

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

Appeals No. 130-04

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**DECISION**

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IN THE MATTER OF THE APPEAL OF:

**STEVEN E. GREEN**

Appellant,

vs.

**DEPARTMENT OF GENERAL SERVICES, PUBLIC OFFICE BUILDINGS DIVISION,**  
Agency, and the City and County of Denver, a municipal corporation.

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**I. INTRODUCTION**

Mr. Steven E. Green (Appellant) appeals a written reprimand served on him by the Department of General Services, Public Office Buildings Division (Agency) on July 28, 2005. The Agency reprimanded the Appellant for alleged violations of the Career Service Rules (CSR). A hearing concerning this appeal was conducted January 5, 2005 by Hearings Officer Bruce A. Plotkin. The Appellant appeared *pro se*. The Agency was represented by Robert D. Nespore, Esq. with Ms. Candace Lothian serving as the Agency's advisory witness.

Agency Exhibits 1-6 were admitted without objection. The Appellant's Exhibit D was admitted without objection. Exhibits B, C and E were admitted over objection. Exhibit A was denied as not relevant.

The Agency presented Mr. Richard Sena and Ms. Candace Lothian as its witnesses. The Appellant alone testified for his case-in-chief.

## **II. ISSUES**

The following issues were presented for appeal.

- A. whether the Appellant was in violation of CSR §§16-50 A. 20), 16-51 A. 4), 5), or 10);
- B. if the Appellant violated any of the above-referenced rules, whether the Agency's written reprimand was reasonably related to the seriousness of the offense and took into consideration the Appellant's past disciplinary record;
- C. whether the Agency violated CSR §§15-20 A., 15-103, or 15-106.
- D. whether the Agency engaged in unlawful harassment or retaliation against the Appellant.
- E. if the Agency violated any of the above-referenced rules, or engaged in unlawful harassment or retaliation against the Appellant, whether the Appellant is entitled to reversal of the Agency written reprimand or written letters of apology from the alleged offenders.

## **III. BACKGROUND**

The Appellant is an electrician for the Agency. On July 6, 2004 the Appellant and others on his team disagreed about the electrical component of the installation of replacement exhaust fans at a city facility. At their regular team meeting the following day, the disagreement continued. The Appellant's behavior at that July 7, 2004 meeting was the subject of the Agency's decision to issue him a written reprimand on July 28, 2004. The Appellant filed his grievance with his first-level supervisor on August 5. Following the rejection of that grievance on August 11, the Appellant filed his grievance with his second-level supervisor on August 16. That grievance was denied on August 20. This appeal, filed August 27, 2004, follows the denial of the Appellant's second-level grievance.

## **IV. AGENCY CLAIMS AGAINST THE APPELLANT**

1. CSR 16-50 A. 20) Conduct not specifically identified herein may also be cause for dismissal.

As the Agency presented no evidence regarding this rule, this claim is dismissed.

2. CSR 16-51 A. 4) Failure to maintain satisfactory working relationships with co-workers, other City and County employees or the public.

In July, 2004, Richard Sena was one of the Appellant's team members. He testified that at the July 7, 2004 meeting, in response to another worker telling the Appellant how to wire the fan installation Sena observed the Appellant "pound his fist on the table and yell 'this is bull\_ \_ \_'" The Appellant then stormed out of the meeting. Sena thought the Appellant's behavior was disruptive to the team meeting. [Sena testimony].

The Appellant responded he did not recollect pounding his fist, did not make such a statement, and was not disruptive. He characterized the meeting as "debateful." [Appellant testimony].

Whether the Appellant was in violation of CSR 16-51 A. 4) turns on the credibility of Sena's testimony. When the Appellant was asked about Sena, he replied "we get along fine. He's a good H.V.A/C technician." Sena, then, had no apparent motive to misconstrue his observations of the July 7 meeting, and the Appellant did not raise any credibility issue regarding Sena. The Hearings Officer finds Sena's testimony credible by a preponderance of the evidence. For obvious reasons of self-interest, the Appellant's testimony is less credible than that of Sena. The Hearings Officer concludes that because the Appellant was loud, obscene and disruptive to the July 7, 2004 meeting, he was in violation of CSR 16-51 A. 4) by a preponderance of the evidence.

3. CSR 16-51 A. 5) Failure to observe Departmental regulations.

The Agency also reprimanded the Appellant for violating the following Agency policy.

Employees are expected to behave in a professional manner at all times, whether during their regular shift or overtime, and treat the public, building tenants, their co-workers and supervisors with respect. Arguments, constant complaining, gossip and a consistently negative attitude towards the job, supervisors or other employees will not be tolerated.

Public Office Buildings Administrative Policy, p.10.

Sena testified the Appellant's actions and words were disruptive, not proper for the meeting and unprofessional. The Hearings Officer agrees, and finds, in addition, the Appellant's outburst and abrupt departure was disrespectful to the opinions of co-workers in the July 7 meeting. The Appellant did not deny he was aware of this policy. The Hearings Officer concludes the Appellant failed to observe this Agency policy, in violation of CSR 16-51 A. 5), by a preponderance of the evidence.

4. 16-51 A. 11) Conduct not specifically identified herein may also be cause for progressive discipline.

As the Agency identified the specific incident on July 7, 2004 for which it disciplined the Appellant, the Hearings Officer finds this claim is superfluous and is thus dismissed.

## **V. APPELLANT CLAIMS AGAINST THE AGENCY**

### 1. CSR §§15-20 A. Conflicts of Interest

The Appellant failed to present any evidence regarding this claim. It is therefore dismissed.

### 2. CSR 15-103 Action of Individual Experiencing Unlawful Harassment and

This rule does not address wrongdoing by the Agency, as required by CSR 19-10. Rather the rule encourages an employee to report unlawful harassment. The Hearings Officer therefore disregards the Appellant's claim under CSR 15-103.

### 3. CSR 15-106 Retaliation Prohibited

A *prima facie* case for retaliation is made by showing (1) protected employee action, (2) adverse action by an employer either after or contemporaneous with the employee's protected action, and (3) a causal connection between the employee's action and the employer's adverse action. Poe v. Shari's Mgmt. Corp., 188 F.3d 519, (10<sup>th</sup> Cir.1999), *citing Morgan v. Hilti, Inc.*, 108 F.3d 1319, 1324 (10<sup>th</sup> Cir. 1997).

The Appellant's evidence in support of this claim is as follows. On July 6, 2004, the Appellant disagreed with a co-worker over the proper way to wire exhaust fan installations so the installations would comply with city code. The Hearings Officer finds the Appellant's expression of his desire to install the exhaust fans pursuant to city code was protected under the first Poe test. Next, the Appellant claimed his supervisor served a written reprimand shortly after he complained about his co-worker's suggestion to install the exhaust fans improperly. This testimony appears to meet the second Poe test of an adverse action shortly after the Appellant's protected action. As to the third Poe test, the Appellant stated only in a conclusory fashion "I feel that I am being...retaliated against for doing my job in a professional manner." [Exhibit D, p.2]. He also claimed his supervisor, Lothian, based her reprimand only "on hearsay and gossip by two unnamed city employees." *Id.* Sena's testimony, however, proves the source of the evidence presented to Lothian was reliable.

Neither of these claims then, demonstrates a causal connection between the Appellant's action of insisting on compliance with the city code and his supervisor's reprimand. On the contrary, the weight of the evidence shows the reprimand was

issued in response to the Appellant's outburst on July 7, and nothing else. Therefore, the Appellant has failed to prove the Agency violated CSR 15-106 by a preponderance of the evidence.

## **VI. PROPRIETY OF THE WRITTEN REPRIMAND**

The Agency must assess the degree of discipline that is reasonably related to the seriousness of the offense and takes into consideration the Appellant's past record. CSR 16-10. This incident, taken alone, may have been insufficient to merit a written reprimand. The Appellant's past record, however, includes a prior, similar incident on March 16, 2004 resulting in a verbal reprimand, only four months before the latest incident. In the March 2004 incident, the Appellant responded to a supervisor's legitimate request for information about the daily work assignments by using abusive language. [Exhibit 6]. Since the March discipline for similar conduct did not result in the required change ("You must make immediate improvement in this area"), *id*, the next step in progressive discipline, a written reprimand, appears justified.

## **VII. CONCLUSION**

Based upon these findings, above, the Hearings Officer must conclude the Appellant violated CSR §§16-51 A. 4) and 5) by a preponderance of the evidence. Further, the Appellant has failed to prove, by a preponderance of the evidence, that the Agency engaged in any unlawful harassment, retaliation, or rule violation in its decision to discipline the Appellant. The Agency's discipline of the Appellant was commensurate with the violation, taking into consideration the Appellant's past record.

## **VIII. ORDER**

The Agency's imposition of a written reprimand to the Appellant on July 28, 2004, is hereby AFFIRMED.

DONE this 7<sup>th</sup> day of January, 2005.

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Bruce A. Plotkin  
Hearing Officer  
Career Service Board

**CERTIFICATE OF MAILING**

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

Mr. Steven Green  
1249 Elmira St.  
Aurora, CO 80010

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

Robert Nespor, Esq.  
City Attorney's Office  
Litigation Section  
201 West Colfax Avenue Dept. 1108  
Denver, CO 80202

Luis A. Colón  
Department of General Services

Dan Barbee  
Public Office Buildings

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