

DECISION AND ORDER

MONICA JACKSON, Appellant,

v.

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

The hearing in this appeal was held on December 2, 2015 before Hearing Officer Valerie McNaughton. Appellant was represented by Sean Olson, Esq. Assistant City Attorney Andrea Kershner represented the Agency. The Agency called Ersula Stanford and Joy Brown as witnesses, and Appellant testified on her own behalf.

I. STATEMENT OF THE APPEAL

Monica Jackson appealed a three-day suspension imposed April 8, 2015. Agency Exhibits 1, 3, 6 and 7 were admitted into evidence. Appellant's Exhibits A - D were also admitted.

II. FINDINGS OF FACT

Appellant has been employed by the Agency for twenty-six years. For the past three years, she has served as Legal Specialist for the Child Support Division, performing paraprofessional duties in Child Support Enforcement (CSE) cases. On April 8, 2015, Appellant was suspended for three days for delays in batching around 200 legal documents for scanning into Alfresco, the Agency's electronic case storage system. The Agency also found that Appellant was dishonest by entering a note that she had sent eleven cases to Alfresco in ACSES (Automated Child Support Enforcement System), the database approved for state agencies administering child support enforcement plans under Title IV-D of the Social Security Act.

The Child Support Division serves custodial parents seeking child support by assisting with paternity issues, child support orders and enforcement of those orders. Child Support Technicians are divided into teams, which are in turn supported by a Legal Specialist who handles pleadings and preparation of cases for trial. Three years ago, Appellant became a Legal Specialist, in which capacity she supported a team of eight technicians in Team 66 to obtain and enforce support orders in Denver District and Juvenile Courts. In July, 2014, Appellant was Stanford's interim supervisor. Stanford was then promoted to that position, and has supervised Appellant since Sept. 22, 2014. Before her promotion, Stanford spent seven years as a Child Support Assistant and Child Support Technician.

In November 2014, the work of the Division was reorganized. Appellant was assigned to support the nineteen Legal Technicians in Teams 1 and 44, and was to prepare and process all pleadings for District Court matters, relieving the technicians to do other work. Each Legal Technician handles between 700 and 900 cases.

On Dec. 10, 2014, Stanford met with Appellant and the supervisor for Team 44 to develop time frames for completing various assignments. Appellant suggested a shorter time frame for processing stipulations, but expressed her concern with the seven-day time frame for batching documents for the Alfresco scanning system. Stanford recognized that a Legal Specialist had never supported that many technicians before, and that the change presented a significant increase in Appellant's workload. Each day, the Legal Specialist receives about two to four inches of new documents, and processes an average of 100 documents. [Stanford, 10:52 am.] Appellant's supervisor agreed they would "need time to determine if the deadlines were reasonable." [Stanford, 11:16 am.] Stanford told Appellant she would closely monitor her workflow and keep in contact to test the appropriateness of the time frames. She understood "this was something that was new, and we were willing and able to adjust any time frame or assist if she needed it." [Stanford, 3:00 pm.] Appellant agreed to provide Stanford weekly logs of all her work, and to update her daily about the status of work at her desk.

Appellant organizes her desk into defined areas, and keeps work at different stages in specific locations so that others may find documents in her absence. [Exhs. A – C.] Her responsibilities include drafting and filing pleadings, preparing cases for trial, and filing verified entries of judgment and satisfaction of judgments under deadlines set by the courts. [Exh. 3.] She also updates cases in the state-wide ACSES system to reflect her actions. The last step for each completed document is batching it for scanning into Alfresco, the Division's own filing system. Appellant considers Alfresco the lowest priority work because it is not controlled by a court deadline or ACSES expiration date. Incoming pleadings from the Court Liaison Unit (CLU) and Legal Unit are kept in her inbox. Finished documents to be batched are placed in a stack that Appellant has always labelled "Alfresco." Since this discipline was imposed, Appellant has added a few more specific labels for attorney questions and attorney signatures. [Appellant, 2:30 pm.]

After the Dec. 10, 2014 meeting, Appellant submitted weekly logs and reviewed the status of work on her desk with Stanford on a daily basis, including the Alfresco stack. Appellant explained that her priorities were meeting court deadlines, and informed Stanford she was having trouble meeting the seven-day batching time frame. She told Stanford that in Team 66, the Locate Specialist and supervisor helped her with batching when it piled up. At one point, Appellant shared that she did not see how it could be done in a 40-hour work week. [Appeal, Atch. 1.] "On January 27th I went in [Stanford's] office and told her that the un-batched Alfresco duty was 3 to 4 weeks behind." [Exh. D-3.] Stanford repeated that they could revisit this deadline at a later time.

On Feb. 12, 2015, Appellant informed Stanford that she needed help with court work facing a deadline. [Exh. D-4.] Stanford offered to help with batching, and Appellant gave her twenty orders they both agreed were the most important ones. Stanford testified at first that the orders were about eight inches thick. She later corrected this to state that it was about three to four inches high. [Stanford, 9:17 am.] On another occasion, Appellant's co-worker offered to help her batch when the computers were down. Stanford observed this, and asked Appellant to give the co-worker a

“caught-ya” card, a device used to recognize team effort and reward recipients with administrative time off. Stanford testified that those overdue documents were not used as a part of the basis for this discipline. [Stanford, 9:16 am.]

On Feb. 17, Stanford noticed a large stack of documents awaiting scanning into Alfresco. “I don’t want to say two feet, but it was a huge stack.” [Stanford 11:29 am.] On rebuttal, Stanford described the stack as two giant stacks of documents that were “four feet high total. That’s not an approximation.” [Stanford, 3:06 pm.] She offered to assist Appellant with them, and Appellant brought them into her office. At the staff meeting the next day, Stanford told the technicians they may need to help Appellant. Later that day, Stanford’s supervisor instructed her to give the documents back to Appellant, since they were her responsibility. Stanford returned them to Appellant on Feb. 19, explaining that the technicians could not help because February was a short month and reports were due soon. [Exh. D-5.] Stanford permitted Appellant to leave aside her other duties on Feb. 23 to concentrate on the Alfresco work. Appellant completed the work in five hours on that day. [Appellant, 2:00 pm; Exh. D-5.]

Thereafter, Stanford reviewed Appellant’s ACSES entries for the documents sent to scanning on Feb. 23. She discovered that Appellant indicated in eleven entries made between December and February that she had sent the documents to scanning on the date she made the entries.

As a result of these two issues, the Agency began the disciplinary process. Appellant responded that her duties increased considerably in December, and her supervisor agreed to adjust her deadlines if she was unable to keep up with the workload. She stated that the batching delay was caused in large part because Appellant had to spend four hours clearing over 400 ACSES alerts sent in error by the state system. She was also delayed by her agreement at the January team meeting to take on Team 44’s legal duties because it was overwhelmed with 15 to 25 additional cases per technician. On Feb. 24, the day after the overdue batching was done, Appellant’s duties were changed back to those she performed before the November 2014 reassignment. [Exh. D.] From that point until the date of hearing nine months later, Appellant has complied with all performance deadlines. [Stanford, 11:35 am.]

The Agency decision-maker was CSE Division Director Joy Brown. She found that Appellant neglected her duty to remain current in her work, as shown by her volunteering to take on more duties while failing to complete the batching within the seven-day time frame set by her supervisor. Brown found Appellant was careless for the same reasons, and that her actions adversely affected work relationships within the Division. Brown also determined that Appellant falsified ACSES by noting in ACSES that she had sent documents to Alfresco when she had not. Based on Appellant’s disciplinary history, Brown imposed a three-day suspension.

III. ANALYSIS

The Agency bears the burden to establish the asserted violations of the Career Service Rules by a preponderance of the evidence, and to show that a three-day suspension was within the range of discipline that can be imposed under the circumstances. Department of Institutions v. Kinchen, 886 P.2d 700 (Colo. 1994).

A. VIOLATION OF DISCIPLINARY RULES

1. Neglect of duty, CSR § 16-60 A.

The Agency claims that the delay of between 13 to 60 days in batching 200 documents constituted neglect of her duty to complete batching within seven days. Appellant does not deny that she was behind in her batching. She testified that the delay was caused by a significant increase in her duties, and added that her supervisor agreed to adjust her batching deadline if it proved unworkable.

This rule prohibits a complete failure to perform a known duty, rather than an inadequate or delayed performance of that duty. In re Gutierrez, CSB 65-11, n1 (4/4/13). The Agency concedes that Appellant did complete the batching, albeit outside of the time frame. Therefore, the Agency failed to prove that Appellant neglected her duty to batch documents for Alfresco.

2. Careless performance of duty, CSR § 16-60 B.

This rule is violated when an employee performs a duty poorly. See In re Leslie, CSA 10-11, 8 (12/5/11). Here, that duty was batching documents to be scanned into the Alfresco filing system. The only issue is whether the seven-day time frame was an established performance standard, as claimed by the Agency, or a goal to be tested as Appellant assumed her additional duties, as claimed by Appellant.

Stanford admitted that she informed Appellant on Dec. 10, 2014 that the seven-day time frame could be revisited and that she would get her assistance. She claims Appellant did not thereafter tell her it was a problem, instead assuring her it was "under control" while concealing the pile from her view. The disciplinary letter did not allege that Appellant concealed her overdue work. [Stanford, 3:09 pm.] Stanford testified she first became aware of the batching issue on Feb. 12, when she noticed overdue orders in the Alfresco pile.

Stanford substantially changed Appellant's work assignment in mid-November, 2014 from served one team of eight to two teams of nineteen. As a result, Appellant's workload went from about 50 pleadings in December to 110 in January, more than doubling that work. She cleared 158 ACSES Alerts in December, and 639 in January, an increase of 300%. [Exh. D-2.] Based on her experience doing the job for two years, Appellant expressed her concern that seven days was unrealistic at the time it was proposed. Stanford reassured her that it could be adjusted if it proved to be so. For the next two months, Stanford received daily and weekly reports from Appellant about the status of her work, which was laid out on her desk with labels, including an Alfresco label for the stack of batching. "On January 27 I went in [Stanford's office and told her that the un-batched Alfresco duty was 3 to 4 weeks behind." [Exh. D-3.] Stanford helped with batching once at Appellant's request on Feb. 12, and observed another employee batching Appellant's overflow. Stanford also conducted two detailed examinations of Appellant's work process. "When I agreed [in January] to take on extra duties from the Legal Technicians I was assured by Ersula that she would work with me and if need be, the technicians would assist with duties I could not complete. She thanked me for being a team player." [Exh. D-4.]

Stanford did not deny the details in Appellant's more specific contemporaneous statements. [Exh. D; Appeal, Atch. 1.] On rebuttal, Stanford conceded that her memory had been refreshed by Appellant's testimony that the events alleged as occurring on Feb. 19th actually occurred earlier because she asked for the team's help at their Feb. 18th team meeting. There is no dispute that the work was further delayed by one or two days while it remained in Stanford's hands.

Some of the Agency's allegations in the disciplinary letter were proven at hearing to be inaccurate. The Agency claimed that Appellant received pleadings on the dates listed in column two of Exhibit 7. That was placed in doubt by Stanford's lack of knowledge about the process by which Appellant ultimately receives documents from the CLU, including the meaning of the handwritten notes of other technicians which appear on several of the date-stamped ACSES sheets. [Exh. 6, pp. 7A, 11A, 15A, 20A, 25A, 29A, 54A.] Appellant explained that a vacancy in the Court Liaison Unit and delivery to the wrong technician delayed her receipt of some orders. [Exh. D-1.] In response, the Agency offered only Stanford's testimony that she assumed certain time frames, leaving in question the actual receipt dates of the 200 Alfresco documents. [Stanford, 10:47 am.] In addition, the Agency witness testified that Appellant did not complete the overdue scanning until Feb. 24. [Exh. 7, column 3.] In fact, scanning is done by a separate unit after the batching is completed. The most credible evidence proved that Appellant completed her batching on Feb. 23rd.

In judging the relative reliability of the parties' differing versions of events, I have taken into consideration several overstatements made by Agency witnesses that were unproven by the evidence. The height of the stack was first estimated at two feet, then changed to exactly four feet, a significant difference. Brown testified that Appellant was "90 days' behind in her work", when the majority of the overdue batching was less than a month old, and performance of her numerous other duties was not challenged as late. [Brown, 11:45 am.] Stanford believed Appellant hid that stack from her during her daily desk visits, but presented no evidence for that belief. The negative effect alleged in the disciplinary letter was unsupported by any testimony, nor was the allegation that other employees were prevented from doing their work by helping Appellant. Appellant's statement that she received batching help in the past was cited as proof that Appellant had "no sense of ownership" for her behavior. Appellant's willingness to assist other technicians to handle a sudden glut of additional cases was considered as justification for charges of carelessness and dishonesty, and for aggravation of the penalty.

Stanford had ample notice during the testing period that the deadline she set in December after Appellant's work doubled was unrealistic. On Feb. 12, Stanford knew Appellant was behind in her batching. Rather than charging her with a violation of the 7-day time frame, Stanford helped her with the batching. A mere five days later, the Agency used Appellant's late batching to charge her with carelessness under the same claimed standard. There was no evidence that Appellant was informed before Feb. 17 that seven days was her performance standard for batching and that she was deficient in that standard. A day after Appellant completed the overdue batching, Stanford reassigned Appellant to a single team of technicians, and Appellant has had no further performance problems. [Stanford, 11:35 am.] Stanford's assurances of help or adjustment to the time frames were unfulfilled. The Agency failed to provide Appellant fair notice that it considered its provisional time frame an enforceable performance

standard. The Agency presented no other evidence that Appellant's batching performance was substandard. Thus, the Agency did not establish that Appellant performed that duty in a careless manner.

The Agency also claimed that Appellant was careless in volunteering her time for city groups. Appellant earned a Black Belt at Peak Academy in May 2014, and attended a one-hour View Masters' meeting in February, 2015. The Agency presented no evidence that this one-hour meeting caused Appellant to perform any duty in a careless manner.

3. Dishonesty, CSR § 16-60 E.

A violation of this rule includes any knowing misrepresentations made within the employment context. In re Mounjim, CSB 87-07 (1/8/09). The Agency claims that Appellant falsified entries in the Colorado ACSES database by stating she sent documents to Alfresco when she had not. The documents were dated between Dec. 9, 2014 and Feb. 10, 2015, but were not batched until Feb. 23, 2015.

The ACSES database is the electronic repository for actions taken on all child support enforcement cases throughout Colorado. Officials, parties and attorneys rely on ACSES to provide an accurate record of case status, including contempt citations, entries of judgment and disbursements to families. The Agency contends that Appellant's notation that she had sent a pleading or order for scanning constituted a false statement, in violation of this rule.

Appellant testified that for the past three years she has noted in ACSES that she is sending documents to Alfresco at the same time she entered her other status notes on each case. Her note "to Alfresco" does not on its face represent that it has already been scanned into Alfresco, and anyone familiar with the work process would know several steps remain before that is accomplished. The seven-day time frame implicitly acknowledges there will be a gap between Appellant's case status note in ACSES and the document's availability in Alfresco, the Agency's electronic file cabinet. Any other procedure would require Appellant to go into ACSES twice to note the document's actual arrival into Alfresco. Since scanning is done by a different operation, even that procedure would require Appellant to assume the work was done rather than certify it had been accomplished. Under this office procedure, there is little to support the Agency's assertion that Appellant was being intentionally dishonest when she made her note "to Alfresco" before she batched the document. Moreover, no one requested any of the overdue documents while they were awaiting scanning. [Appellant, 2:07 pm; Stanford, 11:25 am.] Finally, Appellant stills performs this duty in the same manner, and has not been asked to change that practice. [Appellant, 2:20 pm.]

The Division Director also found that Appellant was dishonest when she volunteered to assist Team 44 with their legal duties on Jan. 11, 2015, because by volunteering she was claiming she was up to date in her own duties. Even if one could make that assumption, it was clear from Appellant's stacks of work on her desk and her weekly logs that she was not without work of her own. Team members were encouraged to help each other out, and had not faced discipline for volunteering if their own work was delayed. Other co-workers who assisted their teammates earned

administrative leave for their efforts. [Appellant, 1:52.] Moreover, on the date Appellant made that offer, she had only two documents in her Alfresco stack for batching. [Exh. 3-4.] The Agency failed to present sufficient evidence to support this violation on either stated basis.

4. Failure to comply with order, CSR § 16-60 J.

This rule contains two discrete violations: failure to comply with a reasonable work order; and failure to perform assigned work an employee is capable of performing. In re Abbey, CSA 99-09, 8 (8/9/10). Under the first portion of the rule, the Agency argues that the stacks of work on Appellant's desk were in effect an order to perform that work by her supervisor.

The word "order" in this rule has never been interpreted in that manner. An order is a communication that clearly requires an employee to take certain action. If the rule is expanded to include implied orders, an employee would be left to guess about which of her assignments were considered orders, and when they would be considered to have been willfully disobeyed. An order must convey to a reasonable person what is intended, including the action that is required to be taken. The mere existence of pending work cannot be considered a violation of a supervisor's order. See In re Macieyovski, CSA 28-14, 6 (10/13/14). Moreover, the evidence showed that when her supervisor ordered Appellant to complete the overdue batching by Feb. 23, 2015, Appellant set aside all of her other work and complied with that order.

In support of the second portion of the rule, the Agency argued Appellant proved she was capable of doing the work because she batched the 200 documents when ordered to do on Feb. 23. Stanford conceded that Appellant's new assignments were a significant increase in her duties, and on that basis promised help and adjustment if necessary. From December to February, Appellant was forthright in explaining her inability to accomplish the work in the stated time frame. Since Appellant only accomplished the Feb. 23 batching by setting aside all other work with the approval of her supervisor, her ability to finish the batching then does not prove she was capable of meeting the seven-day time frame without neglecting her other work. For these reasons, the Agency failed to establish that Appellant was capable of performing that work along with her other duties.

5. Failure to observe written departmental regulations, CSR § 16-60 L.

This rule is violated by proof that there was a clear, reasonable and uniformly enforced written policy, the employee was aware of it, and failed to follow it. In re Rodriguez, CSA 12-10, 13 (10/22/10); In re Leslie, CSA 10-11, 11 (12/5/11). The Agency claims that the time frames for completion of tasks developed at the Dec. 10, 2014 meeting were regulations, and that Appellant's failure to batch within seven days was a breach of that regulation.

Every procedure used to control a work process does not thereby become a policy. Stanford testified that the time frames were not published in the handbook because they applied only to Child Support Technicians and Specialists for very specific work assignments. She described them as work procedures that were subject to change. [Stanford, 11:34 am.] Neither Stanford nor Brown testified that the standard

was written. For these reasons, they did not establish the provisional deadlines amounted to a clear, broadly applicable or uniformly enforced written policy within the meaning of this rule.

6. Failure to maintain satisfactory work relationships, CSR § 16-60 O.

Conduct violates this rule if it would have a significant impact on an employee's working relationship with others. See In re Vega, CSA 12-14, 4 (7/3/14); In re Burghardt, CSB 81-07, 2 (8/28/08). The Agency here argues that Appellant's failure to timely complete her batching affected morale because a co-worker had to stop her own work to assist her, and also because it prevented others from access to the unbatched records. [Stanford, 11:20.]

The evidence showed that Appellant was assisted only once by a co-worker, and that at a time when the co-worker could not accomplish other work because the computers were down. [Appellant, 1:52 pm.] Stanford testified that she was unaware of anyone who tried but was unable to access those documents during the delay. [Stanford, 11:25 am.] The Agency failed to present evidence to establish that there was a significant impact on any working relationship.

7. Conduct prejudicial, CSR § 16-60 Z.

This violation requires proof that Appellant's misconduct caused actual harm to the Agency or the reputation of the City. In re Jones, CSB 88-09, 2 (9/29/10).

Appellant's supervisor admitted at hearing that she was not aware of anyone who asked for the documents in the overdue pile, and thus the delay caused no actual harm to the order or effectiveness of the Agency. Division Director Brown testified that Appellant's actions affected her reputation as the leader of the Division, but presented no evidence to support that allegation.

Brown also stated that the Agency was harmed by virtue of the fact that Stanford had to spend time tracking Appellant's performance. The evidence showed that the tracking was made necessary by the November reassignment of Appellant to an additional team, and Stanford's supervisory duty to ensure that her Dec. 10th time frames were realistic in light of the increased workload. The Agency failed to establish that Appellant committed any conduct prejudicial necessitating the supervisor's efforts, or that her supervisor's time tracking itself harmed the Agency or City.

IV. PENALTY DETERMINATION

Because the Agency failed to establish by a preponderance of the evidence that Appellant violated any of the rules alleged, the penalty issue is moot.

V. ORDER

Based on the foregoing findings of fact and conclusions of law, the three-day suspension imposed on April 8, 2015 is REVERSED.

Dated this 15th day of January, 2016.



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, in accordance with the requirements of CSR § 19-60 *et seq.*, within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the decision's certificate of delivery. See Career Service Rules at www.denvergov.org/csa. **All petitions for review must be filed with the:**

Career Service Board

c/o OHR Executive Director's Office
201 W. Colfax Avenue, Dept. 412, 4th Floor
Denver, CO 80202
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AND opposing parties or their representatives, if any.