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

Appeal No. 162-04

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

CRISTELLA LUCERO, Appellant,

Agency: Department of Parks and Recreation, and the City and County of Denver, a municipal corporation.

The hearing in this appeal was held on March 4, 2005 before Hearing Officer Valerie McNaughton. Appellant was present throughout the hearing and was represented by Cheryl Hutchison, AFSCME Council 76. The Agency was represented by Assistant City Attorney R. Craig Hess. 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 decision:

FINDINGS AND ANALYSIS

This is an appeal of a five-day suspension of Appellant Cristella Lucero, a Recreation Instructor with the Department of Parks and Recreation (Agency; or DP&R). The suspension imposed on November 9, 2004 was administered for violations of Career Service Rules (CSR). The timely appeal asserts that the suspension was in violation of the Career Service Authority (CSA) disciplinary rules, and that the discipline imposed was not reasonably related to the seriousness of the offenses charged.

The Agency's Exhibits 1, 3, 5 – 7 and Appellant's Exhibits A, C - F were admitted without objection. G was admitted over the Agency's objection for the limited purpose of corroborating testimony of an October 12, 2004 conversation among Appellant, witness Danielle Trujillo, and supervisor Reginald Mickles.

I. NATURE OF DISCIPLINE

Appellant was suspended for five days based upon the appointing authority's conclusion that between August and October 2004 she violated ten personnel rules governing attendance, compliance with policies, conduct, and the performance of her duties.

The pre-disciplinary letter asserted that the following incidents violated attendance policies:

1. On August 20th, Appellant was ten minutes late,

2. On October 1st, Appellant failed to come to work, and did not call her supervisor to advise him that she would not be in, and

3. On October 12th, Appellant was twenty minutes late, and did not call her supervisor.

Appellant was also charged with the following violations of the uniform policy:

4. On August 20th, 30th, and 31st, Appellant did not wear her staff shirt, and

5. On September 14th, Appellant came to work in a non-Parks Department sweatshirt.

Finally, the Agency asserts that Appellant was insubordinate on the following occasions:

6. On August 25th, Appellant made statements critical of her supervisor at a staff meeting,

7. On October 12th, Appellant refused to sign a memo acknowledging her receipt of a notice of staff meeting, and did not pick up needed supplies, and

8. On October 15th, Appellant challenged her supervisor's policies in a staff meeting held with the Director of Recreation.

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

1) Gross negligence or willful neglect of duty,

3) Dishonesty, including but not limited to: . . . . lying to superiors . . . with respect to official duties, . . . using official position or authority for personal profit or advantage; or any other act of dishonesty not specifically listed in this paragraph,

7) Refusing to comply with the orders of an authorized supervisor or refusing to do assigned work, which the employee is capable of performing,

13) Unauthorized absence from work, and

20) Other unspecified conduct.

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

1) Reporting to work after the scheduled start time of the shift,

4) Failure to maintain satisfactory working relationships with co-workers,

6) Carelessness in the performance of her duties,

10) Failure to comply with the instructions of an authorized supervisor, and

11) Other unspecified conduct.

At the pre-disciplinary meeting held on October 26, 2004, Appellant participated with her representative Cheryl Hutchison. Both Appellant and her representative made verbal statements, and Appellant furnished written statements from five co-workers in response to the allegations. [Exhs. C – D, F - H.] Appellant testified that she also submitted a written statement which explained her response to the allegations against her.

In imposing the five-day suspension, the Agency considered the statements of Appellant, her representative and her witnesses, as well as the absence of any previous discipline. [Exh. 7, p. 3.]

II. ISSUES

1. Whether the Agency proved that Appellant committed violations of the Career Service Rules by a preponderance of the evidence, and

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

III. EVIDENCE

Appellant was a full-time Recreation Instructor with Green Valley Ranch Recreation Center (Green Valley or the Center) from August 6 to December 6, 2004. She was selected to work with Acting Supervisor Reginald Mickles to open and staff Green Valley, the first city recreation center to be built next to and associated with a school. All other staff members were part-time or on-call employees.

On August 12, 2004, an organizational meeting was held in the Webb Municipal Building for those selected to staff Green Valley. At introductions, Appellant described herself as "a bitch" in a joking manner. Mr. Mickles testified that her introduction "did not make me feel very good." The Center opened on Monday, August 16th. Two days later, Mr. Mickles distributed two blue staff t-shirts to each employee, and instructed everyone to wear them when they work. Mr. Mickles made a note that Appellant failed to wear her staff shirt and was ten minutes late to work on Friday, August 20th. He informed her that she was expected to wear the shirt while on the clock, and noted the violations and their conversation in his supervisory notes. [Exh. 5.] Appellant testified that she believed she wore a staff shirt, since she had been given two of them that

Wednesday, had worn one of them on Thursday, and therefore should have had one clean shirt to finish the week.

The first staff meeting was held on August 25th. At the beginning of that meeting, Deputy Manager of Recreation and Facility Services Daniel Betts, Mr. Mickles' supervisor Bill Peterson, and Mr. Mickles informed the staff of the attendance and uniform policies, among other matters. Employees were told to call Mr. Mickles on his cell phone two hours before the shift start if they were going to be absent. [Exhs. 1, A.] Appellant stated that two shirts were inadequate, and asked if there was an attendance "back-up plan" if an employee could not reach Mr. Mickles by cell phone. She added that she didn't think people should be threatened with their jobs. The supervisors re-emphasized that the stated policies were firm, and that progressive discipline would result from noncompliance.

After Messrs. Betts and Peterson left, Appellant questioned the policies, stating "we never did it that way." As a result of a pre-meeting request from some staff members, she also informed Mr. Mickles that some of the staff were concerned that his communication with employees was poor, and that they believed he did not trust the staff "to do what we're capable of doing." [Testimony of Jethro Pratt, Jr. and Appellant.] Appellant began describing the staff concerns. Mr. Mickles asked her to convey her own concerns rather than attempting to speak for the rest of the staff. Appellant replied that she was speaking for them as they felt they could not communicate with him "because of what's happening right now." Appellant testified that she then turned to the rest of the staff and asked them to convey their concerns, "because it's coming off on me." Mr. Mickles testified that he perceived the tone of her comments as disrespectful and critical of his performance as supervisor.

In implementing the uniform policy, Mr. Mickles was following the "emphatic" orders of Mr. Betts, who observed to him several times that some employees were not wearing the staff shirt. [Testimony of Mr. Mickles.] In response to the concerns expressed at the first staff meeting that two shirts were inadequate, Mr. Peterson dropped off a box of several types of DP&R shirts. Employees were then permitted to wear any of those shirts in addition to their staff shirts. Appellant testified the additional shirts were delivered a day or two after the August 25th meeting. Mr. Mickles testified that he believes Mr. Peterson's box arrived between August 31st and September 14th based on his supervisory notes, which he prepared the day after each event. His August 31st note referred to staff shirts. The next relevant entry described complying uniforms as DP&R shirts, by which he meant any shirts issued by the Department. [Exh. 5.] These contemporaneous notes are found to be more reliable than Appellant's memory. Therefore, it is found that the box of shirts did not arrive until after August 31st.

Recreation Instructor Josh Longfellow testified that he was given written discipline once or twice for not wearing a proper uniform, and was informed that he could lose his job for continued violations. He observed that other employees sometimes wore non-DP&R sweatshirts. Danielle Trujillo, a Recreation Instructor who

was assigned to work at the attached school, testified that she did not wear a uniform when she worked in the Center.

The Agency's policy on attendance requires that employees arrive to work at the start of their shift. CSR § 16-51 A. 1). The Green Valley attendance protocol also requires that employees who will be more than ten minutes late call Mr. Mickles directly as soon as they know they will be late. Appellant had notice of this policy as of at least August 20th. [Exhs. 3, 5.]

Mr. Mickles testified that on August 30th and 31st, Appellant worked her morning Breakfast Club assignment in a DP&R shirt rather than a staff shirt. On September 14th, she wore a non-DP&R sweatshirt over her DP&R shirt. On October 1st, Appellant did not come to work or notify him that she would not be in, and on October 12th, she was twenty minutes late and did not notify him she would be late. After each attendance and uniform violation, Mr. Mickles met with Appellant and told her he would be documenting the incident in her file, and did so. [Testimony of Mr. Mickles; Exh. 5.]

Appellant testified that she believes she always wore a shirt that had DP&R on it, including her sweatshirt, which she wore when she felt cold. On one day, Mr. Mickles asked her where her DP&R shirt was, and she showed him she had one on under her sweatshirt. He walked off without informing her that she would be written up for the incident. Appellant stated that she did not refuse to wear the proper uniform, but objected that they did not have enough to use a clean one each day of the week. She believed she had been given tacit permission to use a badge rather than a uniform as identification, since she mentioned possible badges at the first staff meeting, and Mr. Mickles did not object.

Appellant further testified that she thinks she was on time on August 20th, since she was the only one of the early shift who had a key, and she does not remember anyone waiting outside on her arrival. On October 1st, Appellant discovered her son had a fever before she was to leave for work. She was unable to call Mr. Mickles because his number was stored in her cell phone, and that battery was dead. She called the Center at 6 a.m., the start of her shift, and informed Harvey McCarthy that her son was sick and she would probably not be in. She called twice later in the day, and asked Mr. Pratt to inform Mr. Mickles that she would not be in. She did not ask for Mr. Mickles or his cell phone number because she was caught up in taking care of her son. Appellant testified she was given paid sick leave for that day. On October 12th, Appellant believes she was not more than ten minutes late, having slept through her alarm. She again called the Center and informed Mr. McCarthy that she would be right there. By 6:15 a.m., she was at the Center greeting parents who were signing their children in to the Breakfast Club. [Exh. E.]

On October 12th, Appellant was twenty minutes late. She left a list of the supplies needed for her Breakfast Club on Mr. Mickles' desk. Mr. Mickles asked her who usually gets these supplies. Appellant replied that she does, but that she had no gas in her truck. Mr. Mickles testified that Appellant was responsible for obtaining the

supplies as point person for the Breakfast Club, and should have arranged the matter herself. Mr. Mickles interpreted her unwillingness to do so as insubordination. Earlier that day, Appellant had refused to sign a notice of staff meeting. [Exh. 5.] Appellant testified that she had the Agency's discount store card used to obtain the supplies. Appellant said she gave Mr. Mickles the list only because she had not had the time to get gas, and that she would have continued to pick up the supplies. Mr. Mickles was transferred before the situation could recur.

On Friday, October 15th, the staff met with Director of Recreation Michael Barney for the purpose of voicing their concerns about Mr. Mickles. Mr. Barney invited Mr. Mickles to attend, and started the meeting with a statement that the meeting was not intended to be a "supervisor-bashing." Appellant had prepared a list of concerns, and started the discussion by raising the first one, which was an inquiry into how an employee could file a grievance against a supervisor. After the question was answered, Appellant asked if there was a back-up plan for notifying the supervisor about absences or expected late arrivals to work. "I didn't get emotional until I was interrupted," Appellant testified. At one point, Mr. Mickles asked her not to refer to him as "he," adding "I have a name." Appellant continued to address Mr. Barney. The next time she referred to Mr. Mickles, she emphasized the word "Mister". Appellant stated that by the following Monday, the Center had a new supervisor.

Mr. Longfellow testified that at the October 15th meeting, Appellant told Mr. Mickles that although they didn't get along, they should communicate in order to get their jobs done, and that Appellant became emotional and raised her voice during the meeting. Ms. Trujillo remembered that Appellant started crying after an exchange with Mr. Mickles, and told Mr. Barney, "[t]his is what I'm talking about, this is why we can't communicate."

Mr. Mickles testified that he felt challenged by Appellant from the first staff meeting on August 25th. He further believed that the October 15th meeting with Mr. Barney was arranged in order to discuss things he was doing wrong, and that Appellant acted rudely in speaking as if he was not in the room. He believed that Appellant's first question indicated that she or another staff member was interested in filing a grievance against him, but no one filed one thereafter.

Agency Human Resources Director Alvin Howard testified that he ran Appellant's predisciplinary meeting on October 26, 2004. He noticed that Appellant addressed him and ignored Mr. Mickles, which he found disrespectful. Appellant informed him that she believed the clock at the Center was inaccurate. Mr. Howard then called the Center and asked the time. The time given was accurate according to Mr. Mickles' wristwatch and the time appearing on Mr. Howard's two cell phones.

The five days' suspension action was taken by Mr. Mickles in conjunction with Mr. Howard based upon Mr. Mickles' belief that Appellant had engaged in a serious pattern of conduct that caused a number of other problems in the Center, and adversely

affected Mr. Mickles' ability to supervise the staff at Green Valley. Appellant had no previous discipline.

IV. ANALYSIS

The City Charter requires that the facts at issue in a Career Service appeal must be determined *de novo*. C5.25(4). Such a determination requires an independent fact-finding hearing and the resolution of factual disputes. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975.) The Agency bears the burden to prove the appropriateness of discipline by a preponderance of the evidence. CRS § 13-25-127; In re Ortivez-Powell, CSA 306-01, 7 (12/6/01).

A. Performance of Duties

Appellant is alleged to have been both grossly negligent and careless in the performance of her duties in violation of CSR § 16-50 A. 1), which prohibits gross negligence or willful neglect of duty, and CSR § 16-51 A. 6), proscribing carelessness in the performance of duties and responsibilities.

Gross negligence has been defined under the Career Service Rules as a failure to use reasonable care that is flagrant or beyond all allowance, showing an utter lack of responsibility, and justifying a presumption of willfulness and wantonness. In re Keegan, CSA 69-03, 8 (3/21/04). Carelessness is the failure to exercise that degree of care which an ordinarily prudent person uses in similar matters under similar conditions. Black's Law Dictionary 146 (Abridged 6th ed. 1991).

The Agency produced evidence that Appellant failed to perform her duty to obtain the supplies for the Breakfast Club, for which she served as point person. It is undisputed that Appellant was responsible for obtaining the needed supplies for the Breakfast Club by either assigning that duty or picking them up herself. Appellant testified she was issued a card through Mr. Peterson to purchase the supplies from a discount store, and that she usually picked up those supplies.

On October 12th, Appellant placed the list of needed Breakfast Club supplies on her supervisor's desk, which Mr. Mickles interpreted as a refusal to pick up the supplies. By then, the relationship between Appellant and Mr. Mickles had become difficult. That day, Appellant was twenty minutes late for work, and she had refused to sign a memo acknowledging receipt of a notice of a staff meeting. When Mr. Mickles asked Appellant who usually obtains the items on the list, Appellant told that she did, but that she had no gas. Under the circumstances, Mr. Mickles reasonably concluded that Appellant's delivery of the list was a refusal to perform that duty. However, Appellant stated she would have gone the next day if he had asked her to, and denied she intended to refuse to perform the duty. Mr. Mickles was transferred from the Center shortly thereafter. While it was ill-advised for Appellant to simply place the list on her supervisor's desk rather than delegating it to another, that action alone does not establish that she was grossly negligent under CSR § 16-50 A. 1). The evidence established that Appellant

was careless in the performance of her duty to obtain the Breakfast Club supplies, in violation of CSR § 16-51 A. 6).

B. Dishonesty with Respect to Official Duties

The Agency has presented no evidence from which I could conclude that Appellant acted dishonestly with regard to any employment matter. Therefore, the asserted violation of CSR § 16-50 A. 3) is found not to be supported by the evidence.

C. Attendance

Appellant was charged with both unauthorized absence from work and tardiness, in violation of CSR §§ 16-50 A. 13) and 16-51 A. 1), respectively. The Agency submitted Appellant's October 1st absence in support of the former, and her tardiness on August 20th and October 12th in support of the latter.

An absence is unauthorized if an employee does not obtain permission for such leave. Green Valley had an established policy known to Appellant that an employee must request leave by calling the supervisor directly at least two hours before the start of the shift. Appellant admitted that she did not do this on October 1st, since her child developed symptoms right before she was to leave for work. However, Appellant testified she was later granted sick leave to cover that day, and this testimony was uncontradicted. The examples listed in the rule indicate that a denial of leave renders an absence unauthorized. In the same manner, a later grant of leave retroactively authorizes an absence. Since the Agency approved sick leave for that date, the Agency has failed to prove that Appellant's October 1st absence was unauthorized within the meaning of CSR § 16-50 A. 13).

The evidence is uncontested that Appellant was at least 15 minutes late on October 12th. Appellant's belief that she was on time on August 20th was based on her memory that no one was waiting outside, since she was the only one with a key. However, Mr. Mickles testified that he saw Appellant arrive, and noted that it was ten minutes past her start time. [Exh. 5.] The Agency has therefore established that Appellant's tardiness on August 20th and October 12th violated CSR § 16-51 A. 1).

D. Failure and Refusal to Comply with Orders or Instructions

Appellant was charged with refusing to comply with her supervisor's orders and instructions or refusal to do assigned work in violation of CSR § 16-50 A. 7), as well as failure to comply with her supervisor's instructions, in violation of CSR § 16-51 A. 10). The Agency asserts that Appellant violated those rules by four acts: 1) her non-compliance with the uniform rules, 2) her failure to obey the attendance protocol, 3) her refusal to acknowledge receipt of a memo, and 4) her refusal to pick up needed supplies. Appellant denies noncompliance with policies, and contends that her actions were not willful.

The Agency claims that Appellant failed and refused to comply with the uniform policy on August 20th, 30th, and 31st and September 14th. Employees were required to wear the blue staff shirts from August 18th to sometime after August 31st. Thereafter, they were permitted to wear either the staff shirt or any DP&R shirt, but the shirt was required to be visible; i.e, not under another shirt or sweatshirt. [Exhs. 1, 3; testimony of Mr. Mickles.]

Appellant testified that she "pretty much always" wore some type of Denver Parks and Recreation shirt. She sometimes wore a hooded DP&R sweatshirt when she was cold. She remembers that one day Mr. Mickles asked her where her shirt was, and she pulled up her sweatshirt to show him she had a DP&R shirt underneath. This would appear to conflict with her testimony that the sweatshirt itself had the DP&R logo or initials on it. Appellant did not contradict Mr. Mickles' testimony that he counseled her after each violation, and did not claim she denied the violations during counseling. Mr. Mickles' specific memory of each occasion was corroborated by his supervisor notes written the following day. Those notes indicate that Mr. Mickles did not discipline Appellant for wearing a DP&R shirt rather than a staff shirt after Mr. Peterson distributed the box containing shirts with other DP&R logos or initials. For the foregoing reasons, I conclude that Mr. Mickles' testimony is more reliable on this issue, and that Appellant failed to comply with her supervisor's instructions to wear the approved uniform on the above four occasions, in violation of CSR § 16-51 A. 10). Since she wore the uniform on most days during the three months in question, and did change into the uniform when asked, I find that Appellant did not refuse to obey the policy as prohibited by CSR § 16-50 A. 7).

Mr. Mickles' attendance policies were announced and confirmed by management at the first staff meeting on August 25th. Appellant and all other employees signed to acknowledge receipt of the written attendance protocol on October 4th. The policy was that employees must call Mr. Mickles directly if they will be more than ten minutes late, and must call him two hours before the start of shift if they will be absent. [Exh. 3.] Mr. Mickles stated that he developed the rule in order to allow him to schedule fill-in staff for absent or late employees. Appellant admitted that she did not call her supervisor on October 1st or 12th to inform him she would be absent or late. Appellant's failure to call him on August 20th does not violate the policy, since she was not more than ten minutes late on that day. I conclude that Appellant failed to comply with her supervisor's instructions by failing to call him on October 1st and 12th, in violation of CSR § 16-51 A. 10). Appellant testified believably that she made efforts to contact her supervisor by leaving messages with two co-workers on October 1st, and that she called the Center on October 12th and told a co-worker that she would be right there. The evidence does not support a finding that she willfully refused to comply with the attendance policy under CSR § 16-50 A. 7).

Next, Appellant asserts that her refusal to sign the receipt for a meeting that day was not a refusal to perform a work assignment, and there is no proof she was ordered to sign it. It appears to request a voluntary signature that would have acknowledged her

receipt of a notice of a staff meeting. [Exh. 4.] I find no violation of either CSR § 16-50 A. 7) or CSR § 16-51 A. 10) based upon her refusal to sign the notice.

Finally as to this rule, the Agency claims Appellant refused to do assigned work by giving her supervisor the list of supplies needed for the Breakfast Club. Appellant admitted that obtaining the supplies was a part of her duties, but stated that she gave the list to Mr. Mickles because she did not have gas in her truck. By that day, Appellant and her supervisor were at odds over a number of issues. Appellant had arrived late for the second time that month, and had refused to sign a routine memo. According to Appellant, their conversation about the supply list was curt. Mr. Mickles asked her if she usually got the supplies. Appellant replied that she did, but that she had no gas. Mr. Mickles walked away without further comment. Mr. Mickles testified that the list was the only note he'd ever received from Appellant, and that she had previously asked for permission to get the supplies. He viewed submission of the list and her claim to be out of gas as a means of refusing to get the supplies. The evidence is conflicting on the issue of Appellant's intent. I conclude that Appellant was careless in not planning ahead to perform this duty by either getting gas or delegating it to another, in violation of CSR § 16-51 A. 10). I also conclude that the Agency did not establish that Appellant refused to do the assigned work within the meaning of CSR § 16-50 A. 7) by a preponderance of the evidence.

Based on the foregoing findings, I conclude that Appellant was in violation of CSR § 16-51 A. 10) for her failure to comply with the uniform and attendance policies and her failure to obtain the Breakfast Club supplies. I also conclude that the Agency did not establish that Appellant violated CSR § 16-50 A. 7).

E. Failure to Maintain Satisfactory Work Relationships with Co-workers

The Agency argues that Appellant's statements critical of her supervisor at two staff meetings, as well as Appellant's refusal to comply with her supervisor's policies and instructions, support this charge. Appellant contends that her statements were intended to foster better communication with Mr. Mickles, and were made at the request of the staff. Appellant also denies any intentional violation of policy or rules.

The Agency has a legitimate interest in requiring employees to maintain satisfactory work relationships in order to accomplish its work and mission. The rule prohibits actions that destroy the trust and good will needed between employees. At the first staff meeting, Appellant aggressively and emotionally criticized her supervisor in front of the other staff under the guise of advocating for better communication. In doing so, she displayed either intentional ill-will toward him or poor judgment as to the probable outcome of her public criticism, given her status as the only full-time career employee other than Mr. Mickles himself. It was foreseeable that their future interaction would be harmed by this exchange. Thereafter, Appellant was not conscientious in her compliance with the uniform or attendance rules.

The tension between Appellant and Mr. Mickles culminated at an October 15th employee meeting with the Director of Recreation Michael Barney. The meeting was scheduled to allow the Center's employees to express their concerns about Mr. Mickles' performance. Mr. Barney invited Mr. Mickles to attend. Appellant took the lead at the meeting, and set the tone by immediately asking how an employee could file a grievance against a supervisor. She became emotional and raised her voice when she felt she was interrupted, and told Mr. Barney she could not communicate with Mr. Mickles. The damage done by this meeting was apparent when Mr. Mickles was reassigned from the Center on the following work day. The Agency thus indicated its conclusion that Mr. Mickles' effectiveness as a supervisor at the Center was at an end.

The evidence does not demonstrate that this impasse was caused by the actions of Mr. Mickles. Rather, it is concluded that it was caused by Appellant's choice to air grievances at staff meetings and at a meeting with Mr. Mickles' supervisor based on her disagreement with his policies. Appellant's other options were numerous: Mr. Mickles met with her after each infraction, and had other meetings with her to discuss her performance, both positive and negative. [Exh. 5.] Appellant had access to upper level management to communicate her and staff concerns. However, management confirmed that Mr. Mickles' policies were appropriate and would be enforced.

It is concluded that Appellant intentionally harmed her relationship with her supervisor in order to obtain a change in rules or enforcement of the rules. As such, Appellant failed to maintain a satisfactory relationship with her supervisor, in violation of CSR § 16-51 A. 4).

F. Other Unspecified Conduct

Because I have found that the Agency has proven the Appellant committed violations of specific Career Service Rules, I do not reach the issue of whether Appellant violated either CSR § 16-50 A. 20) or 16-51 A. 11).

V. PENALTY

The sole remaining issue is whether a five-day suspension is reasonably related to the seriousness of the offense, taking into consideration Appellant's past disciplinary record, in compliance with CSR § 16-10.

Discipline is reasonably related to the seriousness of an offense if it is within the range of reasonable alternatives available to a reasonable, prudent agency administrator. In re Gustern, CSA #128-02, 20 (12-28-02.), *citing* Adkins v. Div. of Youth Services, 720 P.2d 626 (Colo. App. 1986.) Discipline is not excessive if it is substantially based on considerations that are supported by a preponderance of the evidence. Gustern, id.

The seriousness of an offense may be measured by many factors. Here, some of Appellant's offenses were relatively minor. In that category must be placed her

tardiness and her failure to call her supervisor when late. On the other hand, her intentional insubordination culminating in the transfer of her supervisor must be considered as serious. Her publicly expressed disrespect for her supervisor had the effect of undermining his ability to perform his job. Appellant's pattern of behavior over the three months in question in disregarding the rules she disagreed with, and criticizing her supervisor in front of his staff and his supervisor justifies a conclusion that the offenses were serious and merited the imposition of a serious penalty.

It is found that the penalty imposed was consistent with the purposes of progressive discipline to correct inappropriate behavior and performance under CSR § 16-10. The Agency was reasonable in its conclusion that progressive discipline required the imposition of a loss of pay for five days, despite Appellant's lack of previous discipline.

ORDER

The Agency's discipline of Appellant dated November 9, 2004 is AFFIRMED.

Dated this 15th day of
April, 2005.

Valerie McNaughton
Hearing Officer
Career Service Board

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing **DECISION** by depositing same in the U.S. mail, postage prepaid, this 15th day of April, 2005, addressed to:

Cheryl Hutchison
Business Agent AFSCME
3401 Quebec St., S. 7500
Denver CO 80207

Cristella Lucero
5014 Perth Ct.
Denver CO 80249

I further certify that I have forwarded a true and correct copy of the foregoing **DECISION** by depositing same in the interoffice mail, this 15th of April, 2005, addressed to:

R. Craig Hess
Assistant City Attorney
Litigation Section

Alvin Howard
Department of Parks and Recreation