

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

Appeal No. 12-10

DECISION

IN THE MATTER OF THE APPEAL OF:

ANGELA RODRIGUEZ,
Appellant,

vs.

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

I. INTRODUCTION

The Appellant, Angela Rodriguez, appeals the termination of her employment by the Denver Department of Human Services (the Agency), for violation of specified Career Service Rules. A hearing concerning this appeal was conducted on April 30, 2010 and on August 27, 2010 by Bruce A. Plotkin, Hearing Officer. Ms. Rodriguez was present and was represented by her attorney-at-law, Michael J. O'Malley, Esq., while the Agency was represented by Assistant City Attorney, Niels Loechelle.

Agency exhibits 1-25, and Appellant's exhibits A-E, were entered into evidence. The Agency called the following witnesses: Angela Rodriguez; Veronica Serna; Christine Martinez; Chet Casebolt; Sarah Lyons; Diane Gomez; Monie Salgado; and Juanita Rios-Johnston. Rodriguez testified on her own behalf, and presented no other witness. The Agency dismissed Rodriguez' alleged rule violations for Career Service Rule (CSR) 16-60 P., conviction of or being charged with a crime. The Agency also withdrew its claim under CSR 16-60 Q, failure to report charges or convictions of crimes.

II. ISSUES

The issues presented for appeal were:

1. whether Rodriguez violated specified Career Service Rules and Denver Department of Human Services (DDHS) policies and regulations;

2. if Rodriguez violated any of the specified Career Service Rules, whether termination was reasonably related to the seriousness of the proven violation(s).

III. FINDINGS

Rodriguez was employed with Denver Department of Human Services for seven years. [Exhibit 26]. From August 2009, until her termination in February 2010, she was a Case Management Coordinator II under supervisor Monie Salgado. Rodriguez processed childcare referrals for the Colorado Childcare Assistance Program (CCAP), which includes new referrals and redeterminations of eligibility for low-income families every six months ("redeterminations"). [Rodriguez Testimony, 4/30/10; Exhibit 1]. On April 30, 2009, Salgado provided Rodriguez with training materials which specified CCAP processes and deadlines for obtaining information from customers and for completing benefit determinations. [Exhibit 1-8].

Between October 22, 2009 and January 21, 2010, Rodriguez was late for her shift twenty-one times, and she worked beyond the end of her shift without authorization fifteen times. During that same period, she called in twice saying she would be late, then did not come in at all. [Exhibit 1-6]. She did not punch out for lunch and entered incorrect work hours into her KRONOS timekeeping records, so that she received pay for time she did not work. [Exhibit 1-7; Exhibit 1-263 through 1-267]. The Agency disciplined Rodriguez for unauthorized leave without pay three times. [Exhibits 4; 6; 9]. The Controller's Office authorized Rodriguez to accept donated leave time, then Rodriguez gave Salgado two days notice before taking FML leave. Salgado was unable to obtain coverage for Rodriguez' absence with two days notice. [Exhibit 1-7; Salgado testimony]. Further, Rodriguez's supervisor conducted a desk audit, the results of which showed Rodriguez failed to meet specific duties.

On December 4, 2009, Rodriguez requested a meeting with Salgado to help with the organization of her desk. Shortly after, Rodriguez called back to report she was sick and would be late. [Exhibit 1-8]. Salgado conducted a desk audit without Rodriguez, and found Rodriguez failed to complete eight redeterminations on time. [Exhibit 1-8]. She also did not have necessary information from the case files to complete thirteen redeterminations assigned to her. [Exhibit 1-8]. Additionally, Rodriguez failed to process seven applications on time, resulting in non-compliance with county regulations. [Exhibit 1-8]. Rodriguez failed to address numerous faxes dating back three weeks from the audit, resulting in delays of assistance to customers. [Exhibit 1-9]. Rodriguez also failed to mail ten to fifteen termination certificates resulting in non-compliance with county regulations, did not process nineteen voter registration forms, failed

to follow up on missing information in multiple "requests for services," resulting in the Agency incorrectly closing those cases, and did not process sixty-eight pieces of mail in the requisite ten day period. [Exhibit 1-9]. Rodriguez also failed to complete fifteen redeterminations on time before she took Family Medical Leave Act leave from December 28, 2009 through January 6, 2010. Consequently a co-worker had to process the redeterminations in order to avoid loss of benefit to those clients. [Exhibit 1-9].

Caseworkers are required to return phone calls within 48 hours. [Exhibit D]. Fifteen customers complained to Salgado that Rodriguez' failed to answer her phone or return their phone calls. [Exhibit 1-10]. Rodriguez's voice mailbox was full on three separate dates between November 5, 2009 and December 29, 2009. [Exhibit 1-10]. Most notably, in one two week period, Rodriguez' internet record showed over 1800 internet site "hits" on non-work related websites during working hours, including many to the social networking site "Facebook." [Exhibit 1-11; 1-221 through 1-262].

The Agency disciplined Rodriguez on four prior occasions. On May 12, 2005, the Agency issued a verbal reprimand to Rodriguez for repeated failures to arrive at the beginning of her shift. [Exhibit 9]. On November 15, 2005, the Agency issued her a verbal reprimand for failure to disclose a conviction. [Exhibit 8]. On June 25, 2008, the Agency issued a verbal reprimand for repeated tardiness in reporting for the start of her shift, after being counseled concerning punctuality issues. [Exhibit 6; 7]. On January 7, 2009, the Agency issued a written reprimand for her repeated unauthorized absences and tardiness, and working beyond her shift. [Exhibit 4]. Additionally, Rodriguez's supervisor placed her on a Performance Improvement Plan (PIP) on May 22, 2007, for failing to be timely in processing pending applications and Care Point messages during a five-month period. [Exhibits 12; 13]. On December 5, 2007, Rodriguez's supervisor again placed her on a PIP, for failing to respond to and resolve Care Point messages for two and a half months. [Exhibits 14; 15]. During both of those PIP periods, Rodriguez was an Eligibility Technician. The Agency's expectation was for an Eligibility Technician to resolve all Care Points within 48 hours for standard Care Points, and 24 hours for high priority Care Points. Rodriguez significantly improved in these areas during the PIP periods, so that Casebolt took her off the PIPs. CCAP does not use the Care Point Call Center, therefore, the Agency no longer evaluated Rodriguez on that basis.

On January 22, 2010, the Agency served notice on Rodriguez that it was contemplating disciplinary action against her for violations of multiple Career Service Rules and DDHS policies and regulations, due to her frequent absences and tardiness, the Agency's desk audit findings, customer complaints, and excessive internet usage. [Exhibit 1].

The Agency convened a pre-disciplinary meeting on February 1, 2010. Rodriguez attended with her union representative and presented a written response to the pre-disciplinary letter. [Exhibits 2; 25; 26].

Rios-Johnston, the Family & Adult Services Division Manager 2, issued a letter dated February 11, 2010, notifying Rodriguez of her termination, effective the following day. This appeal followed timely on February 26, 2010.

IV. JURISDICTION

The City Charter § C5.25(4) and CSA 2-104 b) require the Hearing Officer to determine the facts in an appeal *de novo*, meaning hearing the evidence as though no previous action had been taken. In re Lung, CSB 42-07, 4 (1/30/09), citing Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

V. ANALYSIS

The Agency alleged Rodriguez violated the following thirteen Career Service Rules.

A. CSR § 16-60 A. Neglect of duty

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). Additionally, the Agency must have communicated the duty in a way that a reasonably astute employee would be aware of it and, if required by the Agency, the manner in which the Agency expects him to perform that duty. In re Mestas et al., CSA 64-07, 21 (5/30/08).

Rodriguez went through the same training for CCAP as her co-workers. [Rodriguez Testimony, 4/30/10; Exhibit 22]. Rodriguez was responsible for the low-income caseload, and her duties included maintaining her caseload, processing redeterminations of eligibility every six months, processing intake applications, processing mail, emails and phone calls, and processing changes from clients. [Salgado Testimony, 8/27/10]. After Ms. Salgado conducted a desk audit for Rodriguez, she found eight redeterminations that Rodriguez did not complete within the requisite month-long period. [Salgado Testimony, 8/27/10; Exhibit 16]. When a caseworker does not timely complete a redetermination, clients' children are not able to attend childcare through CCAP. [Salgado Testimony, 8/27/10].

Salgado acknowledged that the cases of one reassigned caseworker were distributed among the remaining case workers, including Rodriguez, and

Rodriguez would not have known whether the newly-assigned cases were complete or correct. [Salgado Testimony, 8/27/10]. However, there was no indication other case workers had an issue with the additional work.

Rodriguez also claimed she was on intermittent Family Medical Leave Act (FMLA) leave since 2008 through December 31, 2009, and was on sick leave for two weeks from the end of December 2009 into January 2010. [Rios-Johnston, 8/27/10]. Salgado agreed that, if an employee misses two weeks of work, the employee would become tardy in her work. [Rios-Johnson, 8/27/10]. However, Salgado's desk audit of Rodriguez disclosed her unprocessed redeterminations occurred before her two-week absence in late December 2009 through early January 2010.

Rodriguez did not respond directly to this disclosure. Instead, she submitted a response to the section on the desk audit findings in the pre-disciplinary letter, stating:

I was under the impression that she was just going to help me get organized because she had helped another co-worker a week before...I did not know it was a desk audit. I was overwhelmed and happy that she was going to help me out with getting my desk together... I thought that's what it was about I did not know it would escalate to this.

[Exhibit 25]. Rodriguez also testified Salgado did not give her an opportunity to improve. She stated she and her co-workers were out of training only six months, and some co-workers understood the training and some did not, but no other witness affirmed her statement. The Agency gave Rodriguez a favorable performance review the month after the CCAP program went live, and Rodriguez did not know she had widespread performance issues. However, she acknowledged Salgado told her about the state standards for timelines for processing CCAP cases, and the standards did not change while Rodriguez worked for the Agency. [Rodriguez Testimony, 4/30/10].

The Agency established that Rodriguez violated this rule because Rodriguez received training regarding her duty to timely process redeterminations for clients in her caseload, she failed to complete eight redeterminations on time, and her failure to complete those redeterminations resulted in significant potential or actual harm since children in her caseload were unable to attend childcare. See In re Lottie, CSA 132-08, 2 (3/9/09).

Further, Rodriguez violated this rule for: her failure to collect the case files to complete thirteen redeterminations; her failure to process timely seven applications that were out of compliance as of the date of the desk audit; her

failure to respond to numerous faxes, her failure to mail ten to fifteen termination certificates after clients fell out of compliance; her failure to provide nineteen completed voter registration forms to Salgado, as required; her failure to follow up on requests for services that were in her "missing information drawer;" and her failure to process a stack of mail in the requisite ten day period, all of which caused delays in processing and approving of childcare assistance. [Exhibit 2].

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

A violation of this rule is proven by a showing that the employee performed a duty poorly, rather than not performing it at all. *In re Mestas et al.*, CSA 64-07, 31 (5/30/08), *citing In re Simpleman*, CSA 31-06, 4-5 (10/20/06).

Sarah Lyons, a Case Management Coordinator II, was one of Rodriguez's co-workers. After Rodriguez was dismissed, Lyons was assigned 20-30 of Rodriguez' cases in addition to her own. She testified Rodriguez had not worked most of those cases at all. She found Rodriguez' desk in disarray and found some of Rodriguez' cases had languished on her desk for more than three or four months. Lyons also stated for those cases Rodriguez did work, Lyons found a 20% error rate while the limit of acceptability was 5%. [Lyons Testimony, 4/30/10]. Lyons was obligated to work Rodriguez's cases so that Rodriguez' clients would not lose their benefits. Notably, Lyons testified she had no difficulty keeping up with her increased caseload. [Lyons Testimony, 4/30/10]. Her testimony remained un rebutted, however, on cross-examination, Lyons acknowledged she was the most experienced case management coordinator.

In August 2009, CCAP cases were divided into two divisions, TANF and Low-Income. The Agency moved a co-worker into the TANF division and distributed some of his cases to Rodriguez. Salgado conceded that she would not have known, when Rodriguez was assigned those cases, whether those files were complete or correct. [Salgado Testimony, 8/27/10].

Rodriguez contended the cases she received in August were incomplete and inaccurate, and she needed to rework them, causing her delay in her own work. [Rodriguez Testimony, 8/27/10]. She testified she told her supervisor at the time, Serna, that reworking the new cases she received caused her to fall behind on her caseload. [Rodriguez Testimony, 8/27/10]. She also asserted that, in November 2009, there were layoffs, and Salgado assigned her additional cases, causing her further delay. [Rodriguez Testimony, 8/27/10]. However, Rodriguez did not notify Salgado that the additional cases caused delay or that she needed help. [Rodriguez Testimony, 8/27/10].

Rodriguez acknowledged her performance "needed improvement," and that "she could not keep up the flow." [Rodriguez Testimony, 4/30/10]. She

conceded she did not complete re-certifications correctly. [Rodriguez Testimony, 4/30/10; Exhibit 26]. She admitted she needed help and failed to request it. [Rodriguez Testimony, 4/30/10]. She claimed she was unaware she had problems until she received Salgado's memos in the beginning of December. [Rodriguez Testimony, 4/30/10]. She testified she did not know she was significantly behind in processing her caseload compared with her co-workers. She also thought she was still in the training process for the six months she worked in CCAP, however, she conceded she never asked Salgado if they were still in the training phase. [Rodriguez Testimony, 4/30/10].

Rodriguez testified she did not receive the results of Salgado's December 4th desk audit until January 22, 2010, when she received the pre-disciplinary letter. [Rodriguez Testimony, 8/27/10]. Rodriguez also testified Salgado failed to disclose the desk audit or any findings from the audit during December, and that Salgado did not give her a chance to improve. [Rodriguez Testimony, 4/30/10, 8/27/10].

20% of Rodriguez' cases were worked incorrectly, and Rodriguez conceded her she did not complete "basically all of" her work correctly. She claimed she needed help but failed to request any. An employee must exercise a degree of care that a reasonable person would exercise under the circumstances. Here, a duty of a Case Management Coordinator for the Low-Income CCAP process is to correctly complete the necessary paperwork to process their cases in order to provide clients the necessary benefits for child care. Where Rodriguez knew that she did not complete "basically all of" her work correctly and failed to seek help to correct her casework, she risked potential or actual significant harm for her clients, jeopardizing their benefits. Based on these findings, the Agency showed Rodriguez performed her duties poorly where she deviated from an exercise of reasonable care, and that her carelessness in the performance of her duty resulted in potential significant harm. Thus, the Agency proved Rodriguez violated this rule.

C. CSR § 16-60 D. Unauthorized operation or use of any vehicles, machines, or equipment of the City, including, but not limited to, the unauthorized use of the internet, e-mail, or telephones.

The Agency provided internet records showing Rodriguez accessed the social networking website Facebook repeatedly between October 2, 2009 and December 2, 2009. [Exhibit 1, 51-262]. Rodriguez stated she minimized the Facebook screen, so that she was not accessing Facebook actively at times shown in the internet records. Nonetheless, she conceded she viewed Facebook often, and she knew such internet use was unauthorized. [Rodriguez Testimony, 4/30/10; Exhibit 26]. This violation is established by Rodriguez' admission.

D. CSR § 16-60 E. Any act of dishonesty, which may include, but is not limited to:

- 1. Altering or falsifying official records...;**

- 3. Lying to superiors or falsifying records with respect to official duties, including work duties, disciplinary actions, or false reporting of work hours.**

A violation of this rule includes any knowing misrepresentations made within the employment context. In re Mounjim, CSA 87-07, reversed 6 (CSB 1/8/09). On December 10, 2009, Salgado received an email from another supervisor stating she saw Rodriguez driving at 12:15 pm. The supervisor checked KRONOS and saw Rodriguez had not punched out for lunch. She saw Rodriguez return to her desk over an hour later, at 1:20 pm. When questioned by Salgado, Rodriguez said she forgot to punch out for lunch but was out for only her designated half hour, 12:30 to 1:00 pm. [Exhibit 2-7]. In her written response presented at the pre-disciplinary meeting Rodriguez stated:

I have an email showing that [Salgado] & I were emailing each other around this time and it states that I said I took lunch at 12:30 to 1:00 but Kronos shows me out to lunch at 1:15 to 1:49.

[Exhibit 25].

In a December 11, 2009 email from Salgado to Rodriguez, the attached KRONOS report shows Rodriguez was out between 1:15 and 1:49 pm. [Exhibit 24]. Rodriguez did not deny she was absent more than one hour, and she did not deny she told Salgado she was absent only for half an hour. Although the exact times in KRONOS that Salgado entered are not the same that Salgado asserts Rodriguez told her, it does account for the thirty minutes Rodriguez allegedly told Salgado she was absent from her desk. Further, Rodriguez did not dispute the credibility of either Salgado or Flores. Rodriguez disputed only the times entered into KRONOS as compared to the times she allegedly told Salgado. Rodriguez violated this rule because she misrepresented the amount of time she was absent from her desk on December 10, 2009, knowing the times she reported to her supervisor would be the time period the supervisor entered into KRONOS for her.

D. 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.

In order to prove Rodriguez failed to comply with a lawful order of her supervisor, the Agency must establish that 1) a supervisor communicated a

reasonable order to her; and 2) she violated the order, 3) under circumstances demonstrating willfulness. *In re Owens*, CSA 69-08, 4 (2/6/09), citing *In re Mounjim*, CSA 87-07, 7 (7/10/08), affirmed, CSB (1/8/09).

Salgado sent an email to Rodriguez on November 5, 2009, prohibiting her from "making up" time. [Salgado testimony, 8/27/10; Exhibit 18]. However, after the Salgado email Rodriguez worked late seven times to make up for late arrivals. [Exhibit 1, 265-266]. The same day as Salgado's directive, Rodriguez confirmed by return email that her schedule was 8:00 am to 4:30 pm on Mondays, Tuesdays, Thursdays, and Fridays, and 9:00 am to 5:30 pm on Wednesdays. [Exhibit 18]. However, in what was her most egregious violation, after being specifically ordered not to do so, Rodriguez continued deviating from her work schedule against Ms. Salgado's explicit prohibition. [Salgado Testimony, 8/27/10; Exhibit 19; Exhibit 24]. Salgado emailed Rodriguez again on December 11, 2009, reminding Rodriguez she was not authorized to make up time at the end of her work day. [Exhibit 1, 265-266; Exhibit 24]. Rodriguez then worked late time three more times, between December 11, 2009 and January 21, 2010, to make up for late arrivals. [Exhibit 1-265]. No other employee made up time without prior approval. [Salgado Testimony, 8/27/10].

Rodriguez claimed Salgado allowed her to make up time by staying late when she was on intermittent FML leave. [Rodriguez Testimony, 8/27/10]. However, Rodriguez acknowledged Salgado's subsequent emails prohibited a continuation of the practice. [Rodriguez Testimony, 8/27/10; Exhibit 18]. Rodriguez stated she did not intend to continue making up time, and she recalled only one instance when she worked late because she lost track of time. She stated that she emailed Salgado asking her to clock her out at the end of her shift time instead of the time she left. [Rodriguez Testimony, 4/30/10; 8/27/10]. She also stated she was mistaken about her Wednesday shift times, believing her shift was 9:30 am to 6:00 pm, when her actual shift times were 9:00 am to 5:30 pm. [Rodriguez Testimony]. In light of Salgado's specific orders and Rodriguez' acknowledgment of them, her recollection is suspect. Since Rodriguez' Wednesday schedule change occurred at her own request, Rodriguez' claim to have been mistaken about it is not credible. The Agency established that Rodriguez violated this rule by willfully continuing to make up time after her supervisor forbade it.

E. CSR § 16-60 K. Failing to meet established standards of performance including either qualitative or quantitative standards. When citing this subsection, a department of agency must describe the specific standards the employee has failed to meet.

In order to prove Rodriguez violated this rule, the Agency must prove 1) it established a standard; 2) it clearly communicated the standard; and 3)

Rodriguez failed to meet that standard. In re Mounjim, CSA 87-07, 8 (7/10/08), citing In re Diaz, CSA 45-05, 7 (9/7/05); affirmed In re Mounjim, CSB 87-07a, 3-5 (1/8/09). Performance standards may be found in an agency or division performance evaluation, classification description, or in its policies and procedures. In re Routa, CSA 123-04, 3 (1/27/05).

The Agency cited the following portions of Rodriguez's Performance Enhancement Program Report (PEPR):

DHS STARS/PEP

Service: The work performed to benefit the customer (citizen, employee, official, vendor, contract, etc.). The goal is to continually seek to exceed customer service expectations by responding to customer inquiries within 48 hours being proactive in identifying and meeting their needs, working collaboratively with them to solve their problems. Exhibits the DDHS values of Community Awareness and Customer Centered.

Here, the Agency presented evidence that Rodriguez failed to meet the Service standard of her PEPR, where she did not respond to customer inquiries within 48 hours, and was not proactive in identifying and meeting their needs. The Agency asserted that Rodriguez's voice mailbox was full on three dates, on November 11, 2009, December 16, 2009, and December 29, 2009. [Salgado Testimony, 8/27/09; Exhibit 2-10]. Further, Salgado testified fifteen clients complained Rodriguez did not return their phone calls, after they left multiple messages on her voicemail. [Salgado Testimony, 8/27/09; Exhibit 2-10]. Diane Gomez, also a Case Management Coordinator II, confirmed CMCs must return phone calls within 48 hours. [Gomez Testimony, 8/27/10]. After the Agency terminated Rodriguez, Salgado reassigned one hundred of Rodriguez' cases to Martinez who testified she received about twenty phone calls a day from Rodriguez' clients, complaining that she did not return their phone calls. [Martinez Testimony, 4/30/10].

In her response to the pre-disciplinary letter, Rodriguez stated "I try and call my clients back. I am sorry that some complained but I have a lot of clients that are happy with me." [Exhibit 25]. Rodriguez also asserted that, although Exhibit 21 shows a call log of her full voicemail, most of the calls were from the two-week period when she on sick leave, from December 24, 2009 through January 11, 2010. Rodriguez failed to rebut the Agency's evidence that her voicemail was full on November 11, 2009 and December 16, 2009, both before her sick leave. Further, Salgado created a call log for Rodriguez, which showed, of the phone complaints during the period Rodriguez was out sick, many clients complained they had been calling for extended periods without response.

[Exhibit 21]. Therefore, the Agency established Rodriguez violated the Service standard of her PEPR in failing to return phone calls in 48 hours.

Teamwork: Works cooperatively with others to achieve Team goals. Encourages and facilitates cooperation, pride, trust, and group identity; fosters commitment and team spirit; works with others to achieve goals. Makes contributions to improve team performance. Exhibits the DDHS value of Teamwork.

The Agency also claimed Rodriguez failed to meet her PEPR standard of Teamwork. Generalized standards and aspirational goals fail to provide notice to apprise employees what measures determine success or failure. See In re Jones, CSA 88-09, 5 (5/11/10); In re Catalina, CSA 35-08, 10 (8/22/08); and In re Mounjim, CSA 87-07, 11 (7/10/08) ("communication of work duties and of the standards by which those duties are judged, are fundamental tenets of the Career Service Rules.") I find that this Agency standard is too vague to provide reasonable notice of what objective standards apply.

Accountability and Ethics: Contributes to maintaining the integrity of the organization; displays high standards of ethical conduct and understands the impact of violating these standards on the organization, self and others; is trustworthy. Exhibits the DDHS values of Accountability, Confidentiality, and Integrity.

The Agency alleged Rodriguez failed to meet the Accountability and Ethics standard of her PEPR. As stated above and in previous decisions, aspirational goals such as these do not constitute enforceable standards. See In re Jones, CSA 88-09, 5 (5/11/10); In re Catalina, CSA 35-08, 10 (8/22/08); and In re Mounjim, CSA 87-07, 11 (7/10/08).

Job Specific Duties and Standards:

- **Maintains knowledge and skills of computer systems used to complete job duties.**
- **Uses knowledge and skills to perform assigned tasks, consistently achieving accurate and timely outcomes.**
- **Completion of all necessary statistical reports. Complies with established policies and procedures set forth by CHATS and supervisor.**
- **Retrieves voicemails each day to receive calls from RMS vendor.**
- **Provides required statistical reports (daily, weekly, monthly, or upon request). Ensures accuracy of statistical report data.**
- **Acquires the knowledge and performs one's job to meet compliance with program rules and regulations. 95% of program applications processed within state standards.**

- **Performs caseload maintenance to ensure that eligibility is correct for each case and that all changes are acted upon timely and in accordance to program rules and regulations and specified time frames.**
- **Complete necessary case and eligibility review and redeterminations based upon Federal, State, and County rules and regulations.**
- **Documents case facts clearly and thoroughly in CHATS case comments and places a copy in the physical case records.**
- **Research inquiries and problems and provides resolutions and recommendations to the clients and providers within 2 business days 90% of the time.**
- **Request verification information when obvious concerns are present. Update and change case information accordingly.**
- **95% of program applications processed within state standards.**
- **Ensures one's work area is maintained in an orderly and accessible manner.**
- **Applies initiative to recognize and perform tasks that are within the goals and objectives of the agency. Display initiative and perform tasks that are not specifically assigned.**
- **Identify areas for improvement and take necessary steps to make improvements.**
- **Use decision making techniques to achieve goals. Generate alternatives to consider risks and evaluate and choose the best alternative to develop solutions.**
- **Consults appropriately with immediate supervisor for advice or direction for problem solving when appropriate.**

With regard to specific standards, the Agency alleged Rodriguez did not "achieve accurate and timely outcomes" where she had many escalated cases which Salgado assigned to a co-worker because Rodriguez failed to work the cases correctly, or at all. [Lyons Testimony, 4/30/10]. The Agency demonstrated that Rodriguez did not meet the standard to "retrieve voicemails each day" where her voice mailbox was full on three separate dates. [Salgado Testimony, 8/27/10]. After Salgado reassigned Rodriguez' cases, she found Rodriguez failed the state standard to process timely "95% of program applications." [Gomez Testimony, 8/27/10; Lyons Testimony, 4/30/10]. Rodriguez failed to perform "caseload maintenance to ensure that eligibility is correct for each case and that all changes are acted upon timely and in accordance to program rules and regulations and specified time frames" where the desk audit revealed that she did not work numerous faxes and failed to mail ten to fifteen termination certificates. [Salgado Testimony, 8/27/10].

In addition, Rodriguez failed to "complete necessary case and eligibility review and redeterminations based upon Federal, State, and County rules and regulations," where Salgado's desk audit revealed eight redeterminations were

not completed timely. [Salgado Testimony, 8/27/10]. Rodriguez failed to “research inquiries and problems and provide resolutions and recommendations to the clients and providers within 2 business days 90% of the time” where Salgado testified that she discovered Rodriguez’s voicemail was full on three separate dates, and that she received fifteen customer complaints that Rodriguez failed to respond to their multiple messages. [Salgado Testimony, 8/27/10]. Further, Rodriguez conceded she asked Salgado for help organizing her desk, proving she failed to maintain her work area “in an orderly and accessible manner.” In light of these findings, the Agency established Rodriguez failed to perform more than half her duties to agency standards.

F. CSR § 16-60 L. Failure to observe written departmental or agency regulations, policies or rules. When citing this subsection, a department or agency must cite the specific regulation, policy or rule the employee has violated.

To prove a violation of this rule, the Agency must prove only that there was a written policy, the employee was aware of the policy, and the employee failed to follow the policy. *In re Mounjim*, CSA 87-07, 6 affirmed on other grounds, *In re Mounjim*, CSB 87-07a (1/8/09). In addition, however, “departmental rules must be clear, reasonable, and uniformly enforced before enforcement will be sustained.” *In re Norman-Curry*, CSA 28-07 and 50-08, 5 (2/27/09).

The Agency cited the Agency’s Colorado Childcare Assistance Program Process Manual and Employee Handbook deadlines for completing redeterminations. [Exhibit 1-14]. Rodriguez testified she assisting in drafting the guidelines, thus she was well aware of them. Rodriguez failed to complete eight redeterminations on time. [Salgado Testimony, 8/27/10; Exhibit 16].

Rodriguez did not specifically address this contention in her response to the pre-disciplinary letter, [Exhibit 25], nor did she did respond specifically to her failure to complete redeterminations on time, as specified in the CCAP Manual. While she admitted she was behind on working her cases, [Rodriguez Testimony], Rodriguez claimed she was insufficiently trained, and she could not keep up with her caseload because it was larger and more disorganized than other workers’ caseloads. [Rodriguez Testimony, 4/30/10; 8/27/10].

The Agency rebutted Rodriguez’ testimony that her caseload was larger and more disorganized than other workers’ caseloads and that she received insufficient training with the testimony of her coworkers and supervisors. Ms. Serna testified supervisors were working constantly with caseworkers’ caseloads to make sure that they were balanced. She defined balanced as “workable and manageable.” [Serna Testimony, 4/30/10]. Salgado testified Martinez carried approximately 350 cases while Rodriguez had approximately 250 cases,

the second smallest caseload of the caseworkers that she supervised. After the supervisors redistributed the cases to balance them, each of the caseworkers had about 227 cases. [Salgado Testimony, 8/27/10]. Further, Salgado testified the entire unit attended the same one month long training session for low-income and CCAP processes.

Ms. Martinez, another Case Management Coordinator, testified that everyone that did ongoing work in the Low-Income unit had the same duties. [Martinez Testimony, 4/30/10]. She testified the supervisors reshuffled the caseload in order to even out the caseloads between the caseworkers. Martinez stated that, initially, she had the most cases, but after the re-alignment, everyone had about the same number of cases. She stated she was able to stay on top of her caseload when the supervisors balanced the caseloads between the caseworkers. When Rodriguez left, her cases were divided between Martinez and Gomez, about 100 each. Martinez testified Rodriguez had processed few of her cases timely. She received up to twenty phone calls per day regarding those cases, and 10% of Rodriguez' redeterminations were untimely.

Diane Gomez, another Case Management Coordinator, was an even stronger witness for the Agency because she had no prior CCAP experience, and the Agency hired her after Rodriguez, dispelling Rodriguez' claim she was less experienced than her better-performing co-workers. Gomez testified without rebuttal that, of the approximately 100 cases she received which were formerly assigned to Rodriguez, 35-40% were tardy.

I find Rodriguez knew the timeframe in which she was required to complete redeterminations, but failed to comply. She failed to notify her supervisor timely that she needed assistance with her ongoing cases, and it was only when Ms. Salgado completed the desk audit that Ms. Salgado discovered how far behind Rodriguez was. The testimony from Rodriguez' co-workers established they were able to complete their ongoing cases timely and correctly to a significantly greater extent than Rodriguez. [Testimony of Gomez; Martinez; Lyons 4/30/10; 8/27/10]. Therefore, the Agency established that Rodriguez violated this rule as to the CCAP Process Manual.

Denver Department of Human Services Employee Handbook

The DDHS computer systems generally must be used only for work-related activities. Incidental personal use is permissible so long as: (a) it does not consume more than a minimal amount of resources; (b) does not interfere with worker productivity, and (c) does not preempt any work-related activity, in accordance with DDHS policies. Users are forbidden from using DDHS

computer systems for private business activities or amusement/entertainment purposes.

Employee Handbook (Computer Privacy Policy and Procedure)

“The City provides electronic media and services primarily for your business use. Limited, occasional or incidental use of electronic media for personal, non-business purposes is understandable as long as it is of a brief duration and upon infrequent occasion, does not interfere with your performance of job duties, and is not in support of a personal business. You are expected to demonstrate a sense of responsibility and not abuse this privilege. Abuse of this privilege may result in disciplinary action and or legal action in the form of criminal or civil penalties.”

“Any use by anyone of computer hardware, software, E-mail, Internet access or other resources available on a DHS computer network that is in violation of federal, state, city, or department policies or procedures will be referred to appropriate management and may result in appropriate disciplinary actions and may subject the individual to prosecution.”

Denver Department of Human Services Privacy and Security Manual Internet Use pages 44 and 45

- **Internet access is provided to members of the Department’s workforce as a business tool, and as such it will be utilized by workforce members in an appropriate manner.**
- **Members of the Department’s workforce will primarily use the Internet to aid in the performance of City business. Limited, occasional or incidental use for personal, non-business purposes is allowed so long as it is of a reasonable duration and frequency, does not interfere with the performance of job duties, does not violate any laws or regulations, and is not in support of a personal business.**
- **Accessing any inappropriate Internet site is prohibited, including sites that are obscene, hateful, harmful, malicious, hostile, threatening, abusive, vulgar, defamatory, profane, or racially, sexually, or ethnically objectionable. Inappropriate use of the Internet also includes participation in “chat rooms” not related to assigned job responsibilities; playing games; purchasing or promoting the sale of merchandise for personal gain; downloading music, games, pictures, video, freeware, or software; or using instant messaging. Workforce members who intentionally visit inappropriate sites or use the Internet in an inappropriate manner with face sanction.**
- **The City and County of Denver uses independently supplied software and data as a web filter to block certain inappropriate categories of Internet sites. A member of the Department’s workforce who has a legitimate**

business need to access a blocked site may submit a written request, approved by the Department's Privacy Officer, to the Technology Services Security Manager to have the site unblocked. The fact that a site is not blocked does not imply that it is acceptable or permissible to access.

- **All access of the Internet will be recorded in an Internet activity log which is available for review by designated Technology Services personnel upon request by a supervisor or Executive Director. When inappropriate use of the Internet is found, Technology Services will notify the workforce member's supervisor, and the Department's Privacy Officer of the inappropriate use. The member's supervisor will take disciplinary action as necessary, based on Career Service Rules or other applicable procedures.**

The Agency asserted Rodriguez used the internet excessively in violation of the Employee Handbook as cited above. On January 26, 2009, the Director of the Human Resources Division, sent Rodriguez an email notifying her of improper email use in violation of the DHS Employment Handbook, and directing her to consult the handbook for computer use policies. [Exhibit 3]. The email notified Rodriguez that the DHS Employment Handbook is available on the Denvergov website. *Id.* The Handbook permits only incidental personal use, and prohibits the abuse of the internet. The Agency supplied Rodriguez's internet records for the dates October 2, 2009 through December 2, 2009, which showed extensive personal internet use more than eight months after Rodriguez was specifically cautioned against the practice. [Exhibit 1, 51-262].

Rodriguez acknowledged she actively accessed Facebook during work hours, but claimed her time on Facebook did not affect her ability to get her work done, and that she voluntarily decreased her use in December and January. [Rodriguez Testimony, 4/30/10]. Rios-Johnston conceded that Rodriguez stopped using the internet excessively. [Rios-Johnston, 8/27/10].

Agency internet records demonstrate that in one 30-day period, Rodriguez' internet record showed over 2500 internet site "hits" on non-work related websites during working hours. [Exhibit 1-11]. However, the internet records that the Agency supplied were between the dates October 2, 2009 through December 2, 2009. [Exhibit 1, 51- 262]. These records demonstrate that Rodriguez did not access the internet between the dates of November 17, 2009 and December 2, 2009. [Exhibit 1-262].

I find the Agency established that Rodriguez violated this rule as to the Agency's internet policy. Although the Agency's internet records show that Rodriguez later decreased her internet use substantially, such belated compliance, more than eight months after a specific order, does not absolve the violations.

Attendance

It is your responsibility to be at work each day scheduled and to report an absence in accordance with the following DHS procedures. If you are unable to report at your scheduled work time, you must call your supervisor as early as possible, but at least two hours prior, unless the needs of the particular division dictate additional advance notice.

Punctuality

Consistent punctuality is necessary to provide the kind of customer service and teamwork that is essential for DHS to fulfill its mission. The responsible supervisor of each work unit sets aside specific reporting standards. Employees should refer to the City Payroll Guidelines for procedures on reporting time.

Non-Exempt Employees

As a Non-Exempt employee, if you report to work after the scheduled starting time, it will be recorded as tardiness and may be cause for disciplinary action and/or unauthorized leave without pay. If a situation arises where you expect to be late, it is your responsibility to contact your supervisor immediately.

The Handbook requires employees to report absences at least two hours prior to the scheduled work time. The Agency established that, between the dates of October 22, 2009 and January 21, 2010, Rodriguez was late for the start of her shift twenty-one times. [Exhibit 1, 265-266]. Additionally, after her pre-disciplinary letter on January 22, 2010 until her termination on February 11, 2010, Rodriguez was late seven times and was assessed unauthorized leave without pay eight times.

Rodriguez admitted that she arrived late for her shift repeatedly. [Rodriguez Testimony, 4/30/10]. She claimed Salgado refused her request to adjust her shift 15 minutes later. [Rodriguez Testimony, 4/30/10; Salgado Testimony, 8/27/10]. Salgado testified Rodriguez requested those hours when she joined the unit, but any shift change required supervisor approval in order to ensure coverage for the entire time the building was open. [Salgado Testimony, 8/27/10]. The Agency failed to produce any evidence whether Rodriguez' request could be accommodated. Nonetheless, of the twenty-one times Rodriguez was tardy between October 22, 2009 and January 21, 2010, she still would have been tardy for the start of her shift fifteen times even if her shift began fifteen minutes later. [Exhibit 1-266].

The Agency did not present any evidence regarding whether Rodriguez called two hours before the start of her shift, or when she called to report that she would be reporting late.

The Agency established that Rodriguez violated the Agency policy regarding punctuality and tardiness, but failed to prove Rodriguez violated Agency policy regarding notifying a supervisor at least two hours before the start of her shift.

Your Responsibility as a DHS Employee

As a representative of Denver Human Services and the City and County of Denver, you are a public servant and a role model for all community members. That means that you are held to a high standard of excellence and professionalism. All DHS employees are expected to comply with the following standards at all times.

Ethics

City employees, officers and officials are in a unique position to influence the public's confidence and trust in Denver's City government. You are expected to conduct yourself according to the highest ethical standards. You not only provide services to the public, but you are also a very visible representative of the City.

The Agency asserted Rodriguez violated the Employee Handbook policy regarding Ethics. However, the Agency failed to present any reasonably specific standards of compliance. Further, the wording of the Ethics policy suggests a general goal, and not an enforceable standard, since it provides no guidelines an employee may follow. The Agency did not establish a violation of the Ethics policy.

G. CSR § 16-60 O. Failure to maintain satisfactory working relationships with co-workers, other City employees, or the public.

In order to establish Rodriguez violated this section, the Agency must show she exhibited conduct that she knew, or reasonably should have known, would be harmful to co-workers, other City employees, or the public, or which would have a significant impact on her working relationship with any of them. In re Burghardt, CSB 81-07, 2 (8/28/08). This rule is reserved for an employee's unjustified, purposeful actions or omissions toward a co-worker which inhibit the smooth operation of the unit. In re Delmonico, CSA 53-06, 5 (10/26/06), *citing In re Anderson*, CSA 05-02, 10 (4/30/02).

Although Rodriguez was behind on her case load, causing Salgado to assign Rodriguez's work to other case workers, the Agency did not present any evidence that Rodriguez' actions were purposeful. The Agency presented evidence that she did not timely or correctly complete a large portion of her duties, however, the Agency did not present any evidence that she knew, or

reasonably should have known, that her incomplete and incorrect caseload would impact her co-workers.

To the extent that the Agency sought to establish Rodriguez's failure to maintain satisfactory working relationships with the public, i.e. Rodriguez's clients, the Agency demonstrated she reasonably should have known her actions had a significant impact on her working relationships with her clients by evidence that Rodriguez failed to process redeterminations, faxes, and applications on time, and failed to return phone calls and messages that impacted the clients' ability to procure childcare. [Exhibit 16]. Therefore, I find that the Agency established Rodriguez violated this rule.

H. CSR § 16-60 S. Unauthorized absence from work; or abuse of paid time off, sick leave or other types of leave; or violation of any rules relating to any forms of leave defined in Rule 10 Paid Leave or Rule 11 Unpaid and Extended Leave.

On October 22, 2009, Rodriguez left a voice message for Salgado that she was running late and would be in at 11:00 am. Rodriguez left another voice message at 2:11 pm advising that she was ill and would not be coming in. Rodriguez stated she attempted to go to work, but became ill on the way in. [Exhibit 2-6; Exhibit 25]. Where Rodriguez did not report to work at the time she stated she would, and did not notify Salgado for a 3:15 hour period that she would not report to work that day, the Agency established Rodriguez violated this rule.

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

Rodriguez acknowledged her shift was 8:00 a.m. to 4:30 p.m. on Mondays, Tuesdays, Thursdays, and Fridays, and 9:00 am to 5:30 pm on Wednesdays. [Rodriguez Testimony, 4/30/10; Exhibit 2-6]. She concedes she had attendance problems outside of her FMLA leave. [Rodriguez Testimony, 4/30/10]. Rodriguez admitted she arrived late for her shift repeatedly. [Rodriguez Testimony, 4/30/10]. She also conceded she was aware of the Agency's attendance policy requiring her to sign in timely and be prepared to work. [Rodriguez Testimony, 4/30/10]. Rodriguez claimed Salgado denied her request for a change in her scheduled work shift. [Rodriguez Testimony, 4/30/10], however, between October 22, 2009 and January 21, 2010, Rodriguez was late for the start of her shift twenty-one times, according to KRONOS records. [Exhibit 1-6; 1-266]. Therefore, the Agency established that Rodriguez violated this rule where Rodriguez knew her shift schedule, but was repeatedly tardy for her shift without justification.

J. CSR § 16-60 U. Unauthorized performance of work by non-exempt employees outside of the established work schedule.

As noted above, Rodriguez admitted her established work schedule at the Agency was 8:00 am to 4:30 pm on Mondays, Tuesdays, Thursdays, Fridays, and 9:00 am to 5:30 pm on Wednesdays. She admitted she arrived late for her shift repeatedly, however, she claimed she could recall only one instance when she stayed past the end of her shift, that her staying late was inadvertent, and that she emailed Salgado to request Salgado to clock her out at the correct time. [Rodriguez Testimony, 4/30/10].

Several employees testified the Agency made them well aware they were not allowed to make up time by working late without Salgado's approval. [See, e.g. testimony of Martinez, 4/30/10; Gomez, 8/27/10; Salgado, 8/27/10]. On November 5, 2009, and again on December 11, 2009, Salgado sent Rodriguez emails in which she specifically prohibited Rodriguez from continuing to stay late to make up tardy arrivals. [Salgado Testimony, 8/27/10; Exhibit 18; Exhibit 24]. The same day, Rodriguez confirmed by return email that her schedule was 8:00 am to 4:30 pm on Mondays, Tuesdays, Thursdays, and Fridays, and 9:00 am to 5:30 pm on Wednesdays. [Exhibit 18]. However, in her most egregious violation, even after Salgado specifically ordered her not to do so, Rodriguez continued to deviate from her schedule without Ms. Salgado's permission. [Salgado Testimony, 8/27/10; Exhibit 19; Exhibit 24]. KRONOS records, from November 5 until her termination on January 21, reveal Rodriguez worked late without Salgado's authorization ten times after Salgado's directive. Each of the ten occurrences was a violation of this rule. [Exhibit 1-265, 266].

Rodriguez replied that, when Salgado first became her supervisor, Salgado allowed her to make up time by staying late because she was out on intermittent FML leave. [Rodriguez Testimony, 8/27/10]. However, Rodriguez acknowledged Salgado's emails which prohibit the practice. [Rodriguez Testimony, 8/27/10; Exhibit 18]. Rodriguez stated she did not intend to continue making up time, and she recalled only one instance when she worked late. She recalled that she emailed Ms. Salgado asking her to clock her out at the end of her shift time instead of the time she left. [Rodriguez Testimony, 8/27/10]. She also stated she was mistaken about her Wednesday shift times, and thought her shift was from 9:30 am to 6:00 pm, when her actual shift times were 9:00 am to 5:30 pm. [Rodriguez Testimony, 8.27.10]. In light of the two specific email orders and her acknowledgment of them by return email, Rodriguez' recollection is suspect. Since the Wednesday schedule change came about at her own request, Rodriguez' claim to have been mistaken about it is not credible. For these reasons also, Rodriguez breached CSR 16-60 U. by continuing to work late.

K. 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 serves two functions: it is a catchall provision for wrongdoing which an agency did not specify elsewhere in its notice of discipline; it also serves to bootstrap wrongdoing under other authority into the career service rules. In re Sawyer and Sproul, CSA 33-08, 14 (1/27/09). However, some actual or reasonably perceived harm is required to establish a violation of this rule. A theoretical effect of bad conduct is insufficient. In re Abdi, CSA 63-07, 29 (2/19/08).

Salgado testified fifteen clients complained to her about Rodriguez' failure to return their phone calls. [Salgado Testimony, 8/27/10]. The CCAP Processes Manual requires that a case manager make two attempts to phone a client upon receiving the client's information. [Exhibit 1-22]. Further, Rodriguez' PEPR requires a case manager to respond to customer inquiries within 48 hours. [Exhibit D]. Gomez, also a case manager, affirmed the 48 hour requirement. [Gomez Testimony, 8/27/10]. One client applied for benefits on 7/28/2009, then called Rodriguez in August, September and October to request the status of her application. Rodriguez told the client she would process her application and approve it as soon as possible; however, Rodriguez failed to take any action, even as late as December 12, 2009. The client stated she lost the opportunity for two jobs due to Rodriguez' delay. [Salgado Testimony, 8/27/10; Exhibit 2-11].

Rodriguez denied she told the client she would approve her application. [Exhibit 25]. She explained at hearing that she was assigned to the client only later, when the caseload was split alphabetically. [Rodriguez Testimony, 4/30/10]. However, Rodriguez' response to the Agency's pre-disciplinary letter states that, when she began working under Salgado, on August 24, 2009, she was assigned cases alphabetically from BO to CO. [Exhibit 26]. B.B.'s name would have fallen under Rodriguez' case assignment at that time. Therefore, even if another caseworker was initially assigned B.B. in July when she applied, Rodriguez had four months to process the application timely. B.B. called Rodriguez in September and October to check on the status of her application, when Rodriguez handled her case.

The Agency proved Rodriguez failed to return the client's phone calls in a timely manner, and that her inaction caused some actual or reasonably perceived harm. However, since the evidence, above, was covered under a more specific violation elsewhere in this decision, the Agency's citation to this rule is superfluous. See, e.g. In re Valdez, CSA 90-09, 7 (3/1/10)].

L. CSR § 16-60 Z. 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.

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), affirmed CSB (8/2/07). To sustain an allegation of harm to the Agency, the Agency must show that Rodriguez's conduct hindered the Agency's effectiveness, i.e. the internal structure and means by which the Agency achieves its mission. Id. The Agency can establish Rodriguez caused harm to the City only if the Agency proves that there is actual injury to the City's reputation or integrity. In re Jones, CSA 88-09 (5/11/10), affirmed In re Jones, CSB 88-09A (9/29/10)].

Here, the Agency failed to establish either harm to the Agency or harm to the City. Although Rodriguez violated several CSA rules and Agency policies and did not perform her duties as required, the Agency failed to present evidence that her conduct actually hindered the Agency's ability to perform its mission. The Agency showed that other co-workers were able to correct or complete her work, preventing harm to the Agency. Further, the Agency failed to prove Rodriguez caused actual injury to the City's reputation or integrity.

VI. DEGREE OF DISCIPLINE

In evaluating the appropriate degree of discipline, the Agency must consider the severity of the offense, an employee's past record, and the penalty most likely to achieve the employee's compliance with the rules. In re Norman-Curry, CSA 28-07 and 50-08, 23 (2/27/09). I must not disturb the Agency's determination unless it was clearly excessive, or if it was based substantially upon considerations unsupported by a preponderance of the evidence. In re Owens, CSA 69-08, 8 (2/6/09), citing In re Mounjim, CSA 87-07, 18 (7/10/08), affirmed on other grounds, In re Mounjim, CSB 87-07 a (1/8/09).

Rodriguez violated multiple Career Service Rule, DDHS policies and regulations, was frequently absent and tardy, did not perform her job duties at an acceptable level, and used the internet for personal purposes excessively. Many of the proven violations were severe, because Rodriguez' actions and negligence delayed providing important benefits to clients such as procuring timely childcare, working, or attending school.

Rodriguez was assessed four prior disciplinary actions, including three verbal reprimands and a written reprimand. [Exhibit 2-12]. Three of the reprimands were for issues of attendance, tardiness, unauthorized leave without pay, and

failure to adhere to her work schedule. Those same issues continued unabated in the present case. [Exhibits 4; 6; 9].

The Agency's notice in contemplation of discipline in this case plainly specified Rodriguez' continuing attendance issues were an important reason dismissal was being contemplated. Yet, between the date of the contemplation letter, January 22, 2010, and her dismissal on February 11, 2010, Rodriguez reported late for her shift seven times. [Rios-Johnston Testimony, 8/27/10; Exhibit 2-13]. Rodriguez' persistence makes it apparent there is little basis to believe her compliance with the Rules would improve with a lesser degree of discipline.

Under these circumstances, the Agency's choice to terminate Rodriguez' employment was not clearly excessive while based upon considerations supported by the evidence.

VII. ORDER

The Agency's termination of Rodriguez is AFFIRMED.

DONE October 22, 2010.



Bruce A. Plotkin
Hearings Officer
Career Service Board

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board to review this DECISION, in accordance with the requirements of CSR 19-60 through 19-80, within fifteen calendar days after the date this order is delivered as stated in the attached certificate of delivery. **Please note the 15-day deadline begins from the date sent from the Hearings Office, not the date you receive it.** The Career Service Rules are available as a hyperlink at <http://www.denvergov.org/jobs/PublicNoticesandAnnouncements/CareerServiceAuthorityRuleRevisions/tabid/433593/Default.aspx>

All petitions for review must be filed with the:

Career Service Board
c/o CSA Personnel Director's Office
201 W. Colfax Avenue, Dept. 412, 4th Floor
Denver, CO 80202
EMAIL: Leon.Duran@denvergov.org

AND

Career Service Hearing Office
201 W. Colfax, 1st Floor
Denver, CO 80202
FAX: 720-913-5995
EMAIL: CSAHearings@denvergov.org.

AND

Opposing parties or their representatives, if any.