in Exhibit 3, page 5. Such listing was a typographical error.

FINDINGS OF FACT

Based on the evidence presented at hearing, the Hearing Officer finds the following to be fact:

1. Appellant is a male Custodian employed by the Agency. Upon hire, his first assignment was to the Human Services building for training. Appellant worked in the Human Services building beginning July 2001 and continuing, through his suspension in this matter, into November 2002. Appellant was in training beginning in July 2001, through the end of 2001, into January 2002. He worked the swing shift. That is, Appellant's scheduled work hours were 4:00 p.m. to 12:30 a.m.

2. Childs is a female Custodian employed by the Agency. She was a Custodial Supervisor, assigned to the Human Services building beginning in the Fall of 2001 and continuing through her demotion in this matter. Childs worked the swing shift and was Appellant's supervisor beginning in the Fall of 2001 and continuing through her demotion.

3. R.C. is a female Custodial Supervisor employed by the Agency. When Appellant began work/training at the Human Services building, R.C. was a Custodian assigned to bathrooms at the Human Services building. When Childs started at the Human Services building, R.C. became a "lead custodian" working the swing shift under Childs' supervision.

4. A lead custodian assists the Custodial Supervisor in checking on other custodians' work, helping other custodians complete their assigned duties and training new custodians. At work, R.C. carried paper and pencil to take notes regarding duties, assignments, training issues or problems and above-average performance of the custodians she was assigned to help. In order to keep up with her duties, R.C. carried a pager and all the custodians with whom she worked had her pager number. For example, if a custodian working with R.C. needed to call in sick, that employee could page R.C. and she would return the page/call as soon as she got to a telephone.

5. Appellant was assigned to the 1st floor. R.C. was assigned to the 1st and 2nd floors. Among other things, R.C. was assigned to check on Appellant's work and assist him in completing his work, if necessary, during his training. R.C. and Appellant developed a "good working relationship" but R.C. did not view the relationship as that of friends. Rather, she thought of Appellant as an acquaintance. For example, they did not sit together at lunch and never got together outside of work.

6. The act of supervising or training custodians requires that the Custodial Supervisor or lead custodian talk with the custodians under their supervision. In addition to talking about work and training, the custodians and supervisors also talk about other things such as families or sports.

7. During the time that Appellant was in training under R.C., R.C. had recurring marital problems which caused her to be more emotional than usual. She often spoke to her co-workers, including Appellant, regarding her problems with her husband. It was apparent to most of R.C.'s co-workers that she was having emotional difficulties over a period of 2 to 3 months in late 2001 and early 2002.

8. When Childs was transferred to the Human Services building, she became supervisor to a number of custodians including Appellant and R.C. Childs supervised the custodians assigned to the 1st and 2nd floors at the Human Services building and the Family Crisis Center, a one-story building near the Human Services building.

9. Childs became R.C.'s mentor regarding R.C. getting a promotion to Custodial Supervisor. Childs advised R.C. regarding applications for promotion, preparation for testing and gave R.C. other "pointers" for getting a promotion to Custodial Supervisor.

10. Approximately 3 months after Appellant and R.C. began working together, Appellant told R.C. that he would like to "get together" with her, perhaps to play pool. He told her that he'd "like to spend time" with her. R.C. understood this to mean that Appellant was interested in "seeing her" or dating her. The first

2 times he asked, R.C. surprised and didn't know what to say. So she said nothing.

11. The third time Appellant asked her out, R.C. told Appellant that she was not interested. R.C. was not insulted that Appellant asked her out. However, she expected the requests to stop when she said "No".

12. Appellant is married and takes the bus to and from work. On at least two occasions, he paged R.C. using his cell phone on the bus. Appellant told R.C. that he was on his way home and wanted to get together with her. After a couple of Appellant's cell phone requests to get together, R.C. stopped returning Appellant's pages/calls. She was afraid that Appellant might follow her home from work.

13. R.C. was very specific in her refusals of Appellant's invitations. R.C. told Appellant that she was not interested in seeing him because, "You're married, I won't date a co-worker and I'm not interested in Black men."

14. Appellant is African-American or Black.

15. In March 2002, R.C. told her supervisor, Childs, that Appellant had asked her out on a number of occasions and that she told him "no". R.C. was crying and upset when she reported Appellant's actions to Childs. Childs asked R.C. if she wanted her (Childs) to talk to Appellant about it. R.C. said "Yes".

16. In addition to his regular duties as Custodian, Appellant was part of the Special Projects crew. Childs was the supervisor for special projects such as cleaning carpets or walls and stripping and waxing floors. On the days Appellant stayed after regular work hours for special projects, the buses usually stopped running before the end of his special projects shift. Appellant doesn't drive. Therefore, Childs offered and often drove Appellant home after special projects.

17. Appellant and Childs had a good working relationship. They became friends and developed a close personal relationship. On occasion, they had lunch together.

18. One or two days after R.C. reported Appellant's unwanted advances, Childs and Appellant worked late with the Special Projects crew. By the time they completed the project, the buses had stopped running. Childs offered to take Appellant home. On the front steps of the building, as they were leaving work Childs began to address R.C.'s concerns with Appellant. The conversation continued into the car on the way home.

19. Childs advised Appellant that R.C. wanted to file a sexual harassment claim against him and that he had to stop asking R.C. out. Appellant

did not feel that he had done anything wrong. Childs advised him that he didn't have to do anything wrong for it to be considered sexual harassment.

20. Sexual harassment is "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature" where "such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." (Sexual Harassment Policy, General Services Department, Definition 1.c.)

22. After Appellant's discussion with Childs, Appellant expressed his anger to R.C. and wanted to know, "Why didn't you tell me". After that, Appellant chose not to speak to R.C. at all. However, whenever R.C. was in the same room or area as Appellant, Appellant made sounds like "Shh, shh, shh". He often said to co-workers, "Be quiet, there's the snitch" or simply utter the word "snitch" under his breath as he walked past R.C. Whenever R.C. entered a room or area where Appellant was talking to a co-worker, Appellant would immediately stop talking or lower his voice. R.C. often heard the word "informant" emphasized by Appellant.

23. When Appellant used the words "snitch" or "informant" he was referring to the fact that R.C. had reported his requests (to see her outside of work) to their supervisor, Childs.

24. Appellant's comments and the way they were presented to her made R.C. feel uneasy. R.C. felt somewhat intimidated by the fact that Appellant would not talk to her but he would make noises or call her "snitch" under his breath. She felt that Appellant's comments to co-workers undermined her authority as a lead custodian. R.C. felt harassed by the noises Appellant made when she was around and the names he called her under his breath or to co-workers.

25. Harassment is defined as "[t]hreatening, fighting with, intimidating, or abusing employees or officers of the City and County of Denver for any reason, including but not limited to: intimidation or retaliation...". CSR 16-50 A (8). "The City maintains a strict policy prohibiting discrimination, sexual harassment and harassment because of race, national origin, sexual orientation, physical or mental disability, age, gender...or any other basis protected by federal, state or local law regulation." CSR 15-101.

26. R.C. again went to Childs and reported the name-calling and noises Appellant made within earshot of R.C. Childs told R.C. to document the noises or comments and advised R.C. that filing a complaint against Appellant could "cause trouble" for R.C.'s promotion. Childs did not take a statement from R.C. or advise R.C. to file a harassment complaint and Childs did not report R.C.'s allegation of harassment to anyone.

27. R.C. wanted a promotion to Custodial Supervisor and didn't want to cause trouble for Childs or Appellant. She did, however, ask Custodial Supervisor Mike Brewer if reporting harassment could affect her chances for a promotion.

28. On one occasion, Childs and R.C. were in the hallway together when Appellant walked by, said the word "snitch" in Appellant's direction, laughed and walked past both Childs and R.C. Childs advised R.C. that she couldn't be sure that Appellant was talking about R.C. and, if he was, he was just teasing R.C. Childs told R.C., "You know how men are".

29. It is Childs' opinion that whenever you get men and women together they talk about sex.

30. R.C. then went to Childs' supervisor, Sharon Romero (Romero) regarding Appellant's comments and noises. Romero referred R.C. back to her supervisor, Childs. On March 6, 2002, Romero transferred Appellant from the 1st floor to the 4th floor. At that time, Mike Brewer (Brewer) became Appellant's supervisor.

31. From March 6, 2002 forward R.C. went to the 4th floor only upon request. She tried to avoid Appellant at all times.

32. Jeff Reyes (Reyes) is a Custodial Supervisor for the day shift, from 7:00 a.m. to 3:30 p.m., at the Human Services building. On April 8, 2002, Reyes worked late. At about 7:15 p.m., R.C. verbally reported Appellant's harassing requests, comments and noises to Reyes. She had no documentation regarding her allegations. However, R.C. was teary-eyed and upset as she reported Appellant's actions over the prior few months and Reyes found her behavior to be consistent with that of a victim. Reyes immediately tried to reach his supervisor, Romero, by phone. When he could not get a hold of Romero, Reyes discussed the situation with another Custodial Supervisor, Brewer. Reyes then sent R.C. home before the end of her shift.

33. The next day Reyes, reached Romero with the information of R.C.'s allegations. Romero met with R.C., to take R.C.'s statement, and with Assistant Director James Williamson (Williamson) about R.C.'s allegations.

34. Williamson immediately requested an investigation of R.C.'s allegations. R.C. was transferred out of the Human Services building and Appellant was placed on investigatory leave.

35. Investigation of R.C.'s allegations was assigned to Regina Garcia (Garcia), a Human Resources Analyst Specialist for the Agency. Garcia's investigation took place in April and May 2002. Garcia first interviewed R.C. and

Child's supervisor, Romero. Romero told Garcia that she reassigned Appellant to the 4th floor because she felt that Appellant and Childs were too close for a supervisor/subordinate relationship. Garcia later interviewed Appellant, Childs, Supervisors Reyes and Brewer and R.C.'s co-worker Lee Nuanez.

36. Appellant told Garcia that he asked R.C. out 3 times but was not attracted to her. Appellant told Garcia, that he later rejected R.C. and that's why she filed a sexual harassment claim against him.

37. Based on her investigation, Garcia concluded that Appellant asked R.C. out 3 times, R.C. asked Childs to intervene and Childs spoke to Appellant about the matter as a friend rather than supervisor to subordinate. Further Garcia concluded that R.C. shared her concerns with co-worker Lee Nunez, that Appellant and Childs had "a close personal relationship" and that the Agency should proceed with discipline in the matter. Garcia wrote a report of her investigation and conclusions and forwarded the report to Williamson in September 2002.

38. The Agency has a "zero tolerance" policy regarding sexual harassment. Every employee is required to take sexual harassment prevention training. Appellant did not receive sexual harassment prevention training prior to imposition of discipline in this matter. Since his suspension Appellant has received Sexual Harassment Prevention Training. Childs received sexual harassment prevention training, on May 27, 1998, before she was assigned as Custodial Supervisor at the Human Services building.

39. Brewer kept a detailed log of the work activities of the custodians he supervised. He kept a log on Appellant from February 22, 2002 (prior to the time Appellant was assigned to Brewer's supervision) through October 24, 2002.

40. The Agency has a policy against cell phone use by custodians during working hours. On April 4, 2002, Appellant received a Verbal Reprimand for being on his cell phone during working hours on March 15, 2002 and on April 4, 2002. Appellant believed that R.C. "turned him in" for being on his cell phone.

41. On April 29, 2002, Brewer could not find Appellant in his assigned area after Appellant punched-in from his lunch break. Brewer noted the absence in his log. Later Appellant told Brewer that he was with Childs and produced a note from Childs. Childs said they were having a late lunch together in a 4th floor conference room. Appellant did not request or get Brewer's permission to take a late lunch or an extended lunch break. On May 1, 2002, Appellant received a Verbal Reprimand for "Tardiness" on April 29, 2002 and refused to sign the documentation of the Verbal Reprimand.

42. On June 25, 2002 and on July 5, 2002, Appellant failed to wear his Agency uniform. On July 5, 2002, when Brewer questioned Appellant regarding

his uniform, Appellant became angry and started yelling at Brewer. Then Appellant abruptly turned and walked away from Brewer.

43. The Agency has a strict policy regarding "clocking-in" on time. That is, an employee may clock-in up to 7 minutes early but no earlier because, if an employee clocks-in earlier than 7 minutes before start-time, the Agency owes the employee for overtime. On June 27, 2002 Appellant clocked in earlier than 7 minutes before start-time. When Brewer questioned Appellant about it, he said it was because he wanted to start work early. Then Appellant abruptly turned and walked away from Brewer.

44. Appellant was regularly late for work. If an employee clocks-in more than 7 minutes late, the employee can be docked for ½ an hour's pay. On July 31, 2002, Appellant reported to work ½ hour late. Because he did not call ahead to notify his supervisor, Appellant was docked for unauthorized leave.

45. Romero was out on medical leave for 60 days, June to August 2002. During that time Childs was the swing-shift Supervisor for the entire Custodial Staff of the Human Services building. During that time no complaints were filed against Childs.

46. At his pre-disciplinary meeting, Appellant denied "bothering" R.C. Appellant stated that he thought the conversations with R.C. were "consensual".

47. At her pre-disciplinary meeting, Childs presented a hand written statement indicating that, in November 2002, R.C. asked Childs what she would say about R.C. dating Appellant, that Childs told R.C. "You are asking the wrong person, you need to ask his wife" and that R.C. got "mad" at Appellant because he said something in front of a co-worker. Childs believes that "this is when it all started". Childs felt that R.C. "had issues" unrelated to her allegations of sexual harassment. Childs stated that R.C. convinced her (Childs) not to report the allegations of sexual harassment.

48. At hearing, Assistant Director Williamson credibly testified that 60 to 75% of the reason for considering suspension of Appellant, rather than a verbal or written reprimand, was the nature and severity of the harassment perpetrated by Appellant. More specifically, Williamson considered that Appellant continued to ask R.C. out after she clearly told him "No"; then Appellant harassed R.C. in retaliation for reporting the sexual harassment. Although dismissal was within the range of discipline provided by Career Service Rules, Williamson did not recommend dismissal because Appellant had not received Sexual Harassment Prevention Training and because his supervisor, Childs, did not handle the complaints appropriately. Therefore, Assistant Director Williamson recommended that Appellant be suspended for 2 or 3 weeks.

48. After Garcia's investigation and a pre-disciplinary meeting, the Director concluded that the alleged acts or omissions, set forth in a pre-disciplinary letter to Appellant, did occur. In determining what, if any, discipline should be imposed upon Appellant, the Director considered Appellant's past disciplinary history including a March 28, 2002 verbal reprimand for tardiness, an April 4, 2002 verbal reprimand for violation of a Supervisor's orders, and a May 1, 2002 verbal reprimand for tardiness. The Director considered the nature and severity of the harassment perpetrated by Appellant. The Director also considered that Appellant had not received Sexual Harassment Prevention Training and that Appellant's supervisor, Childs, did not send Appellant to Sexual Harassment Prevention Training or provide consequences to Appellant for his actions. Although dismissal was within the range of discipline provided by Career Service Rules, the Director concluded that a one week suspension was reasonable and sufficient to correct Appellant's inappropriate behavior and performance.

49. After Garcia's investigation and a pre-disciplinary meeting in this matter, the Director concluded that the alleged acts or omissions, set forth in a pre-disciplinary letter to Childs, did occur. In determining what, if any, discipline should be imposed upon Appellant's supervisor, the Director considered Childs' past disciplinary history including a prior incident of threatening/intimidation and one in which an employee was severely injured by cleaning chemicals that were improperly mixed. The Director considered that, as a Custodial Supervisor, Childs had an obligation to keep employees under her supervision safe from harassment by one another, to insure that required Sexual Harassment Prevention classes were taken and that personal relationships did not interfere with the performance of job duties or discipline. The Director concluded that Childs had been an excellent employee in many ways other than as a supervisor. Therefore, he did not consider dismissal. The Director chose instead to demote Childs for her failure to act as a supervisor should.

50. At hearing, Appellant and Childs appeared to have a close personal relationship, more than that of acquaintances. Their testimony was not always consistent each other or with prior statements made during Garcia's investigation or the pre-disciplinary meetings. Neither Appellant's nor Childs' testimony at hearing was credible.

DISCUSSION

1. **Authority of the Hearing Officer:** The City Charter and Career Service Rules require the Hearing Officer to determine the facts, by *de novo* hearing, in "[a]ny action of an appointing authority resulting in dismissal, suspension, involuntary demotion...which results in alleged violation of the Career Service Charter Provisions or Ordinance relating to the Career Service, or the Personnel Rules." (City Charter C5.25 (4) and CSR 19-10 b.) That is, the Hearing Officer must make independent findings of fact, credibility assessments

and resolve factual disputes. As the finder-of-fact, the Hearing Officer may determine credibility of witnesses and the weight to be given their testimony. (See *Turner v. Rossmiller*, 35 Co. App. 329, 532 P.2d751 (Colo. App.1975) and *Charnes v. Lobato*, 743 P.2d 27 (Colo. 1987).) The finder-of-fact may believe all, part or none of a witness's testimony, even if uncontroverted. (In re *Marriage of Bowles*, 916 P.2d 615, 617 (Colo. App. 1995).)

2. **Sexual harassment** is defined as "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature" where "such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." (Sexual Harassment Policy, General Services Department, Definition 1.c.) In this case, R.C. reported to her supervisor that Appellant's requests to see her outside of work were unwelcome. R.C. was crying and upset when she reported Appellant's repeated requests. Appellant's actions interfered with R.C.'s work performance in that she was often upset; she began to avoid the floor where Appellant worked and tried to avoid Appellant wherever he might be. However, because she was a lead custodian and she worked in the same building, on the same shift, R.C. could not completely avoid Appellant. Appellant's comments and the noises he made in R.C.'s direction made her feel uneasy, intimidated and that her authority had been undermined by Appellant. (See Findings of Fact, paragraphs 10, 15, 24, 30, 31 and 32.) The Hearing Officer concludes that Appellant's actions created an intimidating and offensive working environment and constituted sexual harassment.

3. **Harassment:** Career Service Rules define harassment as "[t]hreatening, fighting with, intimidating, or abusing employees or officers of the City and County of Denver for any reason, including but not limited to: intimidation or retaliation...". CSR 16-50 A (8). "The City maintains a strict policy prohibiting discrimination, sexual harassment and harassment because of race, national origin, sexual orientation, physical or mental disability, age, gender...or any other basis protected by federal, state or local law regulation." CSR 15-101. In this case, not only were Appellant's actions threatening and intimidating to R.C. but, Appellant's comments and the noises he made in R.C.'s presence were clearly in retaliation for R.C.'s reporting of his sexual advances. (See above paragraph 1 and Findings of Fact, paragraphs 22, 23, 24.) Therefore, the Hearing Officer concludes that Appellant's comments about R.C. and the noises he made in her presence, *after* she reported his unwanted advances, were retaliatory in nature and constitute harassment.

Childs' responses were also threatening and intimidating. R.C. went to Childs twice, first about Appellant's unwelcome sexual advances and, second, about the comments and noises Appellant made whenever R.C. was present.

Childs did nothing more than speak with Appellant informally, as a friend. (See Findings of Fact, paragraphs 15, 18, 19 and 26.) Childs *allowed* Appellant to harass R.C. by failing to provide consequences for his actions. The Hearing Officer concludes that Childs' failure to act was threatening, intimidating and abusive of R.C. Additionally, Childs *encouraged* Appellant's retaliatory activity by allowing him to make harassing comments and/or noises in her presence. Therefore, the Hearing Officer concludes that Childs' actions and omissions constitute harassment and contributed to an intimidating and offensive work environment.

4. Degree of Discipline: "The purpose of discipline is to correct inappropriate behavior or performance. The type and severity of discipline depends on the gravity of the infraction. The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record." (CSR 16-10)

a. Appellant was suspended for one week for 1) refusing to comply with the orders of an authorized supervisor, 2) threatening, intimidating or abusing another employee, 3) harassment of an employee, 4) unauthorized absence from work, (See CSR 16-50 (7) (8) (10) and (13).), 5) sexual harassment and 6) retaliation against an employee for reporting unlawful harassment. (See CSR 15-101, 15-105 and 15-106.) The evidence presented at hearing supports the conclusion that Appellant refused to comply with the orders of an authorized supervisor, on June 25, 2002 and July 5, 2002, when he was not wearing the required uniform for work, that he abused and harassed another employee, R.C., and that when he clocked-in late or returned late from his lunch break, without his supervisor's permission, such absences were unauthorized absences from work.

Based on the Agency's investigation and the pre-disciplinary meeting, the Director concluded that Appellant committed the alleged violations. Although dismissal was within the range of discipline provided by Career Service Rules for harassment, unauthorized absences or refusal to comply with a supervisor's order, the Director did not dismiss Appellant because Appellant had not received Sexual Harassment Prevention Training and because his supervisor, Childs, did not send Appellant to Sexual Harassment Prevention Training or provide consequences to Appellant for his actions. The Director considered Appellant's disciplinary history and the nature and severity of the violations in this matter and concluded that a one week suspension was sufficient to correct Appellant's inappropriate behavior and performance. The Hearing Officer concludes that the Director acted reasonably and within the range of discipline provided by Career Service Rules.

b. Childs was demoted for 1) Gross negligence or willful neglect of duty, 2) threatening, fighting with, intimidating, or abusing employees and 3)

retaliation, (See CSR 16-50 A (1) and (8), CSR 15-106.), 4) failure to meet established standards of performance, 5) failure to maintain satisfactory working relationships and 6) carelessness in performance of duties and responsibilities. (See CSR 16-51 A (2), (4) and 6.) Discipline was imposed for gross negligence based on Childs' failure to report or initiate an investigation of sexual harassment and other harassing activity and her failure to initiate behavior modification or disciplinary proceedings at the immediate supervisor level. Discipline was imposed for threatening, intimidating or abusing employees because, as a supervisor, Childs had an obligation to watch for and take action to prevent any and all abuse of the employees under her supervision. Instead, she failed to act.

The evidence presented at hearing supports a finding that Childs failed to act swiftly as required by Agency policy and that she failed to act correctly in that she spoke to Appellant as a friend rather than as a supervisor. Childs was careless in that she allowed her personal relationship with Appellant to get in the way of the performance of her duties and responsibilities. Together Appellant and Childs created an intimidating, hostile and offensive work environment.

Based upon Garcia's investigation and the pre-disciplinary meeting, the Director concluded that Childs committed the acts and omissions alleged. In determining level of discipline, he considered Childs' past disciplinary history. The Director considered that, as a Custodial Supervisor, Childs had an obligation to keep employees under her supervision safe from harassment by one another, to insure that required Sexual Harassment Prevention classes were taken and that personal relationships did not interfere with the performance of job duties or discipline. The Director concluded that Childs had been an excellent employee in many ways other than as a supervisor. Therefore, he did not consider dismissal. The Director chose instead to demote Childs for her failure to act as a supervisor should. The Hearing Officer concludes that the Director acted reasonably and within the range of discipline provided by Career Service Rules.


CONCLUSIONS OF LAW

1. The Hearing Officer has authority to make and issue written conclusions, Findings and Order in this matter. CSR 19-27
2. The Agency has met its burden to show the acts or omissions upon which discipline was imposed occurred, there was just cause for the discipline imposed on each Appellant and that the level of discipline imposed is reasonably related to the severity of the offense for each Appellant.

ORDER

Therefore, for the reasons stated above, the undersigned Hearing Officer **AFFIRMS** the Agency's decision to impose a 5 day suspension on Appellant and demote Appellant's supervisor to Custodian.

Dated this 24th day of April 2003



Michael S. Gallegos
Hearing Officer for the
Career Service Board.

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing **FINDINGS AND ORDER** by depositing same in the United States Mail, postage prepaid, on the 24th day of April 2003, addressed to:

James Gordon
5536 Tulsa Way
Denver, CO 80239

Julie Childs
8000 E .12th Ave., No. 10-27
Denver, CO 80220

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

I further certify that I have forwarded a true and correct copy of the foregoing **FINDINGS AND ORDER** by depositing same in interoffice mail, the 24th day of April 2003, addressed to:

Mindi Wright
Assistance City Attorney

Dan Barbee
Public Office Buildings

