

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 68-09

DECISION

IN THE MATTER OF THE APPEAL OF:

BRENT NORRIS,
Appellant,

vs.

DEPARTMENT OF AVIATION,
and the City and County of Denver, a municipal corporation, Agency.

I. INTRODUCTION

The Appellant, Brent Norris, appeals the termination of his employment by the Denver Department of Aviation (Agency). A hearing concerning this appeal was conducted by Bruce A. Plotkin, Career Service Board Hearing Officer, on May 21, 2010. The Agency was represented by Andrea Kershner, Assistant City Attorney. The Appellant was represented by Michael O'Malley, Esq. Agency exhibits 1-4, 6, 10, and 12-13 were admitted. Appellant's exhibit A was admitted. The following witnesses testified for the Agency: Sean Pent; Lawrence Valdez; Jon Spears; Jason Addy; Clint Dostal; Mark Webber; Noah Catalforno; Brian Monroe; and Dan Brown. The Appellant testified during his case-in-chief. For reasons which follow, the Agency's decision to terminate the Appellant's employment is AFFIRMED.

II. ISSUES

The following issues were presented for appeal:

- A. whether the Appellant violated any of the following Career Service Rules: 16-60 A., E., J., K., L., O., S., T., or Y.;
- B. if the Appellant violated any of the aforementioned Career Service Rules, whether the Agency's decision to terminate his employment conformed to the purposes of discipline under CSR 16-20.

III. FINDINGS

Norris was a graveyard shift electrician at Denver International Airport (DIA). His supervisor was Lawrence Valdez. The principal duty of the graveyard electrician shift was to maintain, repair and rebuild malfunctioning and broken runway and taxiway lights either in place or, if not feasible, in a shop located in Concourse C that is specifically equipped for rebuilding airfield lights. Runways and taxiways must be closed for in-place "lamp" repairs and for lamp removal to the electric shop. If more than three runway lamps require removal, federal law requires the runway to remain closed until the lamps are replaced. There is always a surfeit of lamps in need of repair beyond the crew's capacity to keep up with the demand. Consequently, it is a critical duty for each crew member to be on time and to work diligently with other crew members to repair or replace as many lamps as possible during their shift. For the same reasons, crew members are restricted to one of four designated work areas, except for an occasional trip to a nearby gas station on DIA property to pick up a snack. The designated work areas are the electric shop, the rebuild shop, runways and taxiways as assigned, and the stockroom.

Norris started working with the lamp repair crew in 2008. In his previous assignment in 2007, his supervisor downgraded his performance to "needs improvement" for absenteeism, poor attitude, and for leaving his work location for extended periods. [Exhibit 12, 12-6]. That same supervisor documented a discussion he had with Norris in 2007 concerning complaints from co-workers that Norris was frequently absent or late. [Exhibit 12-11].

Almost immediately after Norris began working on the lamp rebuild crew, all four of his four crew members noticed he arrived late and disappeared for extended periods, including taking two to three hour lunch breaks. Valdez did not check in frequently with the crew, but when he did he noticed Norris was often absent during his shift. When he asked about Norris' whereabouts, at first, the crew covered for him by saying he might be in the bathroom or one of the other work locations.

When Norris' absences persisted, crew member Sean Pent spoke with Norris about his lack of effort and how it affected the entire team. The conversation had no effect on Norris' continued tardiness and disappearances.

When the rest of the crew became fed up with covering for Norris and his continued lack of effort, Pent convened a team meeting on August 28, 2008. Pent spoke generically about the need for crew members to be present for their shifts without extended absences, and to work as a team. Norris, however, continued to arrive late and to leave for extended periods. Pent

also noticed Norris' work was sloppy and shoddy, which required other crew members to clean up lamps rebuilt by Norris and which required subsequent rebuilding of his lamps more frequently. Norris would also arrive late for runway/taxiway operations. Since runways were closed only for a limited time, Norris' crew members would have to perform Norris' duties, as well as their own, until he arrived. All of this caused the team to get further behind in their lamp rebuilding and maintenance duties.

Pent met privately with Norris again on May 18, 2009. Pent told Norris to remain in the rebuild shop and reminded him not to disappear for extended periods. The following day, Norris' crew members told Valdez about Norris' continued tardiness, disappearances for extended periods, and poor performance of his duties. Valdez met with the entire crew and, without specifying anyone, ordered them to remain in one of the four work areas, not to disappear for extended periods, and to take lunch only from 2:00-3:00 a.m., unless they were delayed by airfield work. Although he addressed the entire crew, Valdez did not have work issues with any crew member except Norris. [Valdez testimony].

When Norris continued the same behaviors as described above, Valdez met with his supervisors, Pat Kelly and Deputy Manager of Maintenance Dan Brown. They instructed Valdez to give Norris a direct order to remain in his designated work area during his shift.

On June 1, 2009, Valdez gave Norris a direct order to remain mostly in the rebuild shop, and otherwise to remain in one of the other designated areas except for taking no longer than one hour for lunch. Valdez informed Norris that a failure to abide by his order would result in disciplinary action. [Exhibit 2-2; Valdez testimony]. Later the same day, Norris returned one half hour late from his lunch break. [Exhibit 5; Valdez testimony].

On June 2, 2009, the day after Valdez' direct order, Norris showed up for the start of his 7:30 p.m. shift at 9:30 p.m. and was missing from all designated work areas for two hours and fifteen minutes, from 1:30 a.m. to 3:45 a.m. On June 4, 2009, Pent saw Norris leave the work area at 7:45 p.m. and return at 9:25 p.m. [#6; Pent testimony]. Later in the same shift Norris was missing from the work area between 1:30 a.m. to 3:30 a.m. On June 8, 2009 Norris reported for his shift at 9:00, and he was absent from the work area between 1:30 and 5:00 a.m. [Exhibit 5]. The next day, June 9, one of Norris' crew called Valdez to report Norris was absent. Valdez went to look for Norris and did not find him in any designated work area. At about 9:00 p.m. Valdez located Norris in an area designated as sleeping quarters for snow removal crews. Norris was sitting on one of the beds, his shirt was off and his badge, keys and other equipment were lying on the bed. When Norris saw Valdez, he immediately

stood up and began dressing. Norris said he went there to make a personal phone call. Valdez called Director Dan Brown who instructed Valdez to take Norris' keys and badge, escort him out of DIA, and to place Norris on investigatory leave. Norris said only that he needed to get some things from his locker. Norris did not log in as late, nor did he log out during his absences on any of the aforementioned days.

During his investigatory leave, Norris contacted two DIA employees, provided his email account password, and asked them to access his email account in order to attach photographic files to send to him. On June 18, 2009, Norris' DIA email account was accessed twice from another employee's work station on A Concourse. Photographs of Norris' co-workers sleeping were attached to an email and sent off-site to an unknown email address. The Department of Aviation Information Technologies and Telecommunication Use Agreement, signed by Norris in 2007, prohibits employees from revealing a password to anyone else.

On August 24, 2009, the Agency delivered a letter in contemplation of discipline to Norris. [Exhibit 3]. A pre-disciplinary meeting was held on September 1, 2009. Norris attended with his union representative and provided written and verbal statements.

The Agency dismissed Norris from employment on September 14, 2009. [Exhibit 2]. This appeal followed timely on September 23, 2009.

IV. ANALYSIS

A. Jurisdiction and Review

Personal jurisdiction. As an employee of the Career Service personnel system, Norris may appeal discipline under the Career Service Rules. Charter, §§ 9.1.1. E.(vi), 9.8.2.(A); CSR § 19-10 A.1.a.

Subject matter jurisdiction is proper under CSR § 19-10 A.1.a., as the direct appeal of a dismissal. I am required to conduct a *de novo* review, meaning to consider all the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

B. Burden and Standard of Proof

The Agency retains the burden of persuasion, throughout the case, to prove Norris violated one or more cited sections of the Career Service Rules, and to prove its decision to dismiss him from employment complied with the

purposes of discipline. CSR 16-20. The standard by which the Agency must prove its claims is by a preponderance of the evidence.

C. Career Service Rule Violations

1. CSR 16-60 A. Neglect of duty.

This rule is breached when an employee neglects to perform a job duty which the employee knows he or she is supposed to perform. *In re Campos*, CSB 56-08, 2 (5/21/09) *modifying In re Campos*, CSA 56-08, 14 (12/15/08). The Agency claimed Norris contravened this rule by failing to accomplish his rebuilding duties when he arrived late and when he left for extended absences during his shift. Norris acknowledged his primary duty is to maintain, rebuild, and replace airfield lamps, and that it is critical for crew members to put in their time in order to fulfill this duty. [Norris testimony].

Norris countered he could have been at a different work location when his co-workers believed he was absent. The compelling evidence against this argument is that Valdez found Norris in the snow removal sleeping area after he directed Norris to remain in one of the designated work areas, none of which including the snow removal team sleeping area. Norris' explanation, that he was merely consoling a friend, is irrelevant and is not credible in light of having his shirt off, equipment strewn on the bed, jumping up suddenly upon seeing his supervisor, and the failure of Norris' friend to affirm Norris' claim. This incident alone justifies finding Norris in violation of CSR 16-60 A.

In addition, Norris failed to refute his co-worker claims of his myriad absences and tardiness. Norris' principal response was his crew did not like him and set him up. Norris' evidence for this claim was his unsubstantiated testimony that co-workers blamed him for their loss of virtually unlimited overtime. His co-workers disputed this claim.¹ Moreover, Valdez gave Norris a "successful" work rating despite his many absences, in an effort to encourage Norris into a more positive work ethic, [Valdez testimony], and Norris' co-workers initially covered for him when Valdez inquired as to his whereabouts. Both actions belie Norris' claim of animosity. In addition, before his appeal, Norris never complained about his co-workers and admitted he generally got along well with them.

¹ Each of his co-workers disputed Norris' loss of overtime revenge claim. Clint Dostal testified "I don't buy into it because he had nothing to do with overtime," [Dostal testimony], and Norris had no quarrel with Dostal otherwise. Jon Spears testified he had no personal issues with Norris, but did not appreciate Norris not pulling his own weight. Jason Addy testified he observed Norris' frequent absences but had no other problems with Norris. It appears Norris' overtime revenge claim originated with Mark Webber, who was not a member of the graveyard shift. Webber filed a grievance against the graveyard electric shift, claiming those workers were able to work a lot of overtime hours while his day electric crew was not. The night shift was restricted from overtime shortly afterward, but based on the evidence presented, there is no reason to believe Norris' claim more than that of the other crew members, i.e. they grew weary of his constant absences. and began documenting those absences pursuant to Valdez' directive. Thus, Norris' overtime revenge claim is not established.

On the other hand, Norris continually resisted any suggestion of authority. He ignored Pent's repeated attempts to counsel and warn him about his absenteeism. When Valdez gave Norris a direct to remain in his work area, Norris disobeyed immediately and repeatedly. Most tellingly, the night after Valdez gave Norris a direct order to remain at his work station, Norris awakened Valdez, on his day off, at his home at 3:00 a.m. to report the absence of three co-workers, even though he admitted they could have been at lunch, and there was no urgent reason to report the matter. [Norris cross-exam]. Even if others had engaged in wrongdoing, Norris' unexcused absences were not mitigated by his allegations against others.

Norris also claimed, in response to his co-worker's documentation of his absences, [Exhibit 5], that he could have been on a special assignment ordered by security or another department. Norris did not specify who gave such an order, for which date such an order may have been given, or what he may have been ordered to do on any of those dates. Valdez replied even if there had been a special assignment, he would have heard it on his radio, the only means by which such an order would issue. [Valdez testimony]. Norris' special assignment claim is not established.

2. CSR 16-60 E. Any act of dishonesty, which may include, but is not limited to...
3. Lying to superiors... with respect to official duties, including work duties ... or false reporting of work hours.

Dan Brown testified he found Norris in violation of this rule for falsifying his work hours. [Brown testimony]. For reasons stated immediately above, Norris' co-workers' claims that Norris was frequently absent, and absent specifically during the times listed in Exhibit 5, are more credible than Norris' denials. Therefore, this violation is established by a preponderance of the evidence.

3. CSR 16-60 J. Failing to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.

This rule contains two discrete violations, failure to comply with an order and failure to perform assigned work, whether or not under direct order. Brown claimed Norris failed to comply with Valdez' direct order on June 1, to remain in his work area. As found above, Norris acknowledged the directive, but breached it immediately. Also by arriving late and disappearing for substantial periods during his shift, Norris failed to perform his assigned tasks. Both parts of this violation are established.

4. CSR 16-60 K. Failing to meet established standards of performance including either qualitative or quantitative standards...

This rule covers performance deficiencies that can be measured either by qualitative or quantitative standards, such as those one would find in a performance evaluation. In re Castaneda, CSA 79-03, 12 (12/18/02). Brown testified Norris ran afoul of this rule by failing to meet his work review standard for effort, [Exhibit 12-6, 12-7, 12-12], and failing to work cooperatively with his team to accomplish their duties, [Exhibit 12-5; Brown testimony]. The evidence for these claims was Norris' team members' complaints about his tardiness and frequent disappearances. While Norris denied being absent, the evidence, above, establishes it is more likely than not that the allegations are true. The same evidence also established that his absence caused the rest of the team to fall behind in their duties. Norris' unexcused substantial absences from the work site which caused performance problems for the rest of his crew was a breach of the establish standards of performance to put in a reasonable effort, and to work cooperatively with his team, both in violation of CSR 16-60 K.

5. CSR 16-60 L. Failure to observe written department or agency regulations, policies or rules...

The Agency's "Information Systems User Agreement" signed by Norris in 2007 establishes a violation for allowing any one else access to a work computer or providing one's personal password to another. [Exhibit 4-1 @ # 6, 8; 4-2 @ #10]. Norris admitted that, while he was on investigatory leave, he asked three employees to log on to his email account to send photographs of sleeping colleagues to him. He provided Webber with access to his work email account to do so. When his own attorney asked Norris if he realized his actions were a violation of agency rules, Norris replied "I knew it shouldn't be something that you should do." Then he hedged, saying when he was hired he didn't take the time to read through all documents provided to him. [Norris testimony]. Norris' authorization for another person to access his work email account was a violation of the Agency's User Agreement and therefore a violation of CSR 16-60 L.

6. CSR 16-60 O. Failure to Maintain satisfactory working relationships...

Norris' team members grew increasingly frustrated with Norris' lack of effort and frequent disappearances. Pent attempted twice, unsuccessfully, to encourage Norris to come about. While his team brooked his infidelity to his duties for some time, eventually they felt compelled to complain to Valdez. Even then, Norris continued disappearing for substantial times. The most compelling evidence under this rule was that, unlike other cases involving this violation, it was apparent Norris' team members genuinely liked Norris, but,

after both internal and external interventions failed, they could no longer tolerate his version of a work ethic. A violation of this rule is established.

7. CSR 16-60 S. Unauthorized absence from work...

Since it was established, above, that Norris left work frequently without authorization, this violation is established.

8. CSR 16-60 T. Reporting to work after the scheduled start time of the shift.

Brown testified the evidence for this violation was the same as the evidence regarding unauthorized absence from work, above. The two rules are not established by the same evidence, however. Norris' shift began at 7:30 p.m. The preponderant evidence establishes Norris was tardy at least on June 2, 3, 4, 8, and 9, 2009. [Exhibit 5; Valdez, Pent, Spears, Addy, Dostal testimony]. Norris replied he could have been in some other authorized work area, or at another location pursuant to a special assignment, but as resolved above, these explanations were unlikely. This violation is established by a preponderance of the evidence.

8. CSR 16-60 Y. Conduct which violates the Rules, the City Charter, the Denver Revised Municipal Code, Executive orders, or any other applicable legal authority.

This rule is intended to address evidence which is not appropriately covered under the other Career Service Rules. Violations of other rules were established above. No further consideration is due under this rule.

V. DEGREE OF DISCIPLINE

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-20 to consider the severity of the offense, an employee's past record, and the penalty most likely to achieve compliance with the rules. CSR § 16-20.

A. Severity of proven offenses.

Norris' frequent tardy arrival and extended absences during his shift impaired the fundamental purpose of his crew, to maintain, repair and replace airfield lights in as timely a manner as possible. Password security is an especially sensitive matter at the airport. Both violations were, therefore, egregious.

B. Past Record

Norris prior supervisor commented extensively on Norris' lack of effort and his indifference to his work. "His response time is slow, and others wind up waiting for him" [Exhibit 12-4]. "Brent does not deal with frustration in a mature manner. He tends to act out inappropriately when he thinks he has been wronged, for example when a shift supervisor complained about the way he parked his truck, Brent deliberately parked it the same way the next week to annoy the supervisor." [Exhibit 12-5]. "Brent does not take his job seriously. He has said to others that city workers shouldn't have to work very hard. When I try to explain that there is a problem he just deflects criticism by saying that others do it too, or the city doesn't pay enough to make it worthwhile to improve his attitude." [Exhibit 12-6]. These supervisor reflections are consistent with the proven allegations in the current case.

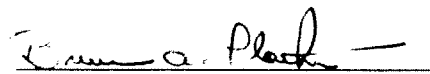
C. Penalty most likely to achieve compliance.

Based upon the findings above and Norris' continuing resistance to criticism, it seems unlikely a lesser discipline would bring about needed change. Valdez, in a last-ditch effort to do so gave Norris a direct order and was unmistakably rebuffed. Consequently, the Agency's election to dismiss Norris was neither clearly excessive nor based upon considerations unsupported by a preponderance of the evidence. In re Mounjim, CSA 87-07, 18 (7/10/08), citing In re Delmonico, CSA 53-06, 8 (10/26/06).

VI. ORDER

The Agency's decision to terminate Norris' employment on September 14, 2009, is **AFFIRMED**.

DONE July 12, 2010.



Bruce A. Plotkin
Hearing Officer
Career Service Board

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

A party may petition the Career Service Board for review of this decision in accordance with the requirements of CSR § 19-60 *et seq.* within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of mailing below. The Career Service Rules are available at [www.denvergov.org/csa/career service rules](http://www.denvergov.org/csa/career-service-rules).

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

BY MAIL OR PERSONAL DELIVERY:

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

BY FAX:

(720) 913-5720

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