

**ORDER ON DISCOVERY MOTIONS**

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IN THE MATTER OF THE APPEALS OF:

**ERIC MADRIL AND JOHN CULHANE**, Appellants,

vs.

**DEPARTMENT OF PUBLIC WORKS, RIGHT OF WAY ENFORCEMENT**,  
and the City and County of Denver, a municipal corporation, Agency.

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The Agency and Appellants both filed motions for discovery in the above consolidated appeals. The Agency filed an objection to one of Appellant's requests for discovery, and stated that the parties have agreed to all other requests. Appellants did not respond to the Agency's discovery request or objection to discovery.

This is an appeal of the Agency's disqualification and separation from employment of both Appellants from their positions as Vehicle Control Agents (VCAs), after revoking their Special Officer Licenses, a job requirement needed by all VCAs in order to issue parking citations. The licenses were revoked based on the Agency's conclusion that Appellants had a fraudulent parking ticket issued to a citizen who had earlier insulted Appellant Madril.

AGENCY'S DISCOVERY REQUESTS

On July 5, 2011, the Agency made two requests for production of documents. Appellants did not respond. In its re response to Appellants' discovery request, the Agency represented that the parties have resolved the Agency's discovery requests. Therefore, the Agency's motion for discovery is moot.

APPELLANTS' DISCOVERY REQUESTS

Appellants initially made eight discovery requests in their motion. The Agency stated that all but Request # 6 have been resolved, and Appellants have not disputed that representation.

Request #6 seeks copies of any discipline given to any other ticket agent for writing an incorrect, accidental, or out-of-area ticket from 2009 – 2011, but states that Appellants specifically request discipline of VCA Keith Vigil for writing tickets on UPS trucks in a parking lot, and discipline of VCA Mike Maestas for writing tickets for cars at unexpired meters. Appellants argue that the request is discoverable because they believe their discipline

was unfairly harsh when compared to discipline imposed on other employees under similar circumstances.

The Agency objects to this request on the basis that it is vague, overbroad, burdensome, and not designed to elicit relevant information. It argues that a three-year period for discipline issued to all VCAs is both overbroad and burdensome, and the Career Service Rules do not contemplate comparative discipline. The Agency adds that the issue is fraudulent issuance of a ticket, not tickets issued in error. However, I find that Appellants' prehearing statements raised the broader issue that the ticket was issued by mistake, rather than intentionally to harass a citizen.

I find that Appellants' request for discipline of two VCAs seeks discoverable information on the issue of the level of discipline received, as it is narrowly tailored to adduce discipline for similar conduct by the same supervisor, and relevant to the issue of whether the discipline was consistent with the principles of progressive discipline. In re Diaz, CSA 72-06, (Order 12/1/06), affirmed (CSB 9/20/07). The request for all discipline of all VCAs for three years is overbroad given the narrow discovery permitted in this forum. CSR 19-45.

ORDER

Based on the foregoing findings, the following orders are entered:

1. Agency's motion for discovery is moot;
2. Appellant's Request # 6 is GRANTED in part. The Agency is ordered to produce any discipline from 2009 to the present of VCA Keith Vigil for writing tickets on UPS trucks in a parking lot, and discipline of VCA Mike Maestas for writing tickets for cars at unexpired meters. Appellant's remaining discovery requests have been mooted by the agreement of the parties.

DONE July 13, 2011.

  
Valerie McNaughton  
Career Service Hearing Officer

I certify that on July 13, 2011, I delivered a correct copy of this Order to the following in the manner indicated:

John Culhane, 6853 S. Zephyr St., Littleton, CO 80128	(via U.S. mail)
Eric Madril, <a href="mailto:ericmad2003@yahoo.com">ericmad2003@yahoo.com</a>	(via email)
Michael O'Malley, Esq., <a href="mailto:Michaelomalleylaw@hotmail.com">Michaelomalleylaw@hotmail.com</a>	(via email)
Kathy Hand, <a href="mailto:Kathy@legalnavigators.net">Kathy@legalnavigators.net</a>	(via email)
City Attorney's Office at <a href="mailto:Dlefilng.litigation@denvergov.org">Dlefilng.litigation@denvergov.org</a>	(via email)
HR Services, <a href="mailto:HRServices@denvergov.org">HRServices@denvergov.org</a>	(via email)

