

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 53-08

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

KARENEE WILLIAMS, Appellants,

vs.

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

The hearing in this appeal was held on November 7, 2008 before Hearing Officer Valerie McNaughton. Appellant was present throughout the hearing, and was represented by George Price, Esq. The Agency was represented by Assistant City Attorney Robert Wolf, and Jim Thomas served as its 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 CASE

On July 21, 2008, Appellant Karenee Williams filed this direct appeal challenging her two-day suspension dated July 18, 2008. The appeal also asserted claims of sex discrimination, sexual harassment, and retaliation for reporting discrimination under § 19-10.A.2. The latter claims were dismissed as premature by order dated August 18, 2008.

Agency Exhibits 1 – 8 and 10 - 17 were admitted during the hearing.

II. ISSUES

The remaining 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 two-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 Karenee Williams is a DIA Maintenance Division Agency Support Technician who has worked for the city for 31 years, and has been with the Department of Aviation for the past 20 years. On July 18, 2006, the Agency suspended her for two 8-hour work days based on four asserted violations of the Agency's attendance policy, as well as a confrontation with a payroll clerk. [Exh. 1.] This appeal resulted.

The Agency presented the testimony of Appellant's supervisor, Contract Compliance Coordinator John Davis, who made the disciplinary decision. In February 2008 he assumed supervision of Appellant. At that time, he reviewed her personnel file and learned that in August 2007 her supervisor had ordered her to submit a doctor's note or other proof of illness for any sick leave use, and had approved her request to move her start time from 7:30 to 8 a.m. to help her comply with the policy on tardiness. [Exhs. 4, 6.] A letter of warning issued Aug. 21, 2007 set forth the Agency policies on tardiness and overtime, and formalized a plan to improve her performance in these areas. [Exh. 5.] Mr. Davis also noted an October 2007 Performance Improvement Plan (PIP) for attendance issues and negativity in carrying out assignments. [Exh. 7.]

At their first meeting, Mr. Davis, Appellant's former supervisor Ruth Rodriguez, and Staff Assistant Amelia Dias Da Silva gave Appellant a verbal reprimand for three additional incidents since the effective date of the PIP. [Exh. 8.] Appellant was also served with a copy of her recently-signed Performance Enhancement Program Report (PEPR), effective for the period Oct. 2006 to Oct. 2007. Appellant reacted angrily by pushing the papers back across the table and refusing to sign the PEPR. Appellant interrupted the supervisors as they explained her new job expectations. Both Davis and Rodriguez described Appellant's attitude as insubordinate.

Appellant testified that she was called into the meeting on Feb. 7, 2008 "to sign some papers", given no notice that disciplinary matters were to be discussed, and was not allowed to give her input during the meeting. Appellant admitted she pushed the papers back without signing them, but denied she was upset or threatening.

A. Workplace Relationship Issues

The first negative contacts between Ms. Sarmiento-Gonzales and Appellant occurred in November 2007, when Appellant emailed Ms. Sarmiento-Gonzales to complain about the delay in effecting direct deposit of her paycheck into her bank account. [Exh. 13.] In the spring of 2008, Appellant called Ms. Sarmiento-Gonzales about ten times when she noticed unpaid leave (LWOP) on her paycheck. On eight of these occasions, Appellant yelled at her after Ms.

Sarmiento-Gonzales explained the policy on negative sick leave balances and the action taken as a result of the policy.

On May 10, 2008, Ms. Sarmiento-Gonzales notified Appellant's supervisor that Appellant had exhausted her sick leave. Appellant sent Ms. Sarmiento-Gonzales an email stating that her records showed her sick leave balance at 14.50 hours, "so please get on the same page with us." Ms. Sarmiento-Gonzales responded that her leave history had to be corrected by three late slips and an unrecorded absence. Appellant complained in reply that she had not been notified about this issue for almost three months, and that she had not been late to work. [Exh. 14.] That same day, Appellant called Ms. Sarmiento-Gonzales and raised her voice in anger, accusing her of tampering with her leave balances. Ms. Sarmiento-Gonzales testified she was uneasy, and that she told Appellant she would hang up if she continued to yell. When she did not, Ms. Sarmiento-Gonzales hung up, and informed her supervisor about the situation. When Mr. Davis took over communications with payroll, "it was better for me."

On May 12, 2008, Mr. Davis was copied on an email string between Appellant and Payroll Technician Stephanie Sarmiento-Gonzales in which Appellant disputed her sick leave balance. [Exh. 14.] On May 15, Mr. Davis was informed by Jackie Ward and Ms. Sarmiento-Gonzales' supervisor, Maryann Evangelista, that Appellant disputed her time and leave records. Mr. Davis went to payroll to obtain an understanding of the problem and attempt "to nip this in the bud". [Exh. 14-3.] Mr. Davis referred the matter to Human Resources, who obtained Ms. Evangelista's written summary based on information from Ms. Sarmiento-Gonzales. The summary described Appellant's demeanor as hostile. Appellant began "yelling and screaming over the phone. Stephanie told her if she continued to scream at her, she was going to terminate the phone call. Stephanie hung up the phone." [Exh. 12.] Mr. Davis determined that Appellant had been hostile and screamed at Ms. Sarmiento-Gonzales over the phone when the latter tried to explain the departmental rules governing unauthorized leave without pay (LWOP). In order to avoid any future problems, Mr. Davis and Ms. Evangelista decided to handle any future communications between Appellant and the payroll department. [Exh. 12.]

Appellant testified that she got notice on May 12, 2008 that payroll was going to take six hours from her pay. She printed a report from the city's payroll system Kronos, which she believed showed a mistake in calculation of her sick leave. Appellant telephoned Ms. Sarmiento-Gonzales, who told her she was being docked for leave taken in March, resulting in a negative sick leave balance. Appellant believed that Ms. Sarmiento-Gonzales was being deceptive. Appellant became very frustrated with this exchange, based in part on her past negative experience with Ms. Sarmiento-Gonzales regarding her payroll direct deposit request. She testified that she believed Ms. Sarmiento-Gonzales was intentionally giving her bad information about her pay. Appellant raised her voice, and Ms. Sarmiento-Gonzales then hung up the phone.

B. Attendance Issues

In reviewing Appellant's time records at payroll to understand the dispute between Appellant and Ms. Sarmiento-Gonzales, Mr. Davis found that Appellant still had some attendance issues. He prepared a notice that discipline was being contemplated, summarizing her past attendance violations and the terms of her Oct. 2007 PIP. After the pre-disciplinary meeting held on June 27, 2008, the Agency imposed a two-day suspension, mandatory training, and an extension of the PIP until July 31, 2009. The disciplinary letter alleged the following attendance violations:

1. March 3, 2008: Appellant punched in eight minutes early, causing unauthorized overtime. Appellant admits that she punched in at 7:52 a.m., although her start time was 8:00 a.m. [Exh. 16-6.]

2. March 7, 2008: Appellant punched out four hours early without providing a leave slip, resulting in unauthorized leave without pay. [Exh. 16-6.] Appellant testified that she prepared the leave slip required by Mr. Davis, and slid it under his door on March 6th. Mr. Davis testified that he never received the slip.

3. April 28, 2008: Appellant reported to work late at 10:35 a.m., brought in a request for sick leave, and was given unauthorized leave without pay based on the lack of a doctor's note. Appellant testified that her sick leave was approved even without the doctor's note. Her time records confirm that she was granted 2.5 hours of paid sick leave for that day. [Exh. 16-10.]

4. May 14, 2008: Appellant punched in twelve minutes late, resulting in 15 minutes unauthorized leave without pay. [Exh. 16-12.] Appellant admitted that she forgot to punch in, but stated she was at work talking to Mr. Davis that day at 8 a.m., her start time. Mr. Davis verified that Appellant was at work on time, but testified that she admitted she forgot to punch in, and asked him to cover for her. Mr. Davis said he would not do that, and instructed her to punch in at that time.

C. Penalty

Mr. Davis imposed the two-day suspension, 14 hours of training, and a one-year extension of her PIP based on her violations of the tardiness and overtime rules, and her failure to resolve workplace issues in a constructive manner. He determined that she had violated supervisor orders and departmental regulations under CSR §§ 16-60 J and L based on her failure to punch in and out on time on March 3 and 7, April 28 and May 12. He also concluded that she violated CSR § 16-60 O, failure to maintain satisfactory work relationships, because of her confrontation with Ms. Sarmiento-Gonzales on May 12, 2008. He considered her prior disciplinary history of a 124-hour suspension

in 2000 for threatening a co-worker, as well as a 2007 letter of instruction and 2008 verbal reprimand for tardiness and leave slip violations. [Exhs. 3, 5, 8.]

IV. ANALYSIS

The Agency bears the burden to prove that the imposition of discipline was appropriate under the Career Service Rules, and that the level imposed was within the range that could be issued by a reasonable administrator.

A. Workplace Relationship Issues

Ms. Sarmiento-Gonzales endured unpleasant encounters with Appellant several times over the course of seven months. Appellant yelled at Ms. Sarmiento-Gonzales again on May 12th, and accused her of tampering with her pay and leave records. Despite Ms. Sarmiento-Gonzales' request to stop yelling or she would hang up, Appellant continued this behavior. Ms. Sarmiento-Gonzales then reported the incident to her supervisor. Mr. Davis and Ms. Evangelista took the unusual measure of taking on responsibility to communicate Appellant's payroll issues themselves, rather than permit further harm to Ms. Sarmiento-Gonzales, who expressed relief. The Agency thus proved both that the conduct was harmful to her and that it had a significant negative impact on the working relationship between the two.

Conduct that would cause a reasonable person standing in the employee's place to know that it would be harmful to another person or have a significant impact on his working relationship with that person violates CSR § 16-60 O. In re Burghardt, CSA 81-07, 2 (CSB 8/28/08). Based on the above findings, I conclude that the Agency established that Appellant failed to maintain a satisfactory work relationship with Ms. Sarmiento-Gonzales, in violation of § 16-60 O.

B. Attendance Issues

1. March 3, 2008: Appellant admits that she caused unauthorized overtime on March 3, 2008, and that this violated Agency policy.

2. March 7, 2008: The only issue is whether Appellant submitted her leave slip for this conditionally-approved training absence. Appellant testified she received permission to attend this CSA training three weeks before it was held as long as she submitted a leave slip. She testified she waited until the day before the training to submit the slip to Mr. Davis in order to assure she had no conflict in her schedule.

Mr. Davis testified that Appellant was very careful with her leave slips, keeping her own copies and asking him for a copy of the slips signed by him. Mr. Davis asked her for a copy of the March 7th slip at the pre-disciplinary meeting. She said she would try to find it, but it was never submitted to Mr. Davis.

Since the permission for training leave was conditioned on submittal of a leave slip, and none was ever effectively delivered to Mr. Davis, the leave was unauthorized. Thus, Appellant violated both Agency policy and her supervisor's orders by her absence without leave on this date.

3. April 28, 2008: Appellant was granted sick leave for her 2 ½ hour absence on this date. Mr. Davis could not recall whether she submitted a doctor's note to cover this time. Agency policy states that an "employee returning to work who has been asked to supply a 'doctor's slip' and fails to do so, will not be granted sick leave." [Exh. 17-3.] Since Appellant's sick leave request was granted, Appellant must have submitted the required doctor's slip. Therefore, the Agency failed to prove this incident violated a supervisor's order.

4. May 14, 2008: Appellant admitted she forgot to punch in at 8 a.m., despite her timely arrival at work, and that her punch-in was 12 minutes late. Appellant testified that she experienced a bout of diarrhea, and was unable to punch in for a period of time. However, Appellant admitted this did not cause her failure to punch in. The Agency therefore proved that Appellant violated its attendance policy, which requires timely punch-in to the Kronos system. In addition, Appellant was under a specific order to "punch in within the guidelines" based on the existence of ongoing attendance issues. [Exh. 5-2.] I find that the Agency established that this conduct violated § 16-60 J. and L.

C. Appropriateness of Penalty

The punishment imposed was based in large part on Appellant's failure to sufficiently improve her behavior and attendance despite repeated corrective measures. In 2000, Appellant received a 124-hour suspension for insults and threats to a co-worker, during which Appellant raised her hand over her head and stated, "I'll smash your head with this." [Exh. 3.] The October PIP also warned against negative interactions with co-workers, in which Appellant referred to a more recent negative encounter with an on-call employee. [Exh. 7-1.] The incident giving rise to this discipline began over confrontations with Ms. Sarmiento-Gonzales spanning several months, finally resulting in an order that Appellant is not to contact her again.

The second basis for the discipline is recurring attendance issues. While the three proven violations were relatively minor, amounting to unauthorized absences of only four hours and 20 minutes, it continued a pattern of attendance issues that began in January 2007. Appellant was under orders to bring medical proof of illness after any use of sick leave. Her start time was adjusted at her request to assist her with punctuality. She was twice disciplined for attendance before this suspension, and was under a PIP to improve her compliance with Agency time policies.

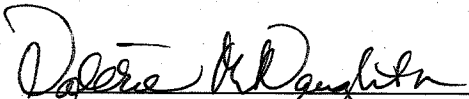
While Appellant appears to have improved her attendance, the sick leave issue led directly to the May 12th confrontation with the payroll technician. In light of the number of other remedial measures taken to assist Appellant, the penalties imposed

were within the range of discipline that could be imposed based on the proven violations of the Career Service Rules.

IV. ORDER

Based on the foregoing findings of fact and conclusions of law, the Agency action dated July 18, 2008 is AFFIRMED.

DATED this 19th day of December, 2008.


Valerie McNaughton
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this decision within fifteen days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of delivery below. CSR § 19-60, 19-62. The Career Service Rules are available as a link at www.denvergov.org/csa.

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

Career Service Board
c/o Employee Relations
201 W. Colfax Avenue, Dept. 412, 4th Floor
Denver, CO 80202
FAX: 720-913-5720
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