

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 69-07

DECISION

IN THE MATTER OF THE APPEAL OF:

HARRY H. HILL III, Appellant,

vs.

DEPARTMENT OF PARKS AND RECREATION,
and the City and County of Denver, a municipal corporation, Agency.

The hearing in this appeal was held on Dec. 14, 2007 before Hearing Officer Valerie McNaughton. Appellant Harry H. Hill III was present and represented himself. The Agency was represented by Assistant City Attorney Robert A. 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

Appellant Harry H. Hill III appeals his three-day suspension dated Sept. 26, 2007 by the Denver Department of Parks and Recreation. Appellant filed a timely appeal of the action on Oct. 10, 2007 pursuant to the jurisdiction provided in the Career Service Rules (CSR) § 19-10 A. 1. b.

The parties stipulated to the admissibility of Agency Exhibits 1, 2, 4-6, and Appellant's Exhibits A and B. Exhibits 10, 11 and 12 were admitted without objection. Exhibit 3 was withdrawn, and Exhibits C and E were ruled inadmissible.

II. ISSUES

The following issues are raised in this appeal:

1. Did the Agency prove by a preponderance of the evidence that Appellant's conduct justified discipline under the Career Service Rules, and
2. Was a suspension of three days within the range of discipline that could be imposed by a reasonable administrator?

III. FINDINGS OF FACT

Appellant Harry H. Hill III has been a Facilities Superintendent for the Department of Parks and Recreation since Oct. 7, 2002, with primary responsibility for maintenance and construction in the parks, including plumbing and irrigation systems, as well as non-building structures such as playgrounds, trails and benches.

In the spring of 2007, 60 to 70 devices used to prevent the backflow of water from park sprinklers into the city's potable water system were discovered to have been stolen from a number of city parks. Since the parks sprinkler systems could not be turned on without the backflow devices, the grass in many of the city's parks was beginning to turn brown. The Agency received pressure from Parks Director Doug Woods to replace the backflows and turn on the sprinklers. At the same time, the Denver Water Department sent the Agency a letter in April 2007 that the backflows should be tested in 2007.

On June 15, 2007, Appellant was assigned by his supervisor Manager I Gordon Carruth to administer a contract with Lakewood Plumbing to replace all the stolen backflow devices as soon as possible. The city has a contract with Lakewood Plumbing for routine and emergency plumbing services on an as-needed basis for \$57.50 per hour plus a materials markup of 18%. [Exh. 11.]

Appellant called Lynette at Lakewood Plumbing to discuss the work. Appellant identified six devices that needed replacing. Lynette called back about a week later and told Appellant the cost would be \$19,000, since the concrete pads above some of the devices needed to be replaced. Appellant assumed Lakewood's hourly rate was \$88 based on a contract he had pulled in the Agency's finance department. Lynette then offered a per-unit price of \$2,600 for 1" devices, \$2,900 for devices of 1 1/2", and \$3,200 for 2" devices, as an alternative to individual pricing, which would vary based upon the damage done to the pipes and pads. Appellant agreed to unit pricing. They also agreed that the company would install a new locked enclosure designed to prevent future thefts, which would be included in the unit price. [Testimony of Appellant.]

On July 5, 2007, Mr. Carruth implemented a communications plan with Appellant intended to correct Appellant's past failure to convey matters related to his duties to his supervisor. The communications plan was the product of several weeks of discussion among Appellant, Mr. Carruth, Deputy Manager Daniel Betts, and Senior Human Resources Professional David Jerrow. Under the plan, Appellant was required to "identify pending issues, inform the Deputy Manager of the challenge and offer recommendations to optimize our response in both the short and long term." Appellant's regular meetings with Mr. Carruth were increased from bi-monthly to weekly, and Appellant was to submit a written report twice a month on the status of all projects. [Exh. 12.] Appellant was aware of the

details to be included in the communication plan by late May. [Testimony of Mr. Carruth.]

As a result of the communications plan, Mr. Carruth decided to allow Appellant to initiate discussions about the Lakewood contract. Appellant did not talk to Mr. Carruth about the contract during its first month. On July 15, Mr. Carruth asked Appellant where he was on costs for the project. Appellant replied that they were using the hourly rate. Mr. Carruth assumed from that comment that the contract was to replace the stolen backflows at Lakewood Plumbing's agreed-to hourly rate of \$57.50. [Exh. 11.]

Later in July, Appellant informed Mr. Carruth that one of the backflow devices might cost \$2,900. Mr. Carruth responded that this amount seemed high. Mr. Carruth testified that his staff could replace two backflow devices in a day, and that he expected the maximum contract cost of replacement for any one device to be \$1,000, even if the pipe was broken off during the theft and the concrete pad needed to be removed and replaced.

The next day, Mr. Carruth told Appellant to call Lakewood Plumbing see if the cost could be reduced if they were doing any more replacements at the amount of \$2,900. Appellant did so, and was told by Lynette that Lakewood could not reduce the contract price. Appellant does not recall whether he informed Mr. Carruth of the company's response on this issue.

About a week after the above discussion, Mr. Carruth received seven invoices for completed work from Lakewood for a total of \$19,000, showing a per-unit price of \$2,600, \$2,900 and \$3,200 for 1", 1 1/2" and 2" devices, respectively. Mr. Carruth became alarmed, since that was more money than was budgeted for that job. Mr. Carruth called Lynette at Lakewood Plumbing, who told him that Appellant agreed to a composite price based on the differing conditions of the backflows. Lynette told him the price included concrete pads, covers and chains to deter theft. Mr. Carruth asked Lynette for prevailing wage reports to justify the amount of the invoices. After reviewing them, Mr. Carruth concluded that the reports did not show enough hours to cover the invoice amounts over and above the cost of materials.

Mr. Carruth testified that Appellant did not inform him of the additions he approved to the work. He stated that if he had been told of this, he would not have approved it without first considering whether that work could have been done by city crews on a more cost-effective basis. Seven more invoices followed, quoting the same per-unit prices with a single exception: \$1,900 for a unit replacing a new device installed by Lakewood that was immediately stolen. The total contract price for the 14 units covered by the invoices was \$38,040. In Mr. Carruth's experience, the price for the installation of 14 devices should have been no more than \$14,000. All 14 invoices were for completed work that was

authorized by Appellant as Facilities Superintendent, and therefore the city paid the full amount of the invoices. [Testimony of Mr. Carruth; Exh. 1-3.]

Appellant did not inform Mr. Carruth that he had agreed to a per-unit cost, or the expected amount of the total project. Appellant did not go on-site to confirm the condition of any of the backflow units, how many of each size were to be replaced, or how many units required concrete replacement. Appellant did not do an analysis as to whether the per-unit price would result in a cost-savings to the city. Appellant believed that the per-unit price was extrapolated from the \$88 per-hour rate for the man-hours needed to do the work, but he did not know how many hours Lakewood estimated each installation would take. Appellant based his decision to agree to a per-device contract rate on his understanding that the Agency had directed them throughout 2007 to spend whatever was needed to get the work done, and that management would request supplemental funds at year end to cover anything above the budgeted amount. [Exh. A-1.] Finally, Appellant testified he proceeded with the Lakewood contract because Mr. Carruth never instructed him to stop after Appellant told him of the possible unit cost. [Testimony of Appellant.]

Mr. Carruth testified that he did instruct his staff to “spend whatever it takes” for daily work orders at a supervisors’ meeting, but that the directive covered supplies in the materials and services budget line item such as light bulbs, not major installations like the Lakewood contract. Mr. Carruth also stated that he believed Appellant understood the level of detail he was to communicate to him about each contract because they discussed it in the spring during development of the communication plan. In addition, Appellant demonstrated good communication skills during their work together on the Observatory Park project several months before. During that project, they discussed the high cost of digging out sewer lines, and Appellant developed a creative solution that allowed the lines to be pushed under the street rather than excavating the street, saving the city \$17,000 on the project.

After the pre-disciplinary meeting on Sept. 5, 2007, Mr. Carruth concluded that Appellant had been careless in performing his duties, and that he failed to meet his position’s standards of performance. He imposed a three-day suspension based on Appellant’s continued refusal to accept responsibility for his actions, the substantial cost to the city, Appellant’s disregard of the new communications plan, and recent and similar past discipline. [Exh. 1.]

III. ANALYSIS

1. Discipline under the Career Service Rules

In an appeal of a disciplinary action, the Agency has the burden to prove the action was taken in conformity with Rule 16 of the Career Service Rules, and

that the degree of discipline was reasonably related to the seriousness of the offense, taking into consideration the employee's past record. CSR § 16-20.

A. CSR § 16-60 B. Carelessness in performance of duties

An employee acts carelessly when he fails to exercise ordinary care in the performance of a job duty. In re Richmond, CSA 18-07, 5 (8/7/07). The Agency asserts that Appellant failed to effectively negotiate with a plumbing contractor to obtain only needed services and manage limited funds, and failed to consult with his supervisor in order to ensure the project accomplished its goals at a reasonable cost. Appellant claims he was acting under a directive to spend what was needed, and that his supervisor failed to stop him after he knew the costs of the project.

It is undisputed that it is part of Appellant's job as a Facilities Superintendent to manage the execution and cost of service contracts in order to accomplish Agency goals. The evidence shows that Appellant accepted the contractor's offer of a per-unit price without knowledge of the scope of the work to be done, the number of hours needed to do it, the price of materials, the normal hourly rate of the contractor, or an analysis of whether a per-unit price would result in a cost savings. Appellant did not inform his supervisor of any of the actual contract terms, and in doing so failed to comply with the terms of the July communications plan. Appellant informed Mr. Carruth that the contract used the hourly rate. In fact, the oral contract used a per-unit pricing at rates that were at least \$1,600 over what Mr. Carruth believed, and Appellant did not rebut, was a reasonable replacement price for the backflows. Appellant failed to confirm the actual hourly rate of the city contractor, which was more than \$30 lower than the rate Appellant assumed was applicable. Appellant also authorized completion of the contract work before his supervisor learned of the terms to which Appellant agreed, thus binding the city to costs that were at least \$24,000 over a reasonable price. Appellant's level of job responsibility demonstrates that he should have exercised greater effort in understanding the scope of work, and in the negotiation and administration of this contract. [Exh. 10.] His failure to do so was a failure to exercise ordinary care in the performance of this important job duty, at great expense to the city.

Appellant's claim that he was required by Agency directive to get the work done regardless of cost is not supported by the evidence. Mr. Carruth explained that the directive related to minor supplies such as light bulbs. Appellant did not dispute this testimony. Further, Appellant did not establish that the work required the expenditure of \$38,000. Appellant testified only that he accepted the offer of a per-unit contract rate without further investigation, negotiation, or consultation. That demonstrates a failure to exercise reasonable care in the performance of his duties.

Appellant also states he believed he was authorized to proceed based on his supervisor's failure to instruct him to stop after Appellant informed him of the unit prices. In fact, the day after Appellant told him one unit may cost \$2,900, Mr. Carruth told Appellant to call Lakewood and renegotiate if any other devices would cost this much. Appellant failed to inform his supervisor that the contractor rebuffed his effort to renegotiate. Appellant also failed to evaluate the work to be performed or make an effort to reduce the cost of that work. Appellant approved additional work without consultation with Mr. Carruth, or determining whether that work was necessary. Under these circumstances, the Agency proved that Appellant was careless in violation of CSR § 16-60 B.

B. CSR § 16-60 K. Failure to meet standards of performance

A violation of this rule is established by proof of 1) a prior-established standard, such as one would find in a performance evaluation, classification description, or in agency or division policies and procedures, 2) clear communication of that standard to the employee, and 3) Appellant's failure to meet that standard. In re Simpleman, CSA 05-06, 7 (5/16/06); Pabst v. Industrial Claim Appeals Office, 833 P.2d 64 (Colo. App. 1992) ("failing to meet established job performance standards [requires proof that the employee] did not do the job for which he was hired and which he knew was expected of him." Id. at 64-65.

In proving this allegation, the Agency relies on the job specifications for Facilities Superintendent and on the July 2007 communications plan. The latter requires Appellant to inform his supervisor of the status of ongoing projects, including backflow testing, during weekly meetings and bimonthly written reports. [Exh. 12.] The evidence is undisputed that Appellant failed to inform his supervisor about the unit pricing agreement and the additional work he authorized over and above what was authorized by his supervisor. By the time Mr. Carruth learned of the terms agreed to by Appellant, the work had been performed and the invoices were issued and due.

Appellant testified that his first conversation with Mr. Carruth about the Lakewood contract was that the replacement backflows would cost about \$19,000, with the smaller ones costing \$2,600 and the larger ones at \$3,200. Mr. Carruth recalls that Appellant told him in early July that one such device may cost about \$2,900. In any event, both agree that Mr. Carruth responded that the cost seemed high, and asked him to renegotiate. Appellant did not inform Mr. Carruth that the renegotiations failed, and that Appellant approved the unit prices of \$2,600 to \$3,200 after his return from vacation and the work had been done. Appellant's contention that Mr. Carruth impliedly gave him authority to agree to any contract price is not credible, given the clear direction given by the communications plan. Appellant was in possession of critical information that affected the scope of work and its ultimate cost. His failure to share that information, despite his active participation in the communications plan,

establishes that Appellant failed to do the job according to known performance standards, in violation of CSR § 16-60 K.

2. Penalty

The final issue is whether the penalty of a three-day suspension was warranted under Rule 16 of the Career Service Rules, which requires discipline to be corrective, "reasonably related to the seriousness of the offense and take into consideration the employee's past record." CSR § 16-20.

Mr. Carruth testified that he imposed the suspension because Appellant never acknowledged that he had failed to comply with the communications plan, despite management's effort from May to July to impress upon Appellant the importance of regular and timely communication about ongoing projects. Mr. Carruth was convinced that Appellant knew what was expected of him, as he had demonstrated excellent communication skills during the Observatory Park project. Mr. Carruth determined that a suspension of more than a few days was necessary to convince Appellant that the Agency was serious in its insistence on good communication between Appellant and management, for the benefit of the Agency and city.

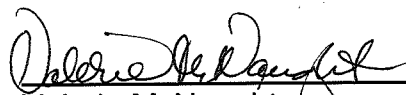
Appellant had been given verbal reprimands in February and June 2007 for failure to properly coordinate snow removal activities and failure to respond to emails. [Exh. 1-3.] The Agency imposed a written reprimand in July 2007 for failure to enroll a maintenance technician in the required backflow certification class, which delayed the backflow testing project. [Exh. 5.]

Appellant's testimony demonstrated that he is still of the opinion that his actions on the backflow project were impliedly authorized, and that he did not violate the communications plan. The evidence supports a contrary conclusion as to each of those opinions. It is apparent that a more serious penalty was necessary to emphasize that communication with his supervisors was of vital importance in the performance of Appellant's job. The three-day suspension was thus within the range of penalties that could be imposed by a reasonable administrator.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Hearing Officer orders that the Agency's three-day suspension dated Sept. 26, 2007 is affirmed.

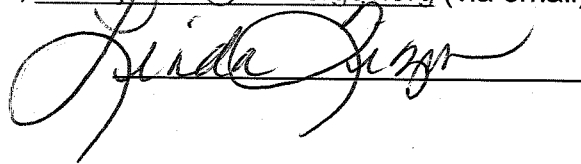
Dated this 23rd day of January, 2008.



Valerie McNaughton
Career Service Hearing Officer

I hereby certify that a copy of this decision was sent to the following on this 23rd day of January, 2008:

Harry H. Hill III, 1230 South Ivanhoe Way, Denver CO 80224 (via US mail)
And hhihi3@msn.com (via email)
Denver City Attorney's Office, via dlefilng.litigation@denvergov.org
David Jerrow, Dept of Parks & Recreation, david.jerrow@denvergov.org (via email)



NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

A party 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 certificate of mailing below. The Career Service Rules are available at [www.denvergov.org/csa/career service rules](http://www.denvergov.org/csa/career%20service%20rules).

All petitions for review must be filed by mail, hand delivery, or fax as follows:

BY MAIL:

Career Service Board
c/o Career Service Hearing Office
201 W. Colfax Avenue, Dept. 412
Denver CO 80202

BY PERSONAL DELIVERY:

Career Service Board
c/o Career Service Hearing Office
201 W. Colfax Avenue, First Floor
Denver CO 80202

BY FAX:

(720) 913-5995

Fax transmissions of more than ten pages will not be accepted.