

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

PAMELA LOPEZ, Appellant,

vs.

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

The hearing in this appeal was held on Feb. 26, 2013 before Hearing Officer Valerie McNaughton. Appellant was present and represented by Edward Russell Harris, Esq. Assistant City Attorney Andrea Kershner represented the Agency in these proceedings. Division Director Andrea Albo testified for the Agency, and Appellant testified on her own behalf. 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 APPEAL

Appellant Pamela Lopez appeals her dismissal from her position as Administrative Support Assistant IV for Denver Department of Human Services (Agency) on Oct. 17, 2012. The parties stipulated to Agency Exhibits 1, 2, 4 and 6. Exhibits 3¹ and 5 were admitted during the hearing, over Appellant's objection to the first paragraph of Exhibit 3-4 and all of Exhibit 5. No other exhibits were offered or received into evidence.

II. STIPULATIONS AND DISPUTED ISSUES FOR HEARING

Appellant stipulated that the facts asserted in the disciplinary letter are accurate², and that her conduct as alleged therein was in violation of Career Service Rules § 16-60 E, dishonesty; and 16-60 L, failure to comply with departmental regulations. Appellant appealed the action in order to challenge the penalty imposed, and to submit evidence in mitigation. Thus, the sole issue in this appeal is whether the Agency established that dismissal was within the range of penalties that could be imposed by a reasonable administrator under these circumstances and the Career Service standards governing penalties. CSR §§ 16-20, 16-50.

III. FINDINGS OF FACT

Appellant Pamela Lopez has been a city employee since November 1998. At the time of her termination, Appellant was an Administrative Support Assistant assigned to the Family and

¹ The parties agree that Exh. 3-1 erroneously indicates it is the pre-disciplinary letter, and substitute Exh. 3-2 for that page.

² Appellant did not stipulate to the statements made in the first paragraph of Exhibit 3-4, which contains the Agency's findings and conclusions as to the discipline. [Exh. 3-4.]

Adult Assistance Division of Agency Denver Human Services. In addition to her regular duties, Appellant sometimes filled in for the EBT (electronic benefit transfer) Issuance Clerk. An EBT card - sometimes called a Quest card - is issued to Human Services clients to allow them to conveniently receive and use their public benefits. The approved amount of money is transferred electronically to the card, which can then be used to make purchases. On Oct. 17, 2012, Appellant was terminated based on an incident arising from her issuance of an EBT card.

On July 16, 2012, Appellant was serving as EBT Clerk in the absence of the regular clerk, Victoria Quintana. Appellant was approached by fellow employee Lashonn Billingsley who inquired how a person could obtain a replacement Quest card. Appellant explained that she needed an authorized representative form and Colorado identification from the client in order to issue the card. Appellant then asked her the name of the card holder. Ms. Billingsley replied that it was her husband, and that he had had a stroke. Appellant then offered to issue the card without the authorized representative form if she had a copy of her husband's identification. Mrs. Billingsley produced her husband's driver's license. Appellant signed the client's name in the place provided on the issuance log for the client signature because Mrs. Billingsley "didn't want to sign the documents." [Appellant, 2/26/13, 9:48 am; Exhs. 5-8, 5-37, 5-38.] Appellant also signed Mr. Billingsley's name on the EBT Card Ownership and Personal Responsibility Statement, a signature required by Agency policy before a replacement Quest card can be issued. [Exh. 5-57.] Appellant inadvertently copied the wrong social security number onto the Personal Responsibility Statement. [Appellant, 9:48 am; Exhs. 5-32 to 5-33; 5-57.] Appellant then issued and activated the card, and obtained a PIN number for its use. "I took a copy of his ID and the card but did not turn in the copy because I knew I was wrong to issue the card." [Exh. 5-37.] Appellant placed all documents associated with this issuance in her desk file to prevent them from being processed in the usual manner "due to the unauthorized issuance." [Exh. 3-3.]

Once the card was issued and activated, Appellant attempted to hand it to Mrs. Billingsley, who was reluctant to receive it at the EBT desk "due to surveillance camera coverage". [Exh. 3-3.] Appellant and Mrs. Billingsley agreed to meet in the restroom, where Appellant gave her the Quest card. [Exh. 3.] The parties stipulated that the card was never used.

Because Appellant had issued the card under the social security number of a similarly-named beneficiary, Gregory M. Billingsley, his Quest card was immediately deactivated. [Exh. 5-16, 5-17.] As a result, the second Mr. Billingsley came in to the EBT desk two days later to obtain a replacement card. The regular EBT clerk, Ms. Quintana, was back from sick leave and researched his records in the Colorado Benefits Management System (CBMS) in order to process his request. Ms. Quintana discovered that Appellant had issued a card for a Gregory L. Billingsley under the social security number of Gregory M. Billingsley, but she was unable to find the required Personal Responsibility Statement associated with that issuance. [Exhs. 5-16 to 18; 5-57.]

Appellant testified that a few days or a week later, she was told by Ms. Quintana that there was something wrong with the card she issued for Gregory L. Billingsley. Appellant asked Mrs. Billingsley to return the card to her "because the benefits on the card belong to someone else". [Appellant, 2/26/13, 9:50 am.] The latter agreed to do so, but not in the open. "We agreed to meet in the bathroom. She gave it to me in the bathroom. I immediately took it, went back into the EBT office, into the shredding room and put it in the shredder right away." [Appellant, 2/26/13, 9:52 am.]

On July 26, 2012, after the Agency discovered that the verifying documents related to this Quest card were missing, Appellant was called in for an interview with an internal

investigator. She began writing a statement that claimed the employee's husband had come in himself, and that she had helped him sign his name because he could not write. [Exh. 5-35.] Before finishing this statement, she admitted to the investigator that the statement was false, and asked for a new statement form. In her second statement, Appellant admitted that the client was not present and that it was her idea to issue the card in the client's absence. She copied the client's identification "but did not turn in the copy because I knew I was wrong to issue the card. I also signed the log for Mr. Billingsley. I swiped the card and entered the PIN #. Then later that day gave the ID and EBT card to Lashonn . . . I do understand that I violated policies." [Exh. 5-37 to 38.]

At hearing, Appellant stated that the above conduct should not have resulted in her termination because she did not benefit personally, and acted out of a desire to help another employee whose disabled husband was entitled to use the benefits on the card. Appellant testified that she is sincerely sorry for what she did. If given a second change, Appellant stated she would follow all procedures and thereby rebuild her supervisor's trust in her. "I would like to have the opportunity to do my job, and do it correctly and honestly." [Appellant, 9:54 am.]

Division Director for Family and Adult Services Andrea Albo made the decision to terminate Appellant. She relied on several factors in making her determination that no discipline short of dismissal would be appropriate. First, Ms. Albo considered the nature of the offense. EBT cards comprise millions of dollars in public benefits to Denver County's most vulnerable citizens, and the Agency relies heavily on the integrity of EBT staff to issue the benefits cards in accordance with Agency policies. Appellant issued this card fraudulently, forged a client's signature, failed to submit the required forms, and temporarily deprived another client of his lawful benefits. Several days later, Appellant destroyed the card without making a record of that destruction, as required for the Agency's accounting to the card issuer, J.P. Morgan.

Next, Ms. Albo viewed as aggravation the harmful effect Appellant's actions had on Mrs. Billingsley, who was also terminated as a result of her involvement in the incident. Ms. Albo noted that Appellant did not admit her misconduct until several days after the event, after starting an admittedly false written account of events during her interview by the investigator. [Exh. 5-35 to 37.] She considered Appellant's thirteen years on the job and minor previous discipline, but also weighed the fact that Appellant was trained in her job duties and on the importance of acting with accuracy, timeliness, honesty and integrity in performing her functions for the benefit of the people served by the Agency. Ms. Albo found that Appellant's actions displayed a lack of integrity, and that no amount of training would make up for that dishonesty. She further found that the Agency could no longer trust Appellant to act with honesty in the performance of her important duties. She concluded that termination was the only appropriate discipline given the nature of the misconduct and all of the surrounding circumstances.

IV. ANALYSIS

As noted above, Appellant stipulated that her behavior violated the Career Service Rule against dishonesty, including falsifying official records. The Agency supported this allegation by evidence of Appellant's admission and copies of the false signatures. [Exhs. 5-8, 5-32; compare Exh. 5-9, 5-39.] Appellant also admitted these actions in her testimony. [Appellant, 9:48 am.]

Appellant also stipulated that her conduct violated CSR § 15-5 requiring her to conscientiously fulfill the duties of her position, and violated the departmental rules mandating truthfulness in all actions and requiring compliance with its written procedures for replacement of EBT cards. [Exhs. 5-57, 5-58.] The Agency established the factual basis supporting this

stipulation by the totality of the evidence presented.

Thus, the only issue presented is whether the degree of discipline was within the range that could be imposed by a reasonable administrator.

Appellant argues that a meaningful system of progressive discipline should require consideration of alternatives to termination when appropriate. She contends that it is appropriate here, given the fact that it was her first act of dishonesty, she accepted responsibility for it and sincerely seeks a second chance to demonstrate her trustworthiness if given a demotion instead of termination. She argues that there is no incentive for employees to do the right thing and admit their mistakes if an admission automatically leads to loss of their employment.

The Agency counters that Appellant only admitted her misconduct after it was discovered when it caused another client's benefits to be discontinued. The termination was required because of the high importance of honesty inherent in her job duties. The Agency added that honesty is not the type of quality that is readily subject to improvement by means of a performance improvement plan.

The evidence demonstrated that Appellant's dishonesty began with the improper issuance of the Quest card and her placement of two false signatures on official Agency forms. It continued when Appellant intentionally misfiled those official documents and arranged for two surreptitious meetings in an office restroom. Several days after the original misconduct, Appellant destroyed the card in order to conceal the original misconduct. Finally, Appellant failed to record that destruction in violation of another provision of Agency policy. [Exh. 5-58.]

As a result of Appellant's actions, another Agency client was temporarily denied benefits and required to come in to restore them. Appellant admits that she used the wrong Social Security Number on the card, and so "I put off another man's benefits for a time." [Appellant, 2/26/13, 9:48 am.] The parties stipulated that Gregory L. Billingsley did not use the card improperly issued by Appellant, and that it was destroyed some days later. Both men obtained replacement cards two days after Appellant's misconduct. In addition, Mrs. Billingsley was terminated from her employment based on her acceptance of the improperly issued EBT card. A month-long investigation finally uncovered the truth based on interviews of thirteen Agency witnesses and three outside witnesses. Finally, Appellant's actions exposed the Billingsleys to an investigation into their entitlement to benefits based on income, expenses, child support, and marital and residential status. That investigation ultimately resolved all of those issues in their favor. [Exh. 5; 5-7; 5-14 to 34.]

Appellant's argument for lesser discipline must be rejected. Her conduct was not a simple and short-lived lack of judgment based on a desire to help a fellow employee. Appellant was aware her conduct was improper as soon as she began processing the card, as shown by her admission that she did not turn in the forms because she "knew I was wrong". [Exh. 5-37.] Appellant failed to tell the truth for ten days, during which the benefits of two clients were stalled and an internal investigation was begun. Appellant finally told the investigator the truth on July 26th, almost an hour after the interview started. [Exhs. 5-4, 5-37.] The evidence revealed nine separate acts involving dishonesty spanning those ten days: two false signatures, concealment of EBT paperwork, violation of two provisions of the EBT policy, improper destruction of the card, two clandestine meetings with the other employee, and a partially completed investigative statement containing a false account of the events.

The Agency concedes that Appellant has been a long term employee with only minimal discipline, and that she did not personally benefit from her actions. Appellant's demeanor on the stand demonstrated a good-hearted interest in the welfare of Agency clients and a genuine desire for the opportunity to correct her misconduct and restore her supervisor's good opinion of her. Regrettably, her actions and the importance of honesty in her job have given the Agency little basis to anticipate that any less severe penalty would serve the purposes of discipline set forth in the Career Service Rules. I find that the Agency considered the severity of the offense, Appellant's disciplinary and employment history, and weighed all relevant factors in determining the discipline most likely to achieve compliance with the rules. CSR §§ 16-20, 16-50. Based upon all the evidence presented, I cannot conclude that termination was clearly excessive or not supported by substantial evidence, and therefore the Agency's disciplinary action may not be disturbed. In re Owens, CSA 69-08, 8 (2/6/09).

Order

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered that the Agency's termination action dated October 17, 2012 is AFFIRMED.

DONE April 5, 2013.


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. The Career Service Rules are available 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
FAX: 720-913-5720
EMAIL: CareerServiceBoardAppeals@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.