

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

Appeal Nos. 79-03

---

**FINDINGS AND ORDER**

---

IN THE MATTER OF THE APPEAL OF:

**DARLENE CASTANEDA, Appellant,**

v.

Agency: Denver Health and Hospital Authority.

---

**INTRODUCTION**

For purposes of these Findings and Order, Darlene Castaneda shall be referred to as "Appellant." Denver Health and Hospital Authority shall be referred to as "DHHA" or "Agency." The Rules of the Career Service Authority shall be abbreviated as "CSR" with a corresponding numerical citation.

A hearing on this appeal was held September 25 - 27, 2003, before Robin R. Rossenfeld, Hearing Officer for the Career Service Board. Appellant was present and was represented by Barry D. Roseman, Esq. DHHA was represented by Christopher Friedman, Esq., Caplan and Earnest, LLC, with Daniel Schirmer serving as the advisory witness.

The Hearing Officer has considered the following evidence in this decision:

The following witnesses were called by and testified on behalf of the Agency:

Leticia Leyva-Marquez, Stephen Bailey, Tim Masias, Shirley Anaya, Jodi Mabb, Beth Lindroos and Dan Schirmer

The following witnesses were called by and testified on behalf of the Appellant:

Appellant, Maria Garcia, Kathy Vigil-Herrera

The following exhibits were offered and admitted into evidence on behalf of the Agency:

1 - 18

The following exhibits were offered and admitted into evidence on behalf of the Appellant:

A - P

The following exhibits were admitted into evidence by stipulation:

1 – 15, A - P

The following exhibits were offered but not admitted into evidence and therefore not considered in this decision:

None

### NATURE OF APPEAL

Appellant is appealing her termination for alleged violations of various provisions of CSR §§16-50 and 16-51. She claims termination is too severe a discipline even if she violated any CSR provisions. Appellant is requesting she be reinstated and be provided with back pay and benefits.

### ISSUES ON APPEAL

Whether Appellant violated CSR §§16-50-A. 1), 3) 7), 20) and 16-51 A. 2), 5), 6), 8), 10) and 11)?

If Appellant violated any provisions of CSR §§16-50 or 16-51, was termination warranted or should a lesser discipline have been imposed?

### PRELIMINARY MATTERS

Appellant filed a motion to conduct limited discovery on July 1, 2003. The Agency responded to the motion on July 11. Appellant filed a Reply on July 22. On August 11 the Hearing Officer issued an order permitting limited discovery, to wit: ordering the production of documentation and witness statements underlying the Agency's decision to terminate Appellant. The Hearing Officer reserved ruling on the motion to the extent that Appellant was requesting to take depositions of Mr. Schirmer and Ms. Mabb.

### FINDINGS OF FACT

1. Appellant was an Administrative Support Assistant III at LaCasa/Quigg Newton Family Health Clinic ("La Casa" or "Clinic"). She began working for the Agency in 1989. From April 1998 until the time of her termination on May 19, 2003, she was the clerk in charge of cash handling at La Casa.

2. Appellant began handling the daily deposits from La Casa in 1999. At the time, Gloria Richardson was her supervisor. While Ms. Richardson was her supervisor, Appellant would spend half an hour to forty-five minutes closing out the cashiers every evening and then another hour in the morning finishing the work.

3. The Clinic moved to a new location in September 2000. At the old facility, three people were assigned to work at the front desk and to share one cash register. At the time of the move, the system still consisted of one cash register and two ledgers (one for the pharmacy and the other for patient visits).

4. In February 2002, each cashier was given her own cash drawer and ledger. This was a procedure already in use in other DHHA clinics.

5. Steve Bailey assumed duties as supervisor in November 2001 through

December 2002. Mr. Bailey is a physician's assistant as well as an administrator for La Casa. Because Mr. Bailey had more duties to attend to than Ms. Richardson, Appellant assumed more duties herself, serving, as she described it, "more as an acting supervisor." She was required to go to more management meetings and assume more management work from Mr. Bailey.

6. Tim Masias assumed the business services supervisor duties in December 2002.

7. Mr. Masias brought Letiticia Levya-Marquez into La Casa as a supervisor in March 2003. She was lead clerk and Appellant's direct supervisor. In addition to Appellant, Ms. Levya-Marquez also supervised the seven women who worked in the front office.

8. There are five cashier windows at La Casa, with a clerk at each window. Every morning, each cashier is handed a blank journal, receipts and a cashbox with \$20.00 in change. Each cashier actually has a bank of \$100.00 to make change, so if a cashier runs out of change, she would go to Appellant to get more.

9. The cashiers handle co-payments for medical services and for the pharmacy.

10. When a patient makes a co-payment, the patient is given a receipt out of a journal ledger. Two copies of the receipt are also imprinted into the ledger. At the end of the day, the clerk makes sure that her receipts, the journal and the money (plus credit card slips) all balance up. The money and the paperwork are turned over to the Appellant for further processing.

11. Appellant's job was to total all the journals and all the receipts to make sure there were no problems, or if there were any, to report them to her supervisor. She was then to take the journals, money and receipts and place them into a plastic tamper-evident bag. A deposit slip was to be placed facing the outside of the bag. A copy of the receipt log is sent on to Cash Handling for posting to the patient's account. Everything is placed into a locked canvas bag for pickup by a security guard. The canvas bag can only be opened by a key kept at Cash Handling.

12. Ms. Levya-Marquez, who started performing this function at the time Appellant was placed on investigatory leave, approximated that took half an hour in the afternoon and another 40-60 minutes the next morning to get the security bag ready for the guard, who came by at 10:00 a.m. She stated she usually gets the work done on time and has been late for the guard only two or three times when she had to research/locate a missing receipt or was covering the front desk. When she did not have the work done on time, she has had her supervisor, Mr. Masias, sign why she did not have it done.

13. Appellant testified that this job took her more time since she had to constantly back-up the other clerks and attend meetings.

14. Beth Lindroos, Financial Manger for Community Health Services, testified that, when she became Financial Manger in 2000, she recognized the need for increased training. She conducted her first annual training in December 2000 to ensure that everyone was aware of the policies involving cash handling and the need to make daily deposits. There was also training in February 2001 addressing questions that came up during the earlier training. Appellant attended these trainings and acknowledged to Ms. Lindroos she knew the policies.

15. In January 2002, La Casa was reorganized so that each cashier was given her

own cash drawer, instead of using a common drawer as they had in the past. Appellant and Kathy Vigil-Herrera, Appellant's backup at the time, trained with Shirley Anaya at the Westside Clinic to see how it was to be done.

16. Because Appellant had five drawers to close out, she had time management issues. Appellant admitted she occasionally got a day behind because the Clinic was busy, but claimed she would catch up the next day. It was suggested she start closing out the windows at 3:00. The clerk started a new sheet for the next day if she was still open.

17. An audit was done of all the clinics in the spring of 2002. Dan Clayton from the Office of Integrity conducted the audit. He observed the cash handling processes at the clinics. He looked specifically at La Casa because of its change over from the common drawer to the individual drawers. He had one clerk close out her drawer, looked at receipt control and reviewed who had access to the keys and safe. He did not perform an in-depth historical audit. He focused on the front-line clerks to make sure they knew how to perform their jobs. La Casa passed this audit.

18. When Ms. Levya-Marquez started at the Clinic, she noted that Appellant had several days worth of receipts on hand. Appellant acknowledged she was behind, but did not say how far. Ms. Levya-Marquez noted Appellant gave the bag to the security guard at the clinic to hand to the transporting guard rather than give it to the transporting guard herself. Appellant gave the key to the safe to other clerks to get change for themselves rather than making change herself, as required. The receipts were not kept in a locked drawer.

19. On April 14, Mrs. Levya-Marquez arrived at 8:00 a.m.; Appellant arrived at 8:30. Elsie Sisneros, Appellant's back-up, was there at 8:00 and handed the drawers to the cashiers when they came in. Ms. Levya-Marquez went into the safe to get the drawers out. She noted the safe was a mess. Coins were everywhere. There were sticky notes with notations on them. Nothing was marked as the "bank." She opened one of the envelopes and found loose money that had not been organized into denominations. There were several hundreds of dollars in the pile, much more than what should have been there for one or two days receipts. Ms. Levya-Marquez testified that she could tell that the "person responsible" (*i.e.* Appellant) was not organized.

20. Upon this discovery, Ms. Levya-Marquez contacted Ms. Lindroos about training another person to do the job and to find out what to do in the meantime. When Ms. Lindroos was told Appellant was behind by three days, she decided to come over for a "surprise" audit to observe Appellant perform her job.

21. Ms. Lindroos arrived around 1:30 p.m. After Appellant returned from lunch, the three women met in Ms. Levya-Marquez's office. Appellant was asked to go through her process while Ms. Lindroos and Ms. Levya-Marquez observed and took notes. Appellant brought in the money and receipts from the safe. Seven days worth of receipts were to be processed. She started with the April 3 receipts. She prepared the deposit for \$701 for the day. She also did the receipts for April 4 and April 7, with \$407 and \$1273.20 in deposits, respectively. They ended the first day of the audit around 5:30. It would continue the next day. The money and documentation was locked away in a drawer in Ms. Levya-Marquez's office. Ms. Levya-Marquez had the only key to the drawer and to her office (*i.e.*, the custodian did not have a key to the office). Appellant had the key to the canvas bag containing everything.

22. Ms. Lindroos testified that Appellant is very skilled and well organized in

processing the cash. She is adept at the ten-key and able to go quickly through the receipts, add up columns and to do the "detective" work necessary when problems arose and journals needed reconciliation.

23. At the end of the first day of the audit, Ms. Levya-Marquez and Ms. Lindroos each privately noted there did not appear to be enough cash remaining to complete the deposits for the remaining days, but they did not say anything about it to Appellant.

24. The audit continued on April 15. While preparing the deposit for April 8, Appellant ran out of cash and came up \$170.00 short. Having no more cash, she was \$870.00 short on April 9, \$759.00 for April 10 and \$856.00 short on April 11, for a total shortage of \$2,655.00.

25. There was an envelope marked "overage" in the safe and post-it notes dating back to January 24, 2002, noting overages from various cashiers. The amount totaled \$134.00. There was also \$20.90 in unspecified loose change.

26. After the count was done, the information was written down. Ms. Lindroos, Ms. Levya-Marquez and Appellant signed off on the information. (Exhibit 5-2)

27. During the entire process, Appellant never made any comments about the missing cash. She did not say she felt that the safe was unsecured or unsafe. She never said she did not have enough time to complete her work.

28. After the audit was complete, Ms. Lindroos asked Appellant, "\$2,600 is a lot of money. What do you think happened?" Appellant started to tear up and replied, "I shouldn't be the only one held responsible for this. Pete Morales has a master key. He sometimes comes into the room with a master key." She also stated only she and Elsie Sisneros knew where the key to the safe was and they would move it around to keep it hidden, but others might have discovered where the key was.

29. Ms. Lindroos testified that Appellant was occasionally late in submitting her monthly reports, but that Ms. Lindroos was never made aware Appellant was behind on a daily basis before this audit.

30. Ms. Lindroos asked Appellant if she was aware of the policy to turn over the money on a daily basis. Appellant indicated she was. When asked why she didn't comply with the policy, Appellant shrugged her shoulders. Ms. Lindroos asked Appellant when the last time she was current was. Appellant replied, "A month ago." Ms. Lindroos said, "If I go back to January, will I find you are current?" Appellant replied, "Well, maybe two months."

31. Ms. Lindroos checked with Cashiering and found that Appellant was current on January 1, 2002 and December 26, 2001. She then went back six months, spot checking the record two or three times a month. She discovered that there were lags up to three weeks in the submission of the deposits.

32. Ms. Lindroos decided to place Appellant on investigatory leave after meeting with her. Appellant was placed on investigatory leave on April 16. (Exhibit 5)

33. After Appellant was placed in investigatory leave, a complete audit of the deposits from La Casa from February 1, 2001 through January 31, 2003, was conducted. Mr.

Dan Schirmer of the Office of Integrity at Denver Health conducted the investigation. He reviewed deposit slips, journal entries and the postings at cash handling.

34. As a result of this audit, Mr. Schirmer found that there were no deposits for thirty dates of service between January 3 and December 20, 2002; at least \$26,664.70 in deposits were not made. (Exhibit 11) It was also discovered that Appellant frequently was two to four weeks behind in processing deposits. (Exhibit 10)

35. According to the information contained in Mr. Schirmer's report listing the dates of service and bank deposit date (Exhibit 10), there are several occasions that Appellant's work was a week or more behind and then, the next day, the backlog was reduced or disappeared. Records do not note multiple deposits, which would have been necessary in order to reduce the backlog, indicating the intervening deposits were skipped. (Exhibit 12)

36. Appellant would have known of the missing cash, checks, and supporting documentation. If there had been any attempt to catch up on the skipped deposits, she would have discovered cash was missing.

37. Because Cash Handling was not posting the money for DHHA, patients were billed for co-payments already made. Complaints came into Customer Service. At least seventeen patients came in with receipts for payments that were made on the "missing" days.

38. Mr. Schirmer did not know if any of the patient accounts had been referred to collections, but he turned over all the receipt records for the missing days so patient accounts could be adjusted.

39. Mr. Schirmer testified that the safe was not large enough to hold twenty days work of checks, cash and transmittal sheets.

40. Ms. Vigil-Herrera testified that she met with Mr. Schirmer during his audit. He spoke to her about a deposit she made on December 26, 2001, for service from December 21 and about work Appellant had done earlier in the month that was nine or more days from date of service to date of deposit. She told him that there was no reason not to get the work out the next day. She was unable to give him a reason why the work was nine days late. During her testimony, Ms. Vigil-Herrera offered the fact that Appellant would often be called away to help at the cashier area. When she asked Ms. Vigil-Herrera to relieve her, Mr. Masias would stop Ms. Vigil-Herrera, who was working in Medical Records at the time, from providing relief assistance.

41. For November 18, 19, 20, 25, 27 and 29, 2002, Alex Jacobo and Maria Garcia filled out the deposit transmittal forms; Appellant did the forms on November 21, 22 and 26. All the days are "missing." (Exhibit M) The deposit pickup logs for the deposits on the subsequent days indicate that Ms. Jacobo, Appellant, Elsie Sisneros and "Theo," the security guard, signed the deposit pickup logs, indicating that something was picked up at La Casa on those dates. (Exhibit 12) Appellant was on vacation on November 18 and 29, but was at work on November 19, 20, 21, 25, 26, 27 and most of the day on December 3, 2002. (Exhibit 13-11 through 13-12)

42. DHHA Standard Policies and Procedures No. Sect. V, a-3, effective October 18, 2002, provides, in part:

## II Policy

- D. 2. Deposit transmittals that are out of balance by more than twenty dollars (\$20) will be returned to the submitting department and/or clinic for correction. Deposit transmittals that are out of balance by less than twenty dollars (\$20) will be processed in the daily bank deposit for correction by the bank.

\* \* \*

- F. All cash and check deposits received by the Cashiering Department will be verified, counted (except for sealed bag deposits), and processed by the Cashiers for deposit to the bank on a daily basis...

\* \* \*

- H. All cash and check deposit overages and shortages will be handled as follows:

1. all cash and check deposit overages are to be noted and are the property of DHHA. Cash overages will be submitted daily on the "Daily Transmittal," placed in a locked key bag and transferred to the Cashiering Department through DHHA Security personnel for reconciliation and deposit.
2. All cash and check deposit shortages will be brought to the department Supervisor's attention and reported on the "Deposit Transmittal" each day....Shortages will be handled as a counseling and/or disciplinary matter through the Employee Counseling and Corrective Action process....The following disciplinary steps are recommended based on the amount and frequency of the shortages.

- a. Shortages of one cent through fifty dollars (.01-\$50.00):

First (1<sup>st</sup>) offense – coaching session on job responsibilities

Second (2<sup>nd</sup>) offense – verbal warning

Third (3<sup>rd</sup>) offense – written warning

Fourth (4<sup>th</sup>) offense – suspension

Fifth (5<sup>th</sup>) offense – termination

- b. Shortages over fifty dollars (\$50.00)

First (1<sup>st</sup>) offense – written warning

Second (2<sup>nd</sup>) offense – suspension

Third (3<sup>rd</sup>) offense - termination

It will be up to the department Supervisor to determine the appropriate level of discipline with regards to each shortage occurrence. Items that shall be taken into consideration are frequency of shortage incidences, dollar

amount, length of time in current position, length of time employed by DHHA or the City of Denver, prior Disciplinary history, and the overall performance of the employee. Any level of disciplinary action may be taken, up to and including termination, as appropriate considering the circumstance warranting the corrective action.

Any shortage incidences greater than one hundred dollars (\$100.00) must be reported by the department Supervisor to the Cashiering Department supervisor within 24 hours via email or if email is not available, via telephone @ 303.436.5092. The department Supervisor must detail what disciplinary action is to be taken and support why that action is appropriate.

Denver Health may also initiate criminal charges against the employee responsible for the cash shortage if there is evidence of theft, malfeasance, embezzlement, or other criminal activity.

(Exhibit 7, emphasis in original)

43. The previous version of DHHA Standard Policies and Procedures No. Section V A-3, effective February 26, 1999, provides:

II. Policy

A. All personnel involved in the handling of money will keep money out of sight except when counting or making change. Anytime the responsible person is away from his/her area (even if only briefly), all money must be locked in a safe place.

\* \* \*

D. All persons responsible for handling cash should have funds available to be picked up by DH Security for transport to the Cash Handling Department. Cash not picked up daily should be maintained in a locked, safe place.

E. All payments collected will be turned into cashiers located throughout the hospital and clinics. All area cashiers will prepare a daily report to summarize transaction for each day. The receipts, report, and the supporting documentation and tapes will be transferred to Cash Handling for deposit and reconciliation.

F. daily cutoff in forwarding revenues:

\* \* \*

2. All outlying divisions will establish a daily cutoff time that will enable the division to transmit cast to Cash Handling on a daily basis.

3. All cash collected between successive cutoff times will be

transmitted daily unless minimal collections occur daily. Cash will not be transmitted daily on weekends or holidays but will be transmitted on the next business day.

4. Cash Handling will have bank deposits ready for pickup by the courier service no later than 7:00 a.m. each business day. These deposits will include all funds received by Cash Handling the previous day.

\* \* \*

IV. Procedures:

\* \* \*

B. Transmittals:

\* \* \*

3. Specific transmittals will be handled as indicated below:

\* \* \*

c. Outlying Locations

1. Receipts will be issued for all money received (cash or check) at the point of receipt. The original receipt is given to the payor and the copy forwarded to the Cashier with the money. The individual requesting the receipts will be responsible for all receipts received and issued.
2. The cash transfer process will be used any time cash is forwarded through the DH system.
3. All overages are to be noted and are the property of DH. All shortages are to be replaced by the responsible cashier.

(Exhibit 8)

44. The Daily Deposit Duties and Responsibilities lists Appellant's duties with regard to making deposits, providing a detailed step-by-step description of how to handle daily deposits. (Exhibit 9)

45. Appellant was issued a non-management position description/performance appraisal by DHHA on January 31, 2003. Essential Job Responsibility 6 is "Enters charges and other medical information from superbill; files completed superbill." The comment for the skill reads, "Darlene is skilled in all phases of billing and problem research." Essential Job Responsibility 9 is "collects co-payments, point-of-service payments and other payments; issues receipts; balances cash drawers." In addition to being knowledgeable in mathematical computations, Appellant is "accountable for accurate cash collections." Comments for this

essential function are "Darlene has done an excellent job of managing our cash management system as LCQN," and "Darlene does an excellent job of managing the cash collections." (Exhibit 6)

46. Appellant received notification of contemplation of discipline on May 7, 2003, for alleged violations of CSR §§16-50 A. 1), 2), 3), 7) and 10) and 16-51 A 2), 5), 6), 8), 10) and 11). (Exhibit 4) The predisciplinary meeting was held on May 16, 2003. Ms. Lindroos, Tim Masias, Dan Schirmer, Lynn Segretti, DHHA Legal Counsel, Barry Roseman, Appellant's attorney, and Appellant were present. A transcript was made of the hearing. (Exhibit 3) Mr. Roseman submitted a letter on Appellant's behalf outlining her position. (Exhibit H) After reviewing the information before him, Mr. Masias, who was the appointing authority, decided to terminate Appellant based upon the above violations of the CSR. The letter dated May 19, 2003, informed her the termination was effective immediately. Appellant filed her appeal of the termination to the Hearing Officer in a timely manner.

### DISCUSSION AND CONCLUSIONS OF LAW

The City Charter C5.25 (4) requires the Hearing Officer to determine the facts in this matter "de novo." This has been determined to mean an independent fact-finding hearing considering evidence submitted at the de novo hearing and resolution of factual disputes. *Turner v. Rossmiller*, 35 Co. App. 329, 532 P.2d 751 (Colo. Ct. of App., 1975)

This is an appeal of a disciplinary action. Therefore, the Agency has the burden of proof.

Appellant has been charged with violating several provisions of CSR Rule 16. The first of these, and perhaps the most serious allegation, the violation of CSR §16-50-A. 1), "gross negligence or willful neglect of duty."

Because none of these terms is defined in the CSR, the Hearing Officer must look elsewhere for their definitions. They are well-defined terms in the law. Negligence does not require intent. It is commonly defined as the failure to use reasonable care or a failure to act in a reasonably prudent manner under the circumstances. *Lavine v. Clear Creek Skiing Corp.*, 557 F.2d730 (10<sup>th</sup> Cir. 1977); *Metropolitan Gas Repair Service, Inc. v. Kulik*, 621 P.2d 313 (Colo. 1980); *Rice v. Eriksen*, 476 P.2d 579 (Colo. App. 1970). Gross negligence involves a higher form of culpability than mere negligence. "Gross" in this context means flagrant or beyond all allowance, *Lee v. State Board of Dental Examiners*, 654 P.2d 839 (Colo. 1982), or showing an utter lack of responsibility. *People v. Blewitt*, 192 Colo. 483, 563 P.2d 1 (1977). Willful neglect of duty transcends any form of negligence and involves conscious or deliberate acts. See *Turner v. Lyon*, 189 Colo. 234, 539 P.2d 125 (1976); *Drake v. Albeke*, 188 Colo. 14, 532 P.2d 225 (1975).

"Gross" has been defined as "immediately obvious" or "glaringly noticeable usually because of inexcusable badness or objectionableness."<sup>1</sup> *Black's* defines it as

[G]reat; culpable. General absolute; not to be excused; flagrant; shameful; as a gross dereliction of duty; a gross injustice; gross carelessness.<sup>2</sup>

"Gross negligence" is defined by *Black's* as:

<sup>1</sup> *Miriam-Webster's Collegiate Dictionary*, 10<sup>th</sup> Ed., 1993

<sup>2</sup> *Black's Law Dictionary*, 4<sup>th</sup> Ed., 1951

The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness. "Gross negligence is substantially higher in magnitude than simple inadvertence, but falls short of intentional wrong." (Cite omitted)<sup>3</sup>

In other words, "gross negligence" does not require that DHHA show Appellant intentionally acted in a wrongful manner, just that she performed her work in a manner that was more than careless or inadvertent and that the failure to perform the work was obviously unreasonable or inappropriate.

On the other hand, "willful neglect" implies that the wrongful conduct was intentional or conscious, not merely negligent. "Willful" is generally defined as "obstinately and often perversely self-willed; done deliberately."<sup>4</sup>

*Black's* defines "willful" as:

Proceeding from a conscious motion of the will; voluntary. (Cite omitted)...Intending the result which actually comes to pass; designed; intentional; not accidental or involuntary...A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. (Cite omitted.)<sup>5</sup>

Appellant was also charged with violating a related provision, CSR §16-51 A. 6), "carelessness in performance of duties and responsibilities." This provision is distinguishable from CSR §16-50 A. 1) in that it does not require either the reckless disregard of the consequences or the intentional performance failures that are necessary to establish either "gross negligence" or "willful neglect."

The Hearing Officer has considered the testimony offered during the hearing and reviewed the extensive documentation submitted by DHHA, as well as by Appellant. Based upon all the evidence, the Hearing Officer concludes that Appellant's handling of the daily cash transmittals was grossly negligent, a violation of CSR §16-50 A. 1).

It is clear from the evidence that Appellant was frequently days, if not weeks, behind in processing the daily transmittals, her primary job duty. Had she kept up-to-date with this portion of her job throughout 2002, she would have known that over \$26,000 was missing. Her failure to keep accurate records and to notify her superiors when she was encountering problems, either in handling her workload or discovering either shortages or overages, is, at a minimum, gross negligence, if not willful misconduct. However, as the Hearing Officer need not determine whether Appellant was intentionally permitting money to disappear or just recklessly disregarding the problems she was encountering, the violation of CSR §15-60 A. 1) has been established.

Appellant is not inexperienced or unintelligent. Her supervisors testified that she was an excellent cashier, knowing how to run the ten-key efficiently and how to prepare the documentation for the daily transmittals. She received kudos for her work on her performance evaluation.

---

<sup>3</sup> *ibid.*

<sup>4</sup> *Miriam-Webster's, op cit.*

<sup>5</sup> *Black's, op cit.*

According to her, she had over twenty years of experience performing clerical and cashier duties. Given her experience and competency, it is evident Appellant was careless in her handling of the daily transmittals during the relevant period. The violation of CSR §16-51 6) is established.

Appellant is charged with violating CSR §16-50 A. 2), "theft, destruction or gross neglect in the use of...property of any agency or entity having a contract with the City." There is no proof that Appellant stole or destroyed the missing money. Instead, Appellant was grossly negligent in the use of DHHA's property. Her failure to perform her duties resulted in a loss to DHHA in excess of \$26,000. This allegation is established.

The violation of CSR §16-50 A. 3), dishonesty, including, but not limited to lying to superiors or falsifying records with respect to official duties, is established. Receipts were recorded and journals were completed by individual cashiers. However, Appellant did not submit all the receipts and journals she received on a daily basis to Cash Handling. There are thirty days of missing deposits. This constitutes dishonesty in the completion of records she was handling as part of her official duties. This violation is established.

Appellant is charged with violating CSR §16-50 A. 7), failure to comply with the orders of her authorized supervisor and refusing to do assigned work which she is capable of performing. There is no direct evidence that Appellant refused to comply with a direct order of her supervisor or refused to do a job as it assigned to her. In fact, there is evidence that Appellant always took on additional duties as requested. The Hearing Officer will not stretch an interpretation of this provision to include the hiding of work as "refusing to do assigned work." This violation is not established.

Similarly, the violation of CSR §16-51 A. 10), failure to comply with the instruction of an authorized supervisor, is not established.

Appellant is charged with violating CSR §16-51 A. 2), the failure to meet established standards of performance. The requirements for this provision are not identical to the requirements for violations of CSR §§16-50 A. 1) or 16-51 A. 6). This provision covers performance deficiencies that can be measured by either qualitative or quantitative standards, such as those one would find in a performance evaluation, in a classification description, or in agency or division's published policy and procedures. Appellant's job description includes provisions regarding cash handling. She was clearly mishandling cash. The violation of CSR §16-51 A. 2) is established.

Appellant did not follow DHHA's policies involving collection of money and daily transmittal of those funds to Cash Handling. The violation of CSR §16-51 6), failure to observe department regulations, is established.

Appellant is charged with a violation of CSR §16-51 A. 8), neglect in care or use of City and County property. This provision is meant to cover allegations that deal with the misuse of property such as cell phones, computers or cars. It does not include the loss of moneys collected by an agency under a contract with the City. Since there was no evidence presented that Appellant personally was neglectful in the care or use of City property, this violation is dismissed.

The violations under CSR §§16-50 A. 20) and 16-51 A. 11) are dismissed. Specific provisions of both CSR §16-50 A. and CSR §16-51 A. cover Appellant's misconduct.

The next issue before the Hearing Officer is the appropriateness of the discipline. DHHA

argues that termination is appropriate. Appellant argues that is not, given that there was no prior discipline in accordance with the Rules or DHHA policies.

CSR §16-20 2) encourages progressive discipline "[w]herever practicable." The Rule goes on to state:

However, any measure or level of discipline may be used in any given situation as appropriate. This rule should not be interpreted to mean that progressive discipline must be taken before an employee may be dismissed.

Similarly, the Rule does not require the interpretation that progressive discipline must be taken before the employee can be terminated.

In this case, DHHA has proven a pattern of inappropriate conduct over the course of more than fifteen months. Due to this pattern, Appellant permitted a loss of over \$26,000 in payments to DHHA. In addition, her actions resulted in indirect costs to both DHHA and the customers it serves. Her failure to forward the daily journals also affected countless patients who were wrongly billed despite the fact they made co-payments. A great deal of time and effort had to be expended to find and correct the records.

The Hearing Officer also considered Appellant's explanations for the lost funds. She tries to lay blame on others, including other cashiers, the custodial staff, and the security guards. This finger pointing is not a legal excuse. Appellant takes no responsibility for the integrity of the cash handling system and daily transmittals from La Casa; yet her chief responsibility was to ensure that very integrity. There is simply no way for the Hearing Officer to believe that Appellant did not know that large amounts of money were missing, particularly as on several occasions, Appellant was several weeks behind in her processing of the daily transmittals one day and then only a few days behind the next. Appellant had a responsibility to make a timely report of the missing funds to DHHA management each and every time that happened. She never did so. Instead, she permitted and/or perpetuated a cover-up of loss of funds from DHHA. She ultimately is responsible even if others took the money. Given the seriousness of the misconduct, progressive discipline is not appropriate.

The Hearing Officer concludes that termination is appropriate under the circumstances of this case.

#### ORDER

Therefore, for the foregoing reasons, the Hearing Officer MODIFIES the appeal as follows: the violations of CSR §§16-50 A. 1) 2), and 3) and 16-51 A. 2), 5), and 6) are SUSTAINED; the violations of CSR §§ 16-50 A. 7) and 20) and 16-51 A. 6), 10) and 11) are REVERSED. Appellant's termination from employment is SUSTAINED. The appeal is DISMISSED with prejudice.

Dated this 12<sup>th</sup> day of January 2004.

  
\_\_\_\_\_  
Robin R. Rossenfeld  
Hearing Officer for the  
Career Service Board

**CERTIFICATE OF MAILING**

I hereby certify that I have forwarded a true and correct copy of the foregoing FINDINGS AND ORDER by depositing the same in the U.S. mail, this 14<sup>th</sup> day of January 2004, addressed to:

Darlene Castaneda  
3849 Vallejo Street  
Denver, CO 80211

Barry D. Roseman, Esq.  
1120 Lincoln St., Suite 1607  
Denver, CO 80203-2141

Christopher Friedman, Esq.  
Caplan and Earnest, LLC  
2595 Canon Blvd., Suite 400  
Boulder, CO 80302-6737

I further certify that I have forwarded a true and correct copy of the foregoing FINDINGS AND ORDER by depositing the same in interoffice mail, this 14<sup>th</sup> day of January 2004, addressed to:

Office of the City Attorney  
Employment Law Section

Darlene Ebert, Esq.  
General Counsel  
DHHA

  
\_\_\_\_\_