

**HEARING OFFICER, CAREER SERVICE BOARD  
CITY AND COUNTY OF DENVER, COLORADO**  
Appeal No. 129-04

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**DECISION AND ORDER**

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IN THE MATTER OF THE APPEAL OF:

**JAMES KATROS**, Appellant,

Agency: Department of Aviation, Denver International Airport, and the City and County of Denver, a municipal corporation.

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The hearing in this appeal was held on January 6, 2005 before Hearing Officer Valerie McNaughton. Appellant was present throughout the hearing and represented himself. The Agency was represented by Assistant City Attorney Robert D. Nespor. Having considered the evidence and arguments of the parties, the Hearing Office makes the following findings of fact, conclusions of law and enters the following decision:

**FINDINGS AND ANALYSIS**

This is an appeal of the termination of Appellant James Katros, an Equipment Operator with the Department of Aviation at the Denver International Airport (DIA) for the City and County of Denver (Agency). The termination imposed on August 20, 2004, 2004 was administered for violations of Career Service Rules (CSR), Executive Order 112, and departmental regulations. The timely appeal asserts that the termination was in violation of the Career Service Authority (CSA) disciplinary rules, and requests reversal of the action, reinstatement, a transfer, damages and costs.

I. **NATURE OF DISCIPLINE**

Appellant was terminated from his position based upon the appointing authority's conclusion that he "created a hostile and threatening work environment" by the "consistency, repetitiveness and emotion" of statements indicating a desire to kill his supervisors. The Agency charged that Appellant thereby violated CSA personnel rules, Executive Order 112 and airport regulations.

The pre-disciplinary letter asserted the following conduct as the basis for the discipline: on July 8, 2004, Appellant's supervisor Jeff Bartleson had been approached by a number of employees who informed him that Appellant told three of his co-workers he felt all supervisors should be killed, and persisted in those comments despite their requests that he stop. The employees reported that they believed he was serious, and that as a result they did not want to work around him. Appellant attended the

predisciplinary meeting on August 20, 2004 without a representative and made a statement on his own behalf.

The Agency charged Appellant with violations of the following subsections of CSR § 16-50 A., Discipline and Termination:

8) Threatening, 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 against an individual who has been identified as a witness, as a party, or as a representative of any party to any hearing or investigation relating to any disciplinary procedure, or a violation of a city, state, or federal rule, regulation or law.

18) Conduct violating Executive Order 112, which states in pertinent part:

II. Violence, or the threat of violence, has no place in any of the City and County of Denver's work locations. It is the goal of the City and County of Denver to rid work sites of violent behavior or the threat of such behavior. It is the shared obligation of all employees . . . to individually and jointly act to prevent or defuse actual or implied violent behavior at work. The City and County of Denver is committed to maintain a safe work environment free from all forms of violence and harassment.

Violence, or the threat of violence, by or against any employee of the City and County of Denver is unacceptable and contrary to city policy, and will subject the perpetrator to serious disciplinary action and possible criminal charges. . .

To ensure and affirm a safe, violence-free workplace, the following will not be tolerated.

A. Intimidating, threatening or hostile behaviors . . . or other acts of this type clearly inappropriate to the workplace.

B. Jokes or comments regarding violent acts, which are reasonably perceived to be a threat of imminent harm.

C. Encouraging others to engage in the negative behaviors outlined in this policy.

Executive Order 112.

20) Other unspecified conduct.

Appellant was also charged with violations of the following subsections of CSR § 16-51 A., Causes of Progressive Discipline:

4) Failure to maintain satisfactory working relationships with co-workers, other City and County employees or the public,

5) Failure to observe departmental regulations; specifically, the Airport Maintenance Division Personnel Manual's policy on interpersonal relationships, which states:

. . . Employees will treat co-workers, management, tenants, contractors and the public with respect. Rudeness or harassment will not be tolerated. . . . At no time will threatening, offensive, vulgar, loud or abusive language be used. . . .

Airport Maintenance and Engineering Division Personnel Manual and Reference Guide, *Interpersonal Relationships*.

11) Other unspecified conduct.

On August 20, 2004, the Agency notified Appellant that he was terminated based upon its conclusion that he had "created a hostile and threatening work environment" because of the "consistency, repetitiveness and emotion" exhibited by his statements, and the concern caused by these statement in his fellow employees. It was noted in aggravation that Appellant had previous discipline, including a one-day suspension for similar misconduct in April 2004. [Exh. 2.]

## II. ISSUES

1. Whether the Agency proved that Appellant violated the cited Service Rules, Executive Order 112 and departmental rule by a preponderance of the evidence, and

2. If so, whether termination was reasonably related to the seriousness of the offenses in question in conformity with CSR § 16-10.

## III. EVIDENCE

The parties stipulated to the admissibility of all of the proffered exhibits herein, i.e., Agency's exhibits 1 – 10 and Appellant's exhibits A – D.

The Agency presented the testimony of Maxine Pacheco, an Equipment Operator at DIA who worked with Appellant starting in May or June 2004 when Appellant bid onto the swing shift. After Appellant joined her shift, Appellant told Ms. Pacheco that if he had a piece of digging equipment, he would dig a hole and "take all the white shirts and bury them, and no one would ever know." He did not appear to her to be joking when he made the statement. On another occasion, when planning a department picnic with an employee committee, he suggested that "we should fill up the dunk tank with boiling hot water so we can boil all the white shirts." The phrase "white shirts" was commonly understood to refer to the supervisors, in contrast with the blue-

shirted crew workers. Later, Appellant told her that he would have no choice but to take out the gun he carries and shoot his supervisors if they ganged up on him and his family at a downtown event. Ms. Pacheco became very concerned about Appellant after hearing this remark, since she worked at Wastewater Management when a murder occurred there. She sat with Appellant on two occasions and told him that if he ever did anything like that, he would ruin his life and that of his family. Appellant told her he could say it was self-defense.

Ms. Pacheco stated she heard Appellant make negative comments about the supervisors on a daily basis when they worked together. After Appellant refused to stop making those comments despite Ms. Pacheco's request that he do so, she decided to inform her supervisor. In early June, Ms. Pacheco told Jeffrey Bartleson that Appellant was making statements about wanting to kill the supervisors, and asked Mr. Bartleson to talk to Appellant.

Mr. Bartleson testified that he decided to investigate the allegation to determine whether action was warranted. In the following weeks, Mr. Bartleson spoke with several other crew members. Charyn Billick and Gary Weisdorfer told Mr. Bartleson that they had heard Appellant make similar comments. Appellant was placed on investigatory leave on July 8, 2004, which was extended for fifteen days by the Personnel Director in accordance with CSR § 16-55. [Exhs. 4 – 6.]

Equipment Operator Specialist Charyn Billick testified that before Appellant bid to her shift, she had observed Appellant slam the ice lid down and exchange angry words with his supervisors in the lunchroom. Within Appellant's first week on the swing shift, Ms. Billick heard him remark that management was out to get him. Shortly thereafter, as they were digging out sprinkler lines during a ground transportation assignment, Appellant told her, "Let's dig [the holes] deep enough so we can bury the management and nobody would find them." Later, Appellant remarked to her that the only way he would offer one of his burritos to the supervisors "is if it was laced with poison." She stated his demeanor during both comments was serious, and she reacted with surprise. On a daily basis, Ms. Billick heard Appellant make remarks critical of the supervisors, sometimes calling them stupid and refusing to obey their orders. Ms. Billick told Mr. Bartleson about Appellant's remarks when she became concerned about working around their equipment in Appellant's presence. In addition, Ms. Billick noticed that Appellant's attitude was starting to adversely affect the crew.

Equipment Operator Gary Weisdorfer testified that he too witnessed Appellant "stomping mad" in the lunchroom. The first time they rode together, Appellant made comments which indicated he was disgruntled with the "white shirts." For awhile, Mr. Weisdorfer ignored his remarks, reasoning that "everyone has a bad time" sometimes, but the comments continued. Appellant once told him that the crew would be better off if the white shirts were dead, and that he knew a place they could be buried and no one could find them. At that point, Mr. Weisdorfer told him he didn't want to hear that kind of talk anymore. Appellant complied for the rest of the shift, but the next day, he made similar comments. Later requests to stop the negativity caused only short delays before

Appellant resumed making hostile remarks about the supervisors. Mr. Weisdorfer observed that Appellant's comments were changing the crew's usual happy attitude, and causing open talk about what Appellant was thinking by his remarks. Mr. Weisdorfer said he and others on the crew worried that Appellant's ill feelings towards the supervisors appeared to be eating at him.

Director of Maintenance Dan G. Brown testified that on July 8, 2004, Director of Aviation Field Maintenance Ron Morin and his assistant director Mr. Bartleson reported to him that a number of employees had informed Mr. Bartleson that Appellant was talking about killing supervisors. Mr. Brown placed Appellant on paid investigatory leave and deactivated his employee access badge based upon the nature of the threats and the safety-sensitive nature of the airport. On July 14<sup>th</sup>, Mr. Brown questioned employees Charyn Billick and Gary Weisdorfer, who reported that they had heard Appellant say that supervisors should be shot, among other negative comments. [Exh. 8.] On August 13, 2004, Mr. Brown mailed a letter notifying Appellant that disciplinary action was being contemplated against him based on these allegations. [Exh. 3.]

On August 20<sup>th</sup>, a predisciplinary meeting was held in order to provide Appellant with an opportunity to correct any errors and tell his side of the story, in accordance with CSR § 16-30 B. Patrick Kelly and Mr. Morin conducted the meeting on behalf of Mr. Brown, who was unable to attend because of a post-operative medical procedure. After returning from his medical appointment that day, Mr. Brown discussed Appellant's presentation with Mr. Kelly and Mr. Morin, and listened to the tape recording of the meeting. Therein, Appellant denied threatening to kill his supervisors, asked questions about the identity of those who reported the remarks, and offered to take a lie detector test to prove his denial. [Exh. 10.] Mr. Brown determined that Appellant had failed to present any information that was more credible than that given by the three employees, and found that the asserted conduct had occurred. He found the conduct was aggravated by the commission of similar conduct in April, which resulted in a one-day suspension, and a written reprimand on April 16, 2002 for failure to report a traffic violation as required by his CDL license. [Exhs. 2, 7.] Mr. Brown also considered the severe and pervasive nature of the threats, and the fear they generated in Appellant's co-workers. Ultimately, Mr. Brown decided that the conduct violated the rules cited in the predisciplinary letter, and that termination was the appropriate penalty for the conduct. [Exh. 2.]

Appellant offered the testimony of four co-workers, who stated that they did not hear Appellant make any threats. John Russomanno testified Appellant had said he wished someone would be hit by a cement truck, but, he added, "[w]e've all said that." He also heard Appellant say "[w]e should dig these holes a little deeper, because there's a couple of people we could put in there." Mr. Russomanno did not interpret either of these remarks as threats, but rather shop gossip in a stressful environment. He stated that he has seen things he believed were ten times worse, such as chairs being thrown across the room and weapons being brandished, without discipline being imposed. Mr. Russomanno did not hear Appellant suggest that supervisors should be killed. He testified that he would have considered that inappropriate workplace conduct.

Equipment Operator Donald Williams worked with Appellant more than half the time in sweeping out the parking structure. Mr. Williams heard Appellant call supervisors “assholes”, but he never heard him threaten anyone. He denied telling Dan Brown that “supervisors gave [Appellant] the shaft”, as indicated in Mr. Brown’s notes. [Exh. 8, p. 2.]

Bob Becker testified that he worked the sweeping machine behind Appellant and the sweeping crew. He remembered that one day Ms. Pacheco and the rest of the crew started on the sixth floor despite Appellant’s direction as lead worker to start on the fourth floor. Mr. Becker viewed this as a lack of communication that “happens all the time, even now.” He heard Appellant say “[w]e should dig a big hole and bury all our supervisors,” but he thought it was meant to be humorous. “If he meant it, that’s a problem,” he testified.

Clarence Quintana is a Heavy Equipment Operator who worked with Appellant in Ground Transportation. He testified he never heard Appellant threaten anyone or act in a violent manner. He did hear him say that “we could dig a big hole and bury our supervisors” after another worker said that if they dug the hole any deeper they would be in China. When asked on cross-examination, Mr. Quintana stated that he would have considered the other comments to which Ms. Billick and Ms. Pacheco testified inappropriate, and would have asked him to stop if he had heard them. If Appellant didn’t stop thereafter, Mr. Quintana stated he would have felt he had to report those comments to the supervisor.

Appellant testified that he never made the statements alleged by the Agency. He admitted that, when the work crew was “getting goofy” while digging a sprinkler ditch, he added, “[t]hat hole is big enough to put supervisors in it.” He stated Ms. Pacheco may have lied in her testimony because she resented him for adversely affecting her shift seniority when he bid onto the swing shift, and she showed this resentment by not following his directions when he was lead worker. He believed Ms. Billick disliked him because he used a new Dodge truck she wanted to use, and because he refused her order to wear a safety vest. Appellant thought Mr. Weisdorfer, described by Mr. Bartleson as a “country boy”, could have resented Appellant because of his long hair.

#### IV. ANALYSIS

The Agency charged that Appellant made numerous statements that resulted in a hostile and threatening work environment. Appellant argues that the statements were not made, and even if proven, were not true threats justifying his termination.

In an appeal to the Hearing Office, the Agency bears the burden of proof to demonstrate by a preponderance of the evidence that there is cause to discipline and that the discipline imposed is reasonably related to the seriousness of the offenses. CSR § 16-10; In re: Castaneda, CSA #155-02 (7/1/03). An appellant is entitled to a

hearing *de novo* on the disputed factual issues. Turner v. Rossmiller, 532 P.2d 751 (Colo.App. 1975); City Charter C5.25(4).

A. Threatening or Intimidating Employees

The personnel rules of the Career Service Authority prohibit “threatening, fighting with, intimidating or abusing employees . . . for any reason, including . . . intimidation or retaliation against an individual who has been identified as a witness [or] party . . . to any . . . investigation relating to any disciplinary procedure . . .” CSR § 16-50 A.

The City and County of Denver’s policy regarding violence in the workplace is found in Executive Order No. 112. That policy prohibits threats of violence, “intimidating, threatening or hostile behaviors [and] jokes or comments regarding violent acts, which are reasonably perceived to be a threat of imminent harm.” The stated purpose of the policy is “to rid work sites of violent behavior or the threat of such behavior”, and “to maintain a safe work environment free from all forms of violence and harassment.” The Airport Maintenance and Engineering Division’s personnel manual establishes a stricter rule: “[a]t no time will threatening . . . or abusive language be used.” Appellant had notice of the personnel and work rules prohibiting violence and jokes or comments about violent acts by virtue of his employment within the department and the city.

Appellant claims that he did not make the statements alleged, with the exception of the remark suggesting they dig the hole deeper and put the supervisors in it. He asserts that the employees who testified to those statements are not believable because they did not agree about what was said, and each had a motive to lie based on either previous negative experiences with him, or his effect on their crew seniority.

Credible evidence indicates Appellant made the comments alleged. The witnesses to the comments sincerely expressed their reluctance to report them until they had significantly affected crew morale. Executive Order 112 requires employees to share the obligation to act individually and jointly to prevent or defuse violent behavior at work, which includes jokes or comments regarding violent acts. The witnesses’ actions in repeatedly requesting that Appellant desist from such remarks, and reporting them to Mr. Bartleson when he refused to do so, is consistent with their obligation under Executive Order 112. Their combined testimony presents a pattern of behavior based on Appellant’s resentment of his supervisors stemming from his recent suspension. That pattern renders their testimony more believable than Appellant’s denial that he made most of the remarks.

Further, the evidence does not indicate a basis for a finding that any of the witnesses harbored a motive to lie about the behavior. Mr. Weisdorfer considered the possible danger to himself before determining that he had an obligation to others to report Appellant’s remarks to his supervisors. Appellant did not present any evidence that Mr. Weisdorfer disliked Appellant for his long hair or for any other reason. Ms. Pacheco convincingly denied that she resented Appellant for affecting her seniority by

his bid on the swing shift, and her testimony showed a friendship with Appellant that included the sharing of confidences and advice. Ms. Billick admitted that she did not feel Appellant showed respect for her when they worked together, but she did not report Appellant's behavior for several weeks after they began.

A threat made against a supervisor is a serious matter which affects the ability of the agency to maintain a safe workplace for its employees. See Vernon v. USPS, 87 M.S.P.R. 392, 400 (2000). A statement constitutes a threat if a reasonable person would give that meaning to the words used. Metz v. Dept. of Treasury, 780 F.2d 1001 (Fed. Cir. 1986.) A trier of fact must give heavy weight to objective factors in determining if a reasonable person would consider the words threatening, including the listener's reaction and apprehension of harm, the speaker's intent, any conditional nature of the statement, and the circumstances surrounding an alleged threat. Id. at 1002 – 1003.

The first Metz factor is whether a reasonable person would consider the words threatening. Before Appellant joined the swing shift, he had been suspended for one day because of an angry confrontation with five supervisors in the lunchroom when he swore at them and accused them of planning against him. [Exh. 7.] Two workers from the swing shift, Ms. Billick and Mr. Weisdorfer, witnessed the confrontation. They described Appellant as “flying off the handle,” and acting “stomping mad.”

After he returned to work and joined the swing shift, Appellant stated to a work crew digging a hole that they should dig it deeper and bury the supervisors in it. The remark was heard by five of the seven crew members who testified at the appeal. Two of them, Ms. Billick and Ms. Pacheco, observed that he appeared serious when he made the remark. Mr. Becker thought it was meant to be humorous, and Mr. Quintana did not view it as a threat. Mr. Russomanno considered it “shop gossip” in a workplace so stressful he likened it to “a war zone.” The statement was thus perceived to express negative feelings toward the supervisors by three of those who heard it: Mr. Russomanno, Ms. Billick and Ms. Pacheco. Messrs. Russomanno and Becker admitted they had made similar remarks themselves, but both testified that they believed it would be inappropriate conduct to state that supervisors should be killed.

Appellant expressed a desire to see the supervisors suffer harm on other occasions. He told Ms. Billick that he would offer only burritos laced with poison to the supervisors. During a discussion of a planned employee picnic, he suggested to Ms. Pacheco that they should put boiling water in the dunk tank for the supervisors. He told Mr. Weisdorfer that they would be better off if the white shirts were all dead. Ms. Billick and Ms. Pacheco testified that he made other negative comments about the supervisors every day they saw him. All of the co-workers who testified had heard Appellant make some remark which expressed ill feeling toward the supervisors.

Mr. Weisdorfer and Ms. Billick reacted to Appellant's statements with concern, and asked him to stop making such comments. Both testified that Appellant complied for a short period, which was sometimes a few hours, and sometimes an entire shift.

Appellant then resumed making the same type of remarks. Mr. Weisdorfer observed that Appellant did not appear to be able to let go of his anger. This became a cause of general concern and discussion among the crew, who expressed worry about what he meant by his remarks, testified Mr. Weisdorfer. Ms. Billick became afraid to ride in a truck alone with Appellant, and Mr. Weisdorfer grew uncomfortable in his presence.

The supervisors who learned of Appellant's statements took immediate action to prevent potential harm. Mr. Brown placed Appellant on investigative leave and requested a police presence when Appellant was scheduled to meet with him. The supervisors' reactions are additional objective evidence of the nature of the remarks, since they are based on their knowledge of Appellant and his April confrontation with the supervisors.

I conclude based on the foregoing evidence that those who heard Appellant's continuing statements of hostility toward his supervisors reasonably perceived them to be threats of imminent harm.

Appellant argues that none of the statements indicate a present intent to harm the supervisors. However, the issue is not whether Appellant was likely to carry out a threat, but whether he intended his statements as a threat. Greenough v. Dept. of Army, 73 M.S.P.R. 648 (1997).

Whether Appellant's statements were intended as threats under the second Metz test must be judged by the statements themselves and their context. At the time of the first reported statement, Appellant had just joined the swing shift crew upon his return from a suspension for an angry exchange with several supervisors. All of the statements convey a desire to inflict harm on his supervisors or to see harm occur to them. Most of the negative comments were made in private conversations with one employee in a serious tone. Appellant chose unlikely scenarios: a public boiling in a dunk tank in the middle of an employee picnic, or a chance encounter with supervisors at a downtown event which turns into an attack on his family. The statements communicated to the listeners Appellant's continued animosity toward his supervisors. I conclude that Appellant intended the natural consequence of his recurring comments, which is that his co-workers and ultimately the supervisors would become increasingly apprehensive of his intentions.

The third Metz factor is whether the statements were conditional in nature. Three of the remarks were expressed as a suggestion or desire that harm befall the supervisors: "we should dig a big hole and bury the supervisors", "we could put them in boiling water", "we'd be better off if the white shirts were dead; I even know a place we can bury them and no one would ever know." Two were conditional: his statement that "the only way I'd give the supervisors a burrito is if they were laced with poison", and that he would shoot the supervisors if they attacked him downtown. I find that the first three remarks were intended to threaten the supervisors, and that the remaining remarks were simply intended to express his continued ill will towards them.

The final standard under Metz requires the fact-finder to consider the attendant circumstances. Here, they include Appellant's public display of temper two months before the statements at issue, and his suspension for that behavior. One crew member, John Russomanno, testified that the atmosphere in the airport workplace was very stressful, "like a war zone" where comments similar to Appellant's were the norm. Ms. Pacheco was motivated to report Appellant's hostile comments by his statement that he carried a gun, her memory of a murder when she was working at Wastewater Management, and her resulting concern that "if something happened, it would have been my fault." Right after returning from his suspension, Appellant joined a new crew and shift whose prior knowledge of him seemed only to be the angry incident in the lunchroom. His willingness to make hostile statements about the supervisors to several of his new colleagues, despite his usual tendency to keep to himself, tends to show the intensity of his need to make his feelings known. That is consistent with the disturbed reaction of those in whom he confided. Within this atmosphere, the circumstances indicate that the words Appellant used constituted a threat to his supervisors.

At the hearing, Appellant displayed none of the anger related by the witnesses within their testimony, despite the stress inherent in acting as his own representative. The evidence indicates that Appellant was deeply upset by what he believed was an unjust suspension, and regularly expressed to his co-workers the desire to see harm befall his supervisors, displaying a preoccupation that they considered unhealthy and threatening. Those continuing negative comments and threats created a hostile and threatening work environment.

I find that Appellant's conduct threatened and intimidated his supervisors for their part in the disciplinary procedure leading to his previous suspension, in violation of CSR § 16-50 A. 8). By virtue of these same actions, Appellant violated the City's Executive Order No. 112 and the Maintenance Division's personnel rule prohibiting such threats.

B. Failure to Maintain Satisfactory Work Relationships

CSR § 16-51 A. 4) renders the failure to maintain satisfactory working relationship with co-workers an offense that can lead to discipline. Past decisions have interpreted that rule to require some action directed at the co-worker which causes an inability to work together. In re: Perez, CSA 137-03 (2/23/04).

The evidence indicates that Appellant's working relationship with his supervisors was damaged by the April lunchroom incident, when Appellant expressed disrespect for them by repeated use of offensive and confrontational language. Appellant's continual negative comments to his co-workers thereafter indicate that he maintained his attitude of resentment toward the supervisors as a group, and did not consider the matter resolved by the discipline. Ms. Billick's testimony that Appellant refused to comply with supervisors' orders further indicate that Appellant had failed to maintain the supervisor/employee relationship necessary to accomplish the work of the unit. Based on this unrebutted evidence, it is concluded that the Agency established a violation of CSR § 16-51 A. 4) by a preponderance of the evidence.

### C. Appropriateness of Penalty of Removal

Having determined that Appellant's conduct violated of the above personnel rules and Executive Order 112, the remaining issue is whether the penalty of termination is reasonably related to the seriousness of the offense, considering Appellant's past record with the Agency.

Appellant argues that he has been a City and County employee for twelve years, and that the Agency was unreasonable in terminating his employment based on the misconduct. The Agency asserts that its clear rules placed Appellant on notice that the City and County of Denver considers the utterance of words expressing violent acts serious misconduct justifying serious discipline. It also asserts that it acted reasonably in concluding that its recent prior discipline of a one-day suspension for similar misconduct gave Appellant the opportunity to correct his behavior, which he did not heed.

The Agency and City and County of Denver rules governing Appellant's conduct contemplate the imposition of serious discipline in order to meet their goals of ensuring a safe, violence-free workplace. Executive Order 112 states that "[a]ny violation of this policy by employees, including a first offense, will result in disciplinary action, up to and including dismissal." The Order indicates there shall be no tolerance for comments regarding violent acts reasonably perceived as threats, and that criminal charges may result from such behavior. I find that the rules provided Appellant notice of the seriousness of his conduct. I further find that the Agency did not impose discipline twice for the April incident, but rather that it appropriately considered that discipline in accordance with the requirements of progressive discipline set forth in Rule 16. Finally, I find that Appellant's recent discipline for similar misconduct allowed Appellant the opportunity to correct his behavior and achieve improved conduct, in compliance with CSR § 16-10.

Based on the evidentiary facts as found herein, I conclude that termination was reasonably related to the seriousness of the offense, and took into account Appellant's past record as well as his 12-year history with the Agency, in compliance with CSR § 16-10.

**ORDER**

The Agency's action dated August 20, 2004 is hereby AFFIRMED.

Dated this 16<sup>th</sup> day of  
March, 2005.

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Valerie McNaughton  
Hearing Officer  
Career Service Board

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**CERTIFICATE OF MAILING**

I hereby certify that I have forwarded a true and correct copy of the foregoing **DECISION AND ORDER** by depositing same in the U.S. mail, postage prepaid, this 16<sup>th</sup> day of March, 2005, addressed to:

James Katros  
4201 W. Tufts Avenue  
Denver CO 80236

I further certify that I have forwarded a true and correct copy of the foregoing **DECISION AND ORDER** by depositing same in the interoffice mail, this 16<sup>th</sup> day of March, 2005, addressed to:

Robert D. Nespor  
Assistant City Attorney  
Litigation Section

Jim Thomas  
Department of Aviation

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