

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 84-07

DECISION

IN THE MATTER OF THE APPEAL OF:

SHEILA ROBERTS, Appellant,

vs.

DENVER COUNTY COURT,
and the City and County of Denver, a municipal corporation, Agency.

The hearing in this appeal was held on February 12, 2008 before Hearing Officer Valerie McNaughton. Appellant Sheila Roberts was present and represented herself. The Agency was represented by Assistant City Attorney Joseph M. Rivera. Deputy Court Administrator Terrie Cooke served as the Agency's advisory witness. Having considered the evidence and arguments of the parties, the following findings of fact, conclusions of law and order are entered:

I. STATEMENT OF THE CASE

Appellant Sheila Roberts is a Court Technical Clerk for the Denver County Court. Ms. Roberts appeals the denial of her grievance challenging her "needs improvement" Performance Enhancement Program Report (PEPR) dated October 23, 2007 pursuant to the jurisdiction provided in the Career Service Rules (CSR) § 19-10 A. 2. c.

The parties stipulated to the admissibility of Exhibits 1 and 2. Exhibits 3 – 5, 7 – 9, 11 – 19, 21, 23, 25 and 26 were also admitted during the hearing.

II. ISSUE

The only issue raised in this appeal is whether Appellant established by a preponderance of the evidence that this "needs improvement" PEPR rating was arbitrary, capricious and without rational basis or foundation under CSR § 19-10 A. 2. c.

III. FINDINGS OF FACT

Appellant Sheila Roberts is a Court Technical Clerk for the Denver County Court. On Oct. 23, 2007, Appellant was given a "needs improvement" rating for the period of Nov. 1, 2006 to Nov. 1, 2007. This appeal challenges that rating.

The job of Court Technical Clerk requires that Appellant perform eight Priority 1 job responsibilities: courtroom management, tapes and notes, customer service, telephone skills, records, coworker relations, punctuality, and schedules and leaves. The October 2007 PEPR rated Appellant's performance at the "needs improvement" level for four of those areas: courtroom management, records, coworker relations and punctuality. Appellant was rated as performing customer service, telephone skills and schedules and leaves at the satisfactory level, and rating exceptional in area of tapes and notes. Appellant was also rated as satisfactory in the Priority 2 duty of performing special projects as assigned. [Exh. 1.]

Since the issuance of the PEPR, Career Service Rule 13, Pay for Performance, was significantly revised. C.S.R. Rule 13, amended Jan. 1, 2008. Review of this PEPR is controlled by Rule 13 as it existed on Oct. 23, 2007.

1. Courtroom Management

The first job responsibility listed in the PEPR is courtroom management. "In the courtroom, all settings that are given must be according to the procedures of the court and should facilitate smooth operations. The appropriate paperwork is to be filled out properly and the correct information must be on all forms." A successful rating of this duty requires an employee in this job classification to be responsible for no more than one significant error per month. [Exh. 1-2.]

The Agency rated Appellant at the "needs improvement" level in courtroom management based on five incidents, all of which occurred in May 2007. [Exh. 1-9, 1-10.] On May 15th and 16th, Appellant mistakenly set two different hearings in the wrong courtroom. [Exhs. 17, 18.] The errors were discovered by the judge into whose courtroom they were assigned. Also on May 16th, Appellant recorded a dismissal in a case despite the defendant's plea of guilty to the charge. In another case, Appellant failed to update the file to show that it had been dismissed. In the latter instance, Appellant erroneously sent the matter to the clerk's office to be filed as a dead case. [Exh. 15.] Later that month, a file reported as missing by Appellant was located by Technical Support Supervisor Colin Odle. After a two-day search for the file, he discovered that the information on the file jacket was wrong, the file contained a setting slip from a different case, and the District Attorney's motion and judge's rulings were not recorded in the file. [Exh. 7.]

Appellant was suspended for three days on the basis of these errors and her comments during a supervisory discussion of them. [Exh. 5.] At the pre-disciplinary meeting on this discipline, Appellant stated that Mr. Odle told her the missing case had been dismissed. However, Mr. Odle reported back that he would not have told Appellant that, since he spent the next few days after his discussion with Appellant trying both to locate the case file and determine its final disposition. [Exh. 23.]

Appellant admits that in April she gave a defendant a payment slip with the wrong case number on it. After defendant paid, Appellant entered the payment to the record for the erroneous case number. As a result, an arrest warrant was issued for the defendant, despite his payment of all ordered amounts. [Exhs. 1-9, 1-10, 12, 21.] Although the mistake was corrected before the warrant was served, the potential loss of liberty rendered this a serious enough error in the view of Mr. Trujillo to merit a face-to-face meeting between Appellant and her supervisor. On May 25, 2007, the Agency served Appellant with a written reprimand for this error and 29 data entry errors occurring March 23rd to May 1st. [Exh. 4.]

2. Records

The second job duty in which Appellant was rated at the "needs improvement" level was records. That duty requires a clerk "to comply with guidelines for the timely processing of cases while maintaining the accuracy and proper preservation of records, which include files, documents and computer records. All new court settings along with warrants and disposition settings must be updated daily." The standard for a successful rating in this Priority One category is accurately entering information into the computer system "with no more than two errors per quarter, and files are consistently returned to the clerk's office according to departmental standards." [Exh. 1-4.]

Shortly after this performance rating period began, Appellant was reassigned from the courtroom of County Court Judge Robert Crew to act as an Administrative Rover, where she would work directly under Deputy Court Administrator Terrie Cooke to cover staff shortages and special projects as needed. [Exh. 26.]

In her first assignment as rover, Appellant worked for three months in the Protection Order courtroom with Judge Barajas. The initial audit of information provided by Appellant to the Senior Transcriptionist revealed some errors in that information. The second audit showed no errors. [Exh. 1-8.] Appellant admitted the errors shown in the first audit, which were largely failing to include defendants' phone numbers in the data provided to the transcriptionist. She testified that she relied on her past experience in performing that job, when adding phone numbers was not the practice. Appellant stated that her errors were caused by an outdated manual, which was not updated to clearly describe the need to include phone numbers until August 2007. However, Appellant admitted on cross-examination that she did not consult the outdated manual before beginning this assignment. Therefore, Appellant could not have relied on the outdated manual in making the errors.

The County Court's quality assurance process reviews court files and computer records to ensure that all information is recorded correctly. As a result of this process, Criminal Division Manager Ron Trujillo discovered 16 data entry errors made by Appellant on March 23rd, and nine additional errors on April 4, 2007. [Exh. 1-8, 1-9.] Appellant admits these errors. Appellant stated she recorded some traffic infractions

incorrectly because they used to be listed in a different order on the traffic ticket, and she failed to notice the order of infractions had now changed.

In April and May, Mr. Trujillo notified Appellant of several more data entry errors. [Exh. 1-9.] In two cases, Appellant failed to complete and forward motor vehicle transcripts to the Department of Motor Vehicle (DMV) for inclusion in defendants' records. [Exhs. 8, 11.] In another, a 30-day stay of execution issued in April was not recorded in the sentencing screen, which could have resulted in the issuance of a warrant for the arrest of the defendant if it had not been corrected. [Exh. 9.] Another review showed that on April 13th, Appellant incorrectly recorded a judge's order of a 45-day stay of execution of a jail sentence as a 15-day stay. [Exh. 13.] If the error had not been caught, that defendant could have had insufficient time to apply for a hookup for in-house detention before the end of the stay of execution, causing a significant loss of personal liberty. A fifth computer screen showed that Appellant recorded a dismissal order in a traffic matter where the defendant had actually pled guilty, which could have resulted in a significant underreporting of points on that defendant's driving record. [Exh. 14.] Appellant does not recall making any of those mistakes.

On May 25, 2007, the Agency served Appellant with a written reprimand in large part for the above data entry errors occurring March 23rd to May 1st, 25 of which were admitted by Appellant. [Exh. 4.] In addition, Appellant was given a "needs improvement" rating in records on her PEPR on the basis of these errors. [Exh. 1-4, 1-5, 1-8, 1-9.]

3. Co-worker Relations

To earn a successful rating in co-worker relations, a clerk is expected to meet the requirements of adequate and reasonable communication, courtesy, cooperation, refraining from gossip and observing the chain of command, with no more than one incident that adversely affects the work environment during the rating period. [Exh. 1-5.]

Appellant was rated "needs improvement" in co-worker relations based on a number of incidents arising from conversations with her supervisor. On April 10, 2007, Ms. Cooke requested a doctor's note for her absence the day before. Appellant asked her why she needed a doctor's note, and why it was being requested of her now, adding that if she was able to drive to the doctor, she would have come to work. When Ms. Cooke gave her a pre-disciplinary notice based on her failure to furnish a doctor's note, Appellant became visibly angry, started shaking, raised her voice and pointed at Ms. Cooke, saying, "[y]ou don't have the authority to do that". Appellant added, "[y]ou're being unfair", and walked out of the meeting. At the pre-disciplinary meeting, Appellant became angry again, pointed to Ms. Cooke, and said she was "out of line". [Exh. 20.] At a coaching session immediately afterward intended to illustrate how Appellant could have handled these encounters without being confrontational, Appellant said she still could not see the difference in her reactions and their suggested approach. [Testimony of Ms. Cooke.] The Agency imposed a one-day suspension for failure to comply with her supervisor's orders. [Exh. 3.] The last incident occurred on June 4th, when

Appellant and Ms. Cooke met to discuss the May data entry errors. Appellant asked her, "if I'm a total fuck-up, why do you keep me here?" [Exhs. 1-9, 1-10.] The incident was included in the discipline imposed in the August three-day suspension. [Exh. 5-2.] Ms. Cooke testified that she considered all of this behavior disrespectful and inappropriate.

Appellant admits making the above statements, but contends that she is entitled to "throw a little anger and dissension her way" because Ms. Cooke is her supervisor, and the threatened discipline put her on the defensive, requiring her to try to save her job. Appellant also argues that Ms. Cooke is the only one at work with whom she "bumped heads", and that she gets along well with all other employees. She cites in support the comment in her PEPR that "Sheila has not become involved in the Civil Division drama or politics." [Exh. 1-10.] Appellant testified that for awhile she and Ms. Cooke avoided talking to each other when they met during the course of the work day. That changed for the better after Appellant initiated efforts to greet Ms. Cooke.

4. Punctuality

The last "needs improvement" rating is in the area of punctuality. A successful rating requires no more than four late starts per quarter, and no more than four failures to sign in and out on the time clock. [Exh. 1-6.] Appellant admitted she was late 13 times from November 2006 to April 2007, and failed to log in or out several times from December 2006 to February 2007. She explained that she was on crutches starting in December, and that she was delayed during the snowy and icy weather by the need to walk carefully from the car to her work site. The PEPR noted that Appellant recently improved significantly in punctuality and use of the time clock. [Exh. 1-10.]

The PEPR concluded by recording several improvements in Appellant's performance in the latter part of the rating period. The Civil Division Manager reported that Appellant handled phone inquiries appropriately, took on data entry of her own initiative, helped out in courtrooms to cover staff illnesses, avoided getting involved in other employees' "drama or politics", and acknowledged another employee's customer service efforts. In addition, Appellant was professional, respectful, and asked intelligent questions during a Civil Division staff meeting, impressing Mr. Trujillo with her "ability to identify questionable practices and make useful suggestions." [Exh. 1-10.] "I am encouraged by [Appellant's] recent work effort and hope that she has a much improved upcoming year. Sheila is a bright, intelligent person and is capable of performing at a higher level." [Exh. 1-11.]

IV. ANALYSIS

The Career Service Rules provide jurisdiction for review of a PEPR with an overall rating of "needs improvement" after a grievance based on that rating has been presented and denied by the Agency. "The only basis for reversal of the PEPR shall be an express finding that the rating was arbitrary, capricious, and without rational basis or foundation." CSR § 19-10 A. 2. c.

The purpose of an annual performance review is to evaluate individual performance, and reward successful performance with merit pay increases under the Career Service Rules. An evaluation must be fairly based on the standards and measures in the PEP plan in order to give an employee notice of the criteria by which her performance will be judged. Evaluations must weigh performance against standards of performance that are objective to the extent feasible given the job being measured.

In re Padilla, CSA 25-06, 10 (9/13/06); citing CSR § 13-10 G; Cohen v. Austin, 861 F.Supp. 340 (E.D.Pa. 1994).

1. Courtroom Management

Accurate court records and settings are of vital importance to the operation of the courts and the rights accorded to parties and victims in the traffic, criminal and civil judicial systems. Therefore, courtroom management duties are a top priority for a clerk in an administrative rover assignment who covers courtrooms during absences and vacancies.

Appellant's PEP allows a successful rating in this duty if there is no more than one significant error per month. The Agency established that Appellant prepared two incorrect setting slips, which would have sent two defendants to the wrong courtroom if the mistake had not been discovered by the judge who would have received those cases. Appellant also erroneously dismissed one case and failed to dismiss another case, with potentially adverse consequences to the parties or victims in those cases. A fifth error involved a case in which Appellant noted the wrong information on the file jacket, and filed the wrong setting slip inside. As a result, the court file was lost for several days. Finally, Appellant listed the wrong case number on paperwork given to a defendant, and credited his payment to the wrong case. All of these errors required extra work to correct them, and could have had serious consequences to those involved in the cases.

Appellant contends that she was already punished significantly for these errors by means of her written reprimand and three-day suspension. "The purpose of discipline is to correct inappropriate behavior or performance, if possible." CSR § 16-20. In contrast, Rule 13 Pay for Performance provides for an annual evaluation of an employee's performance for the purpose of setting annual merit increases and giving valuable feedback to the employee. The different goals of Rules 13 and 16 require different tools. The Career Service Rules do not prohibit rating an employee based on behavior for which discipline was imposed during the rating period.

Since Appellant committed six significant errors in one month, her rating of "needs improvement" was in accordance with the clear standards set forth in the PEP.

That rating does not constitute double punishment for performance deficiencies that also constitute behavior subject to discipline under Rule 16.

2. Records

Secondly, Appellant was rated at the "needs improvement" level in the job responsibility of accurately entering information into the court's computer records, a Priority One duty for a Court Technical Clerk. Success in this category permits no more than two errors per quarter, and the proper return of files to the clerk's office.

The Agency established by credible testimony and court records that Appellant made about 30 data entry errors from November 2006 to April 4, 2007. [Exh. 1-8, 1-9.] Appellant admits 25 of these errors. That exceeds the two errors per quarter allowed by the PEP for a successful rating. In addition, Appellant failed to return a file to the clerk's office with a note that a dismissal order was entered, but instead returned it as a "dead" file. Therefore, the Agency's rating of "needs improvement" for this job duty was appropriate under the clear standards set forth in the PEPR.

3. Co-worker Relations

Appellant admits that she made the statements alleged by her supervisor. Ms. Cooke testified that she considered these statements disrespectful and inappropriate. For a time, Appellant and her supervisor stopped talking as a result of these comments, causing an adverse effect on the work environment between them.

Appellant justified her comments as reasonable in the context of the imposition of discipline. While it is certainly true that an employee is entitled under the Career Service Rules to correct and dispute allegations that could lead to discipline, that right is not incompatible with an employee's obligation to maintain satisfactory working relationships with supervisors. CSR §§ 16-40; 16-60 O. Any other result would immunize an employee from discipline for any type of behavior during pre-disciplinary meetings, where the need for a dispassionate exchange of information is paramount.

Given Appellant's admission of a series of angry and confrontational statements that adversely affected the work environment between Appellant and her supervisor, the PEPR rating of "needs improvement" in this category was in keeping with the announced standards for this job responsibility.

4. Punctuality

Appellant admits that she exceeded the standard of four late starts per quarter by being late to work a total of thirteen times from November 2006 to April 2007. Appellant also concedes several time clock violations for that same period. Her use of crutches partially mitigates the seriousness of the infractions, but does not render the rating arbitrary, capricious, or without rational basis or foundation.

5. Overall Rating

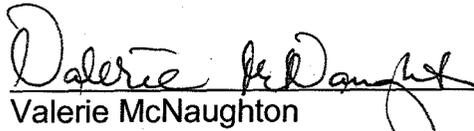
Appellant argues that the PEPR unfairly rated her for the entire year on mistakes committed during the first three months, giving her no opportunity to benefit from the numerous improvements in her performance she made, and the Agency acknowledged, later in the rating period.

An overall rating of "needs improvement" is not rendered arbitrary, capricious, or without rational basis or foundation simply because all of the deficiencies on which it is based are clustered in one part of the rating period. See also In re Leal-McIntyre, CSA 77-03, 134-03 and 167-03, 6 (1/27/05) (failing to meet a significant portion of expected accomplishments, regardless of her achievement of others, may lead to below expectations rating.) The PEPR fairly acknowledged Appellant's impressive performance improvements during the latter part of the rating period. The whole of the evidence indicates that the PEPR was an objective and balanced reflection of Appellant's performance for the year in question. Therefore, the PEPR rating of "needs improvement" was not arbitrary, capricious, or without rational basis or foundation under the standard of review mandated in CSR § 19-10 A. 2. c.

ORDER

Based on the foregoing findings of fact, it is determined that the Agency's PEPR dated October 23, 2007 is AFFIRMED.

Done this 7th day of March, 2008.


Valerie McNaughton
Career Service Hearing Officer