

**DECISION AND ORDER**

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IN THE MATTER OF THE APPEAL OF:

**MONIQUE JACKSON**, Appellant,

vs.

**TECHNOLOGY SERVICES, 311 SERVICES**,  
and the City and County of Denver, a municipal corporation, Agency.

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The hearing in this appeal was held on August 3, 2010 before Hearing Officer Valerie McNaughton. Appellant was present throughout the hearing and represented herself. The Agency was represented by Assistant City Attorney Andrea Kershner. Operations Supervisor Nick Scheidegger served as the Agency's advisory witness. Having considered the evidence and arguments of the parties, the Hearing Officer makes the following findings of fact and conclusions of law, and enters the following order:

I. STATEMENT OF THE APPEAL

Appellant Monique Jackson, 3-1-1 Customer Service Agent with 3-1-1 Call Center, Technology Services Department (Agency), appeals this five-day suspension imposed on May 13, 2010. Appellant initially asserted a claim that the discipline constituted disability discrimination, but withdrew that claim at the commencement of this hearing, and the claim was dismissed on the record. The parties stipulated to the admissibility of Agency Exhibits 1 – 16. Appellant's Exh. A-20 and E, and Agency's Exh. 17, were admitted during the hearing.

II. ISSUES

The issues in this appeal are as follows:

1) Did the Agency establish by a preponderance of the evidence that Appellant's conduct justified discipline under the Career Service Rules (CSR), and

2) Did the Agency establish that a five-day suspension was within the range of penalties that could be imposed upon Appellant by a reasonable administrator for the violations proven under the rules?

### III. FINDINGS OF FACT

Appellant was hired in December 2007 as a 3-1-1 Customer Service Agent in the 3-1-1 Call Center, a division of Technology Services. The mission of the Agency is to provide a link for non-emergency services and communications between the citizens of Denver and the City and County of Denver. Appellant is one of fifty-five agents that answer telephone inquiries and address them or transfer them to the appropriate Agency.

On May 13, 2010, the Agency gave Appellant a five-day suspension without pay following an investigation and pre-disciplinary meeting for violation of certain specified Career Service Rules. The Agency determined that disciplinary action was appropriate based on Appellant's misconduct, which included: 1) three incidents of tardiness; 2) twice leaving her workstation without permission; and 3) her behavior during a call from an upset citizen. Appellant stipulated that she was late to work on Feb. 4, Apr. 5 and Apr. 19, as stated in the letter of suspension.

#### 1. Leaving Workstation

On March 22, 2010, Appellant was missing from her workstation for thirty-nine minutes. Appellant told Lead Agent Betty Martinez that she was going to BRB ("be right back"), a code used to indicate a break for personal comfort such as getting water or using the restroom. Appellant's supervisor Nick Scheidegger searched for Appellant because "the board was red"<sup>1</sup>, with thirty-nine calls in queue. He was also concerned because he knew Appellant suffered from a chronic condition and worried she might have fainted. After a lengthy search, Mr. Scheidegger located Appellant on the fourth floor, talking with Peter Garritt about a human resources matter, and advised her to return to her workstation. Her supervisors reminded her on her return that she needed to be at her workstation unless she received prior approval to leave or was on a regularly scheduled break. She was excused for the remainder of the day because the supervisors determined they did not have the capacity to monitor her to make sure she would stay at her desk. [Testimony of Mr. Scheidegger; Karen Kelly].

Appellant did not testify at the hearing. She admitted at the pre-disciplinary meeting that she was gone for 39 minutes on a "BRB" code, and

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<sup>1</sup> Pursuant to the Mayor's goal to have all calls answered within 20 seconds, the board displaying incoming calls is set to turn red if a caller has been waiting two minutes. [Testimony of Mr. Scheidegger.]

that 39 calls in queue was very heavy. "That's super panic mode for us." [Exh. 5.] Appellant defended her absence by asserting that Ms. Martinez knew where she was for 20 minutes, since she could see Appellant at the copy machine and at her desk collating copies, but did not ask Appellant her to assist with the calls in queue. Appellant admitted she was out of the Call Center for another 19 minutes, during which she was speaking with CSA Supervisor Pete Garritt. [Exhs. 4-2; 5.]

The following day at 3:50 pm, Appellant entered code 20 on the CRM (Customer Relationship Management) system, which code indicates that she is on an outgoing business call and is not ready to receive incoming calls. [Exh. 7.] At 3:53 pm, Appellant placed herself in not-ready break and told Ms. Martinez that she was going upstairs to drop off some paperwork. Her scheduled break was at 3:00 pm, and she had not requested prior approval to leave her workstation at 3:53. [Testimony of Mr. Scheidegger]. Appellant never responded to this allegation. [Exhs. 4-2; 5.]

## 2. Mishandled Customer Call

On February 25, 2010, Appellant received a call from a citizen upset about a public inspector who had come to her house. Appellant began self-recording a few seconds after the call began. The recording begins with the caller explaining that she had called 3-1-1 about this yesterday, and that an Agent told her someone would call her in 72 hours. Instead, she complained, "some idiot left a card at my door without calling me." Appellant was silent. The caller then accused "all of you" of being incompetent and mentally retarded. Appellant remained silent. The caller angrily repeated her question, adding that this was how they "screw every taxpayer over", and asked if she had a supervisor. Appellant replied, "I'm sorry, are you asking me a question?" The caller asked her if she had heard the question: Appellant said she had not. The caller slowly and loudly stated, "Do you have a supervisor?" Appellant said yes. The caller shouted, "Can you find your supervisor?" Appellant said, "Yes, I can. Do you want to be connected to my supervisor?" The caller paused, then said, "I would like that. If you have the brain capacity, I would appreciate it." Appellant said, "I'm not sure if I do or not." The caller agreed. "I'm not sure you do either." Appellant said, "Okay then, we'll just sit here." The caller asked if Appellant was incompetent, an idiot, or both.

The caller then demanded, "Get your supervisor on the phone now." Appellant asked, "Is that a question?" The caller replied, "No it's not. It's a demand. And it's called customer service." She added a hostile and scurrilous comment about the Mayor. Appellant remained silent for almost a minute. The caller waited for several seconds, then began in a quieter voice, "I spent all day at work trying to get ahold of the other public inspector." She then shouted, "Are you still sitting there? Are you playing with yourself? . . . Get your supervisor

on the phone now." Appellant then asked the caller to calm down and stop swearing. The caller said she would, as soon as "I get done what I was lied to yesterday." Appellant said she wasn't the one who lied to her yesterday. "No, it was some other idiot." Appellant said she was sorry the caller was not able to speak to "that idiot." The caller angrily persisted. "Can you get your supervisor on the phone? Do you have a supervisor?" Appellant replied, "I've already told you I do." For the ninth time, the caller demanded, "Then get your supervisor on the phone." Appellant told her that she would "as soon as you calm down". The caller asked, "Are you going to wait all day?" Appellant said, "If that's how long it takes." The caller blasted one final obscenity, then hung up. [Exh. 6.]

Appellant reported the call to her Lead Worker, who then listened to the recording and asked Mr. Scheidegger to listen to it the next day. He concluded that Appellant had failed to follow procedure in handling an abusive caller, and referred the matter for discipline. An Apr. 5, 2010 disciplinary action based on this incident was withdrawn on Apr. 26, and this pre-disciplinary proceeding commenced the next day. [Exhs. 9, B, L.]

During the pre-disciplinary conference, Appellant readily admitted that she had not handled the call well. She explained that the caller had made "an indirect threat to the Mayor" during the first few unrecorded seconds of the call. Later at that meeting, Appellant stated it was "an indirect threat to 3-1-1." Appellant stated that she had never had a call like that before. "It came in as a threat call. . . I kept holding on. I didn't know what to do." She admitted it should have been escalated to a supervisor, and that she "just didn't do what I was supposed to do as an agent." Appellant denied the call should subject her to discipline, since it constituted a small fraction of the calls she had handled that year. [Exh. 5.] Mr. Scheidegger testified that Appellant never told anyone the caller had issued a threat until the day of the pre-disciplinary meeting, two months after the incident.

3-1-1 Agents are trained to refer abusive callers to a lead worker or supervisor in order to prevent a customer who is merely upset into one that is irate, causing more work for others who would then need to calm down the caller before the underlying problem which led to the call could be addressed. It is common knowledge that a call must be escalated to a supervisor as soon as a caller requests it. Calls in which threats are made are handled under a different procedure: agents are trained to use a quick code to report the threat during the call for immediate assessment by a Resource Management Lead and law enforcement. [Testimony of Karen Kelly; Exhs. 17-1; A-20; D.]

### 3. Disciplinary Decision

The disciplinary letter concluded that Appellant did not handle the call according to performance standards outlined in her Performance Enhancement Plan (PEP) to "increase the level of Citizen satisfaction when contacting the CCD." [Exhs. 2; 3-2]. The Agency also determined that Appellant had violated departmental regulations regarding telephone procedures, attendance and work breaks. The letter noted Appellant's disciplinary history, which included a three-day suspension in Nov. 2009 for failure to observe attendance policies, a 2009 written reprimand for attendance issues and causing a disturbance in the office, and two verbal reprimands for time and leave issues. [Testimony of Nick Scheidegger; Exhs. 2, 10-13.]

Mr. Scheidegger issued the disciplinary decision suspending Appellant for a period of five days. He testified that Appellant had neglected her duty and exhibited carelessness in the performance of her duties and responsibilities based on her tardiness, unexcused absences from her workstation, and treatment of the angry caller. He also found that she failed to comply with her supervisor's orders to comply with attendance rules based on her repeated tardiness and unauthorized breaks, despite prior discipline for the same offenses. He concluded that Appellant failed to meet established performance and training standards based on her conduct of the Feb. 22 customer call. Mr. Scheidegger found that Appellant failed to observe departmental telephone and attendance procedures with regard to the angry caller, tardiness and work absences.

Additionally, the Agency found that Appellant failed to maintain satisfactory working relationships based on the impact her unexcused absences and tardiness had on her co-workers having to take on her workload, and on the public having to wait longer for their inquiries to be addressed. Finally, the Agency found that Appellant's conduct with the angry caller exhibited conduct prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City.

The five-day suspension was based on Appellant's disciplinary history and on the seriousness of her repeated tardiness and absences from her workstation on the operation of the Call Center. Mr. Scheidegger viewed her behavior during the phone call as an intentional effort to enrage the caller by sarcastic responses to the caller's nine requests for a supervisor, and lengthy silences designed to let her believe she had stepped away or hung up. The Agency considered all disciplinary options, including termination, demotion, and suspension, but ultimately decided that a five-day suspension would give Appellant the opportunity that she needed to change her behavior.

#### IV. ANALYSIS

In this de novo hearing, the Agency bears the burden to establish that Appellant violated the Career Service Rules as cited in the letter of discipline by a preponderance of the evidence, and that the discipline was within the range of discipline that can be imposed under the circumstances. In re Gustern, CSA 128-02, 20 (12/23/02); Turner v. Rossmiller, 535 P.2d 751 (Colo. App. 1975).

##### 1. Neglect of duty under § 16-60 A

The Agency found that Appellant neglected her duty by tardiness, extended breaks, and failing to transfer an angry caller to the supervisor upon request, as required by Agency policies.

To sustain a violation under CSR 16-60 A, an agency must establish that an employee failed to heed an important work duty, resulting in significant potential or actual harm. In re Lottie, CSA 132-08, 2 (3/9/09). The Agency must have communicated the duty in such a manner that a reasonably astute employee would be aware of the duty and the manner in which the Agency expects it to be performed. In re Mestas et al., CSA 64-07, 21 (5/30/08).

Here, Appellant admitted she was tardy three times and absent from her desk without authorization for 39 minutes on one occasion and an unknown amount of time on a second occasion, all occurring during over a period of about two months. Appellant does not deny that her presence at the workplace ready to take calls is an important work duty: indeed, it is the essence of the job of a 3-1-1 Agent.

The Agency is by its own description a rigidly structured environment, controlled by the Mayor's goal to answer calls within 20 seconds. Call volume is constantly being quantified, and determines staffing models and coverage during scheduled and unscheduled employee absences. Calls have a high "abandon rate", meaning that callers will hang up quickly if not connected, and will either call back or seek other methods to complain of city services. The mission of the 3-1-1 Call Center is to increase citizen satisfaction with the city by efficiently handling all requests for information. Missed calls set that mission back, and require someone in the city to work harder to undo the damage done by a missed or mishandled call. [Testimony of Mr. Major, Mr. Scheidegger.]

Given the importance of Agent attendance at the phones, Appellant was heedless of her duty when she absented herself from her station on two occasions, and was late on another three days. This was neglectful of her duty to answer telephone inquiries, caused extra work for her co-workers, increased call response time, and resulted in delays in resolving constituents' issues. Appellant also neglected her duty to follow the Escalation Process to refer the

Feb. 22<sup>nd</sup> caller to a supervisor based both on the caller's request for a supervisor, and her verbally abusive behavior toward Appellant. [Exh. 3-12; 17]. Appellant's behavior during that call rebutted her belated allegation two months later that the caller had indirectly threatened the Mayor or the Call Center. Appellant displayed no fear, failed to use the quick code or connect the call to a Lead or supervisor, did not call 911, and requested no threat assessment during the call or thereafter. Appellant did not claim the caller made a threat until the pre-disciplinary meeting two months later. In any event, Agency policies required Appellant to contact a supervisor about both threatening and abusive callers. In violation of that policy, Appellant refused for almost five minutes to refer the call to a supervisor, despite nine demands that she do so. I find that the Agency proved Appellant neglected her duties in violation of CSR § 16-60 A.

## 2. Carelessness in the performance of duties under § 16-60 B.

Carelessness occurs when an employee performs her duties poorly and deviates from an exercise of reasonable care, resulting in potential or actual significant harm. In re Mestas et al., CSA 64-07, 31 (5/30/08); In re Mounjim, CSA 87-07, 5 (7/10/08).

The Agency found that Appellant was careless in her performance of duties based on her tardiness and absence from her workstation. It also contends Appellant performed her duties poorly during the Feb. 22<sup>nd</sup> customer call. Appellant admitted that she was late and absent from her station, as alleged in the disciplinary letter, and that she "didn't handle the call well." The Agency proved that Appellant had a duty to perform on Feb. 22<sup>nd</sup>, and it was customer service. Instead, Appellant's prolonged silences, passive and sarcastic responses, and failure to respond to the caller's many requests to speak to a supervisor increased the caller's frustration, anger, and abusive behavior. Appellant's explanation at the pre-disciplinary conference was that she had never handled this type of call, which "came in as a threat call", and believed that her only responsibility was to record the call and report it thereafter. On the contrary, Agency training and policies all emphasize the need to take immediate action to assess the credibility of a threat while a caller is on the line. Appellant presented no testimony about this allegation, and never supported her claim that the call "came in as a threat call". She first stated that the indirect threat was to the Mayor, then later said it was directed at the 3-1-1 Call Center. The Agency established that Appellant performed her duty to provide customer service in a substandard manner, resulting in damage to the relationship between a citizen and the City and County of Denver. The Agency also proved that Appellant was careless in her duty to be available for customer calls during her shift, and to accurately report all breaks and absences to her supervisor.

### 3. Failure to comply with orders of supervisor under §16-60 J

Failure to comply with a lawful order is established by proof that a supervisor communicated a reasonable order to a subordinate, and the subordinate violated the order under circumstances demonstrating willfulness. In re Owens, CSA 69-08, 4 (2/6/09).

The Agency found that Appellant failed to comply with Mr. Scheidegger's Mar. 22<sup>nd</sup> order restricting her from taking unauthorized breaks when she logged out on Mar. 23<sup>rd</sup> without permission. Appellant does not deny that she left the office without permission on Mar. 22<sup>nd</sup> to drop off some paperwork, and that she had been sent home the day before based on the same behavior. I find that the Agency did prove Appellant disobeyed a direct order against unauthorized breaks.

The Agency also contends that Appellant's Feb. 22<sup>nd</sup> disobedience of the policy to refer callers to a supervisor upon request constituted a failure to obey a supervisor's order. If a written policy is also interpreted as an order issued by a supervisor, the distinction between §§ 16-60 J and L largely disappears. The two rules clearly address different misconduct, and they should therefore not be merged into one another by going beyond the plain meaning of the words used in the rules. See Fishbach v. Holzberlein, 215 P.3d 407 (Colo.App. 2009). I find that the existence of the written policy to escalate calls to a supervisor upon request does not constitute a supervisory order to do so. Therefore, the Agency did not prove a violation of the rule based on this evidence.

### 4. Failure to meet established standards of performance under §16-60 K

An employee's failure to meet established standards of performance is proven by evidence of a prior-established standard, clear communication of that standard, and an employee's failure to meet that standard. In re Mounjim, CSA 87-07, 8 (7/10/08.) This rule differs from neglect of duty or carelessness in that it focuses on the failure to perform objective measures of performance. In re Mestas et al., CSA 64-07, 18-19 (5/30/08).

The Agency based its determination that Appellant failed to meet performance standards on Appellant's conduct with the angry caller, as measured by training and procedures on handling callers to "increase the level of citizen satisfaction . . . being proactive in identifying and meeting [caller] needs, [and] working collaboratively with them to solve the problems and developing/maintaining trusting, constructive relationships." [Exh. 3-2, 3-3.]

Appellant ignored the caller's request to be connected to a supervisor nine times, engaged in a non-productive exchange which only increased the caller's frustration, and sat in silence for seventy seconds of the four minute and

forty-second telephone call. Appellant conceded in her pre-disciplinary meeting that she did not handle the phone call well, and presented no testimony on this or any issue. I find that she violated this rule in failing to meet the clear performance standard to meet the caller's needs and work collaboratively with the caller to solve the problem and develop a relationship. Appellant also violated the explicit Agency standard to immediately refer the caller to a supervisor after her numerous and unequivocal requests.

5. Failure to observe written departmental policies under § 16-60 L

An agency establishes an employee's failure to observe a regulation by proving notice to an employee of a clear, reasonable, and uniformly enforced policy, and the employee's failure to comply with the policy. In re Mounjim, CSA 87-07A, 6 (1/8/09); In re Norman-Curry, CSA 28-07 and 50-08, 5 (2/27/09).

The Agency found that Appellant failed to observe its policies regarding attendance, breaks, and referral of a caller to a supervisor. Karen Kelly testified that Appellant received training that calls shall be transferred to a supervisor if the caller requests it or becomes abusive. [Exh. 3-12; A-20; D-2.] The policy exists for two very important reasons: it underscores the fact that an agent is not required to submit to abuse as a part of an already stressful job, and it allows management to document and develop a plan for dealing with abusive callers. Ms. Kelly noted that the procedure was in effect since March 2009, and that the written policies were awaiting only the signature of the City Attorney's Office for publication at the time of this incident. [Exh. A.] Supervisors reviewed the policies with the agents in small groups to explain the revision, and were informed that the written policies were readily accessible on the network. Appellant failed to follow the Escalation Procedure after nine separate requests to speak to a supervisor, and therefore violated this rule.

Further, it is undisputed that Appellant was late for her shift on Feb. 4, 2010. Agency policy requires that an employee who anticipates being late must call both the Attendance Line and the MOD (Manager of the Day). [Exh. 8-1.] 3-1-1 Policies and Procedures are available on the share drive, and all Agents receive extensive training in this procedure. [Testimony of Karen Kelly]. Appellant admits she forgot to call the MOD that day, and called only the Attendance Line. Therefore, Appellant did not follow the 3-1-1 attendance policy, in violation of this rule.

6. Failure to maintain satisfactory working relationships under § 16-60 O

This section is violated by conduct that an employee knows or reasonably should know will be harmful to coworkers, other City employees, or the public, or will have a significant impact on the employee's working relationship with them,

as measured by a reasonably objective standard. In re Burghardt, CSA 81-07A, 2 (8/28/08).

The Agency found that Appellant failed to maintain satisfactory working relationships with co-workers, other City employees, or the public based on the adverse impact her unexcused absences and tardiness had on her co-workers and the public. In support of this claim, the Agency raised only the theoretical impact that Appellant's absences may have had on other Agents' workload. It presented no evidence that a reasonable person would know this behavior would significantly impact Appellant's working relationships. In fact, the Agency Director, Michael Major, testified that his relationship with Appellant has not been affected. Appellant's PEPR issued a month later states that she "is well-liked in the call center." [Exhibit 3-6].

The Agency also argued that Appellant's mishandling of the Feb. 22<sup>nd</sup> call caused damage to her relationship with the caller. The recording of that call demonstrates that Appellant's behavior provoked the caller into a rage before she ended the call. Clearly, that relationship, however fleeting, was significantly and negatively impacted by Appellant's misconduct, in violation of this rule.

7. Reporting to work after scheduled start time under § 16-60 T

The Agency found that Appellant on three separate days reported to work after the scheduled start time of her shift. Appellant stipulated that she was late on Feb. 4, Apr. 5, and Apr. 19, 2010. Therefore, the Agency established that Appellant violated this rule.

8. Conduct prejudicial to the Agency or City under § 16-60 Z

This rule establishes two independent violations: harm to the agency and harm to the city. In re Norman-Curry, CSA 28-07 and 50-08, 28 (2/27/09), *citing In re Simpleman*, CSA 31-06, 10 (10/20/06), *aff'd* CSB (8/2/07). To sustain an allegation of harm to the agency, an agency must prove an employee's conduct hindered the agency's effectiveness, i.e., the internal structure and means by which the agency achieves its mission. Id. The second part of this rule is violated only where there is actual injury to the city's reputation or integrity. In re Jones, CSA 88-09A, 3 (9/29/10).

Mr. Sheidegger testified that he believed Appellant injured the city's reputation by her conduct towards the caller, "because she'll talk to her friends", thus setting back the Agency mission to turn around citizen attitudes about city government. The caller never submitted a written complaint to the Agency or City. Appellant's conduct during the call was discovered only because Appellant herself reported it to her Lead that evening. [Exh. 4-1.] The Agency failed to present any evidence that the call had any effect on the

Agency's ability to achieve its mission in violation of the first part of this rule. Further, the Agency failed to prove the call injured the City's reputation or integrity under the second part of this rule.

#### 9. Appropriateness of Disciplinary Action

The Agency established that Appellant violated CSR §§ 16-60 A, B, J, K, L, O and T by her misconduct and violations of its attendance policies. Appellant had already received verbal and written reprimands and a three-day suspension for misconduct and previous violations of the attendance policies. The Agency determined that Appellant's mistreatment of an angry caller was intentional, and that her failure to refer the call to her supervisor after repeated requests was a violation of clearly established policy, Agency mission, and her PEP standards of performance.

3-1-1 Director Michael Major testified that he contemplated all disciplinary options after assessing the seriousness of the misconduct and Appellant's disciplinary history for similar offenses. He weighed the fact that Appellant's performance was for the most part satisfactory or better as against the need to change her behavior and her pattern of attendance violations. In addition, Mr. Major granted Appellant a later start time to assist her in complying with attendance policies.

I conclude that the five-day suspension was within the range of discipline that could be imposed by a reasonable administrator, in keeping with the goals of discipline under the Career Service Rules.

#### V. ORDER

Based on the foregoing findings of fact and conclusions of law, the following orders are entered:

1. The Agency's suspension action dated May 13, 2010 is AFFIRMED.
2. Appellant's disability discrimination claim is DISMISSED on motion of the Appellant.

Dated this 7<sup>th</sup> day of October, 2010.

  
Valerie McNaughton  
Career Service Hearing Officer