

**HEARING OFFICER, CAREER SERVICE BOARD  
CITY AND COUNTY OF DENVER, COLORADO**  
Appeal No. 20-09

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**DECISION**

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IN THE MATTER OF THE APPEAL OF:

**FIDEL SALAZAR**, Appellant,

vs.

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

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**I. INTRODUCTION**

The Appellant, Fidel Salazar, appeals his March 19, 2009 dismissal from the Denver Department of Human Services (Agency) for alleged violations of specified Career Service Rules and Agency regulations. A hearing concerning these appeals was conducted by Bruce A. Plotkin, Hearing Officer, on June 25, and August 11, 2009. The Agency was represented by Neils Loechell, Assistant City Attorney, while the Appellant was represented by Michael O'Malley, Esq. Agency exhibits 1 through 22 were admitted. Appellants' exhibits A-1 through A-9, C-E, G-I, K, M-P, S-V, X-Z, BB, DD-II were admitted. The following witnesses were called to testify by the Agency: Juanita Rios Johnston, Geraldine Bettis, David Hooker, Cherie Black, Linda Ann Dixon, Sheila Vieira, Melanie Hosl, Appellant. The Appellant presented testimony by Eileen Trujillo.

**II. ISSUES**

The following issues were presented for appeal:

- A. whether the Appellant violated any of the following Career Service Rules: 16-60 A., B., E., J., K., L., O., S., T., U., or Z;
- B. if the Appellant violated any of the aforementioned Career Service Rules, whether the Agency's decision to dismiss the Appellant conformed to the purposes of discipline under CSR 16-20;

**III. FINDINGS**

The Appellant was employed as a Case Management Coordinator by the Denver Department of Human Services (the Agency). The Agency serves the needs of a highly

vulnerable population, so the timely processing of cases by the Case Management Workers is a critical function of the Agency.

Salazar's immediate supervisor was Geraldine Bettis. Bettis hired Salazar. Though she recognized ongoing performance issues in Salazar's work from the beginning, Bettis believed she could coach Salazar into improving.

Bettis' supervisor, Sheila Vieira, received and tracked complaints from customers of Bettis' unit. She found an inordinate number of complaints against Salazar, including that he was not doing his job, was rude, not responsive, and had a poor attitude and demeanor. Clients reported that, in response to their complaints, Salazar would threaten to withhold benefits if they complained. She found these complaints were not reflected in Bettis' performance review (PEPR) of Salazar. [Exhibit 6]. She therefore had some reservations about Bettis' rating Salazar's performance in 2007 as "successful" rather than "needs improvement." In addition, Vieira tracked the performance of Bettis' unit and found Salazar consistently underperformed unit standards. Based on Vieira's information, Bettis changed some individual entries in Salazar's PEPR from "meets expectations" to "needs improvement" but left the overall rating as "meets expectations." When complaints against Salazar persisted and performance problems continued, Vieira ordered Bettis to place Salazar on a Performance Improvement Plan (PIP). When Bettis demurred, stating she believed she could coach Salazar into compliance, Vieira flatly told Bettis "either he gets PIP'd or you get PIP'd." [8/11/09 Vieira testimony 8:52:00].

Bettis placed Salazar on a three-month performance improvement plan (PIP) on April 17, 2008. At the end of the PIP Salazar told Bettis he completed all PIP requirements. Based upon his assurance, Bettis terminated the PIP.

Bettis conducted regular desk audits of her subordinates. During her December 2008 desk audit of Salazar's work, Bettis discovered, contrary to Salazar's representation, he had not completed the requirements of his April PIP. She found on his disorganized desk: 143 verifications from customers Salazar had failed to act upon, some over one year old; 80 forms returned by customers reporting changes to Medicaid information; 151 pieces of returned mail which required follow-up; 17 outstanding redetermination/recertification forms (RRRs);<sup>1</sup> 175 outstanding DSS-1's;<sup>2</sup> 12 food stamp change report forms returned by clients; 42 incomplete files; and 10 unanswered applications between four and ten months old.

Based upon her findings, above, and based upon reports from Salazar's co-workers that he would often disappear from his desk during work hours without reporting his whereabouts, Bettis placed Salazar on a second PIP in December 2008 with clear and specific task and reporting requirements, including, in pertinent part, the following:

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<sup>1</sup> A form sent each year to DHHS clients which must be completed and returned in order to re-establish eligibility for benefits.

<sup>2</sup> A critical information-sharing document which describes assessment of and provision of benefits.

Your work hours are 8:00 a.m. – 4:30 p.m. each day beginning January 5, 2009. You are not authorized to begin work until 8:00 a.m. and you are to obtain prior written approval/authorization for any deviation or absence, otherwise you are expected to be at your desk. You are not authorized to be at work after your shift ends without prior approval/authorization from me...You are to notify me in advance of any deviation and in the event you are with a client and cannot take your break when scheduled you are to email me when you are leaving for your break(s)/lunch and when you return.

At all weekly meetings verification must be provided to the supervisor of the completions of the work listed in the desk review.

From the desk review completed December 3 through 12/10/08. You are to have the backlog completed by January 31, 2009. You are to report honestly and truthfully when you complete numbers 1 through 8 noted above.

You are to immediately report any obstacles/barriers in completing the backlog immediately.

You are to complete the backlog in addition to your daily assignments and duties and you are not to ask others to complete the work for you.

You are to identify any barriers or obstacles which you feel may impede your ability to complete your duties immediately to me.

We will review this Performance Improvement Plan weekly beginning **January 8, 2009** and **11:00 a.m.** and continuing **each Thursday for 3 months** or, until otherwise notified in writing from the supervisor.

[Exhibit 3] [emphasis in the original].

Salazar refused to sign the PIP, but acknowledged he understood what was expected, did not need any clarification, and understood how he could improve. [Exhibit 3-2; 8/11/09 Salazar testimony]. Bettis made detailed, contemporaneous notes of Salazar's PIP review meetings. [Exhibits 10-18].

At the first PIP review, Salazar failed to provide any documentation for work he stated was completed. He failed to provide any information concerning what backlogged cases he addressed, failed to provide case numbers or progress reports, and did not email Bettis concerning his lunch and breaks. He told Bettis he didn't have time to go through the box of documents which Bettis had sorted and labeled to assist him. He also told her he was waiting for filing help from work pool staff.

On January 13, 2009, Salazar worked outside his scheduled hours. Bettis docked his pay for 15 minutes of unauthorized overtime.

At their January 15, 2009 PIP review, Salazar failed to provide any information, status updates, or progress reports concerning his backlogged cases. Salazar stated he had worked on applications in the box but provided no confirmation. He performed no work on the outstanding RRRs or DSS-1's. Bettis reminded Salazar to work on the backlogged cases, and to provide documentation. She also reminded him he was required to finish his backlog by January 31.

Salazar failed to appear at his next PIP review on January 21, 2009. He was away from his desk most of the morning and did not notify Bettis of his absence, nor did he request approval from her for his absence. Bettis reviewed paperwork on Salazar's desk and found he had not completed his backlog.

At the January 29, 2009 PIP review, Salazar had not come close to completing his backlog, nor did he provide documentation for work performed. He told Bettis he completed some items and provided some verification. On February 10, 2009, Bettis sent Salazar a letter in contemplation of discipline. [Exhibit 1].

A pre-disciplinary meeting was held on March 11, 2009. Salazar attended with his union representative. He also presented a written document for consideration by the Agency. [Exhibit BB].

On March 19, 2009, the Agency delivered in person its notice of termination to Salazar. This appeal followed timely on March 24, 2009. Juanita Rios Johnston was the final decision maker in the Appellant's discipline.

#### **IV. ANALYSIS**

##### **A. Jurisdiction and Review**

Jurisdiction is proper under CSR §19-10 A.1.a., as a direct appeal of a dismissal. I am required to conduct a *de novo* review, meaning to consider all the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

##### **B. Burden and Standard of Proof**

The Agency retains the burden of persuasion, throughout the case, to prove the Appellants violated one or more cited sections of the Career Service Rules, and to prove its decision to terminate the Appellant's employment complied with CSR 16-20. The standard by which the Agency must prove its claims is by a preponderance of the evidence.

## C. Career Service Rule Violations

### 1. CSR 16-60 A. Neglect of duty.

A violation under CSR 16-60 A., is established by a showing the employee fails to perform a job duty he knows he is supposed to perform. In re Rogers, CSB 25-08, 2 (7/16/09).

Salazar did not dispute he was required to fulfill the terms of both PIPs as job duties. "This PIP sets forth what is expected of you in order for you to perform at a minimum as at a 'successful' level." [Exhibit 4]. Based upon Salazar's say-so, Bettis deemed Salazar completed the requirements of his April 17 PIP and withdrew the PIP on October 18, 2008. However, when she conducted a desk audit between December 8 and 12, 2008, Bettis found Salazar continued not to fulfill essential work duties and did not complete the requirements of his earlier PIP. She found 143 cases not acted upon. [Exhibit 3; Exhibit 20]. She then assigned a second PIP on December 12, 2008, and required Salazar to complete it by January 31, 2009. The key terms of the December 12 PIP required Salazar to:

meet weekly to review and provide confirmation of his progress of the past week;

turn in a schedule of how he spends his work day;

strictly adhere to his work and break schedule, and to email Bettis immediately about any unanticipated exceptions;

seek approval in advance of all vacations, and provide physician's proof of sick leave taken;

notify Bettis immediately of any impediments to completing these requirements.

Salazar failed to appear for one of his scheduled review meetings with Bettis and did not notify her in advance. [Exhibit 11]. He replied he checked himself out on the in-out board. [Exhibit V-2]. His failure to notify Bettis directly contravened his meeting requirement, and the requirement to email Bettis about exceptions to working at his desk.

The Appellant protested that he had acted on "most of it," or "a majority" of the backlog. [8/11/09 Appellant testimony 11:03:56; 11:05:22]. Even while protesting that assigned cases had a 30-day grace period for completion, the Appellant testified that some of his cases were more than 60 days overdue. [8/11/09 Appellant testimony 1:41:36]. Incongruously, the Appellant protested he addressed all the outstanding matters, but he did not provide or refer to any written documentation, in violation of the requirement in his PIP to provide documentation of his progress. "At all weekly meetings verification must be provided to the supervisor of the completions of the work listed in the desk review." [Exhibit 3-2].

Salazar also insisted he was always current with the backlog requirements of his December 12 PIP, but stated at his January 31, 2009 PIP review meeting, that he expected to catch up with his backlog by February 19, 2009. [Exhibit 14-1]. Salazar explained at hearing that Bettis' recollection was inaccurate, [8/11/09 Appellant testimony 11:48:56], but he failed to impeach Bettis' credibility. Indeed, Bettis' copious, timely notes of her review meetings with Salazar, and the extent to which she continued to work with Salazar, even when Bettis' superior found she was improperly over-indulging Salazar,<sup>3</sup> support Bettis' credibility. In addition, Bettis hired Salazar, thus providing another reason to find she did not treat him inequitably. Most convincingly, another Case Management Coordinator, Linda Dixon, testified without rebuttal that, after Salazar's termination, she was assigned from 65 to 68 of his backlogged cases in addition to her regular caseload. She found Salazar did not process his cases timely, managed them poorly, and found clients went without benefits for a long time after all required information was available to Salazar. One elderly client with colon cancer had been unable to receive treatment due to Salazar's failure to process the case. [6/25/09 Dixon testimony 3:32:24]

The Appellants' own statements acknowledge a failure to act on at least some of the PIP requirements. His responses to specific questions regarding how he complied with his PIP were replete with frustratingly non-responsive or unexplained answers. "I can't say." [8/11/09 Appellant testimony 11:08:47]. "I addressed it." [*Id* at 11:06:07]. "I was within the time expectations of the group." [*Id* at 10:44:02].

Salazar also claimed some cases had been assigned to co-workers so that he was not responsible for them, or that his failure to submit cases were due to case worker delay. [See, e.g. Exhibits 16-20, 16-38]; however co-workers testified Salazar asked them to work on his cases for him. [See, e.g. 6/25/09 Bettis cross-exam 1:40:10]. Case workers had to duplicate work due to Salazar's failure to provide it. [See, e.g. *id* @ 1:47:50].

Some of the Appellant's failures to submit cases timely simply went unexplained. David Hooker, supervisor of six Case Management Coordinators, testified without rebuttal, that he inherited some 50 of Salazar's cases. Among them, Salazar failed to process a claim for an elderly Russian couple. They filled out their application twice. When Bettis found out, she directed Salazar to process the application "but it didn't happen." When Hooker took over Salazar's files, he found the Appellant's desk disorganized, with piles of unorganized papers strewn everywhere, and mixed up as to

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<sup>3</sup> Salazar claimed Bettis treated him less favorably than other employees. The evidence does not support his claim. Sheila Vieira is Bettis' supervisor. After Vieira tracked complaint calls concerning Salazar, she disagreed with Bettis' decision to rate Salazar's 2007-2008 PEPR as "successful" rather than "needs improvement." Bettis believed, with additional coaching, he could improve. After Vieira continued to receive complaints continued against Salazar, Vieira commanded Bettis to require a PIP for Salazar or risk being assessed a PIP herself. [8/11/09 Vieira testimony 8:52:00]. It is unlikely Bettis treated Salazar unfairly while she risked a downgrade of her own performance to protect him. Moreover, Dixon testified, without rebuttal, that she observed Bettis' interactions with Salazar and found she treated him the same as everyone else. On the other hand, she found Salazar believed he did not need to be accountable and became upset if he were asked the same kind of accountability questions she asked of everyone. [6/25/09 Dixon testimony 3:32:24, 3:41:01].

the type of case and dates, so that it was difficult to find any order and track needed documents. [6/25/09 Hooker testimony 2:57:10].

Salazar's principal contentions were that he was overwhelmed by an unfair distribution of work and undertrained compared with his co-workers. His supervisors, Bettis and Vieira understandably denied these allegations. The most convincing rebuttal, however, came from Salazar's co-workers, all of whom seemed to have a great personal affection for Salazar, thus eliminating the specter of bias, while acknowledging he simply underperformed while having the same resources available to him that were available to his co-workers. Hosl testified Salazar had more experience as a Case Management Coordinator than she, since he began before her. She considered Salazar her friend. She stated Salazar's case load was not more onerous than that of any other Case Management Coordinator. [8/11/09 Hosl testimony 9:41:12]. She also testified she gained the knowledge to perform her duties as a Case Management Coordinator from on the job training and asking questions, and not as much from formal class training. [*Id* at 9:19:26]. Eileen Trujillo was also a Case Management Coordinator. She began those duties at the same time as Salazar. She stated she and Salazar received the same training and shared the same case loads. Notably, she observed Salazar "did the best he could; he was a little slower, struggled a little bit with things..." Trujillo helped Salazar with his cases. [8/11/09 Trujillo testimony 2:41:40]. In response to Salazar's claim that only his co-workers had work pool assistance, Trujillo stated "we all did [have work pool help]... it was upon our request." [*Id* at 2:43:54]. In addition, Bettis testified without rebuttal that Salazar's cases were not completed to the point where they could be filed by work pool volunteers or anyone else. The testimony of Salazar's co-workers rebutted Salazar's claim that he received less training and had fewer resources available than his co-workers.

Finally, the Appellant claimed he was unaware of his PIP duty to provide documentation at his PIP reviews. [Exhibit 18-1, lines 3-4]. First, his signed PIP indicates he read and understood the requirement. Second, this claim is contradicted by his own testimony that he understood the requirement to bring written documentation, and did bring it every week. [8/11/09 Appellant testimony 11:16:02].

The preponderance of the evidence, above, proves Salazar neglected his PIP requirements in violation of CSR 16-60 A.

## **2. CSR 16-60 B. Carelessness in performance of duties and responsibilities.**

While CSR 16-60 A) and CSR 16-60 B), share similar elements of proof, they are distinguished in that, under 16-60 B., it is the Appellant's sub-par performance, rather than his omissions (neglect), which are reviewed. See In re Rogers, CSB 25-08, 3 (7/2/09). Thus, a violation under this rule occurs for performing poorly, rather than neglecting to perform, an important duty.

This claim is supported by unrebutted testimony from co-workers who, after Salazar's dismissal, inherited his poorly managed cases. Eileen Trujillo is a Case Management Coordinator. While it was evident she felt sympathy for the Appellant's efforts ("he did the best he could compared with the rest of us"), she testified, without rebuttal, that many of Salazar's cases required verifications ("cleansing"), and she and her co-workers took turns finding verifications and bringing the cases current. She also testified some of Salazar's cases were 30-60 days old. [8/11/09 Trujillo testimony 2:38:35]. Dixon, Hooker, and Cherie Black affirmed Salazar's lack of organization and failure to process claims timely. [6/25/09 Dixon testimony 3:32:24; 6/25/09 Hooker testimony 2:57:10]. Black testified she worked on about 100 of Salazar's 250 former cases, all of which (100) had something wrong with them. In one instance \$6,000 in benefits continued to be paid to a client who had moved out of the country. The case had remained open for a year after it should have been closed in May 2008 when proof of the client's move was received. Black confirmed no one but Salazar worked on the case until she inherited it. The continued payments totaling \$6,000 necessitated the opening of a fraud action to recover money from the client who was, by then, out of the country. [6/25/09 Black testimony 3:22:53, 3:25:19]. For the Appellant's actions in these cases that were not neglectful, his actions were a careless performance of his duties, in violation of 16-60 B.

The Appellant replied he did have a filing system. The inability of any co-worker to access information in the Appellant's system indicates it was a careless system. Salazar also stated co-workers were allowed to have work pool assistance in filing their cases while he was not. Bettis rebutted this claim, stating, unlike his co-workers, Salazar had not worked the cases to the point where the cases could be filed. The Appellant failed to rebut his violation of CSR 16-60 B.

**3. CSR 16-60 E. Any act of dishonesty, which may include, but is not limited to: Altering or falsifying official records or examinations... Lying to superiors or falsifying records with respect to official duties, including work duties, disciplinary actions, or false reporting of work hours.**

An employee violates this rule by knowingly making a misrepresentation within the employment context. In re Mounjim, CSB 87-07, 6 (1/8/09). The Agency claimed Salazar falsely claimed he worked eight hours of work on his time sheet when Bettis observed he was gone for over an hour of his eight hour shift on May 2, 2008. [Exhibit 5-4]. In addition, the Agency alleged Salazar falsely claimed he completed his April 2008 PIP when he had not.

As a starting point, an agency may not forgo discipline for a discrete incident<sup>4</sup> of misconduct then, much later, "pile on" the same incident for unrelated discipline. Here, Bettis downgraded the Appellant's performance review, in part, due to his dishonesty on May 2, 2008. However, the Agency did not notify the Appellant concerning discipline for that incident until serving its contemplation of discipline letter in the present case, for unrelated reasons, on February 10, 2009, some nine months later. Thus, even though the Appellant did not raise

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<sup>4</sup> As distinguished from ongoing misconduct for which an agency may elect not to bring discipline in the beginning.

any evidence in rebuttal to the Agency's claim, the Agency, by sitting on its hands for nine months, may not invoke this incident in the current case.

With respect to the April PIP, Bettis stated that as a result of her misplaced trust in Salazar's word, she ended his April PIP on October 8; however, her subsequent desk audit of the Appellant's work in December 2008 revealed he had not completed the work he promised was complete. For instance, there were 288 DSS-1 forms on the Appellant's desk in April 2008 that needed to be processed before clients could be returned to long-term care options whereas other coordinators would work them as they came up. [Exhibit 5-5 @ supervisor comments; 6/25/09 Bettis testimony 10:37:01; Exhibit 20]. When Bettis conducted the December desk audit she found 95 of the DSS-1s still at his desk, some over a year old, contrary to Salazar's representation that only six remained. In addition, 24 redeterminations (confirmation of continued need for benefits) remained at his desk, contrary to Salazar's representation. Salazar's reply that he had completed at least some of the required work, [8/11/09 Appellant testimony 11:03:56; 11:05:22], does not seriously dispute the Agency's contentions. This violation is proven by a preponderance of the evidence.

**4. CSR 16-60 J. Failing to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.**

The Appellant's PIPs contained the following clear orders.

1. The backlog of client files was to be brought up to date by January 31, 2009. The PIP provided the opportunity for Salazar to meet that deadline or document why progress could not be made. Salazar understood the requirement to bring documentation to his PIP review meetings. [8/11/09 Salazar testimony 11:16:02]. His subsequent attempt to re-define the meaning of backlog into those cases he hadn't touched at all was unconvincing in light of his stated understanding. For reasons stated above, he failed to comply with either requirement.

In addition, Salazar's replies concerning his backlog were inconsistent and unpersuasive. At first he stated he had no backlog. [8/11/09 Appellant testimony 10:32, 10:42, 11]. He also claimed his backlog workload was overwhelming, [8/11/09 Appellant testimony 10:44:02], which raises the question how could his backlog could be overwhelming if he had no backlog? Then he stated his backlog consisted mostly of filing. [8/11/09 Appellant testimony 2:51:05; Exhibit 10-1]. However, when asked whether he had 143 verifications that he failed to act upon, the Appellant replied "there's a possibility there could be, but most of it I had acted on." [8/11/09 Appellant testimony 11:03:56]. He acknowledged to Bettis on January 9, 2009 that he had not worked his backlog assignments since receiving them in December since he had until April to complete them, [Exhibit 10-1; 8/11/09 Appellant testimony 11:16:02], in violation of the clear terms of the PIP. Bettis' extensive notes regarding their weekly PIP reviews, [Exhibits 10-18], rebut Salazar's contentions. When asked "how many of your cases as of the date of your termination were more than 30 days backlogged?" Salazar replied there were none so old as to risk being closed, [8/11/09 Appellant testimony 2:46:27]. Salazar's prevarication, above, fails to establish an alternative to the clearly stated duties and times to complete them in his PIP, to attend all weekly meetings, to present written documentation of

his work, to show weekly progress, and to “immediately report any obstacles/barriers in completing the backlog immediately.” [Exhibit 3-2].

2. Salazar was required to attend weekly PIP reviews with Bettis. [Exhibit 3-2]. He failed to attend his PIP review meeting on January 22, 2009. [Exhibit 11; Exhibit 1-4]. Incongruously, Salazar stated he met with Bettis for their January 22 PIP review, [Exhibit DD-1], but testified at hearing that he didn’t know if they had met on that date (8/11/09 Appellant testimony 11:32:01). He also acknowledged he did not attend, but explained he had signed out on his board . [Appellant testimony]. These contradictions raise serious questions about Salazar’s credibility.

Due to his prior history of disappearing from his desk for extended times without authorization, Bettis required him to obtain prior authorization before leaving his desk. [Exhibit 3-1]. He did not do so, and did not provide a valid reason for missing his required weekly PIP review with Bettis. Similarly, Salazar’s retort to Bettis that “it becomes counterproductive, in my opinion, to email you every time I leave my chair” is without merit in light of his prior history of disappearing for extended periods without authorization. Hosl’s testimony supported the Agency’s contention. Hosl was Salazar’s co-worker. Her unchallenged observation was that Salazar was often difficult to find. [8/11/09 Hosl testimony 9:33:51]. For reasons stated immediately above, Salazar violated Bettis’ order to attend his weekly PIP review on January 22, 2009.

3. In light of his previous representations that he performed his duties, Bettis ordered Salazar to provide documentation for the work accomplished under the terms of his PIP, and repeated her order to him frequently. [Exhibits 10-2, 13-1, 15-1, 17-1; 6/25/09 Bettis testimony 4:06:53]. The unrebutted testimony of his co-workers, above, who had to take over his many unfinished cases, provided further evidence of Salazar’s failure to complete his PIP assignments timely. Salazar stated he provided 20 pages of verifications on February 9, 2009, however, even if true, this statement did not rebut Bettis’ claim that he failed to provide documentation of work on 37 DDS-1s as of February 3, 2009. [See Exhibit 13-1; 13-3 through 23; 2-4 last paragraph]. Salazar also turned in some of his verifications on March 5, well after the February 3 due date. Bettis also declared, without rebuttal, that there was never a time when Salazar did not have a backlog. [6/25/09 Bettis testimony 10:16:30]. For reasons stated in these paragraphs, the Appellant failed to comply with Bettis’ orders in violation of CSR 16-60 J.

**5. CSR 16-60 K. Failing to meet established standards of performance including either qualitative or quantitative standards...**

This rule covers performance deficiencies that can be measured either by qualitative or quantitative standards, such as those one would find in a performance evaluation. In re Castaneda, CSA 79-03, 12 (12/18/02). Reasonable requirements contained in a PIP also fall under the purview of this rule.

Exhibit 20 summarizes the PIP duties Salazar failed to meet at the time of his dismissal, and parallels the findings in CSR 16-60 J., above. Salazar even failed such

basic performance standards such as returning a client's phone call. Melanie Hosl, was a Case Management Coordinator at the time Salazar was dismissed. She partook in cleansing Salazar's unfinished files. She testified, without rebuttal, that Salazar's former clients complained to her they were glad they finally had a case worker who would return their phone calls. [8/11/09 Hosl testimony 9:35:13].

Vieira tracked performance for the Salazar's unit. The standard for responding to calls on time was 75%. Salazar was consistently below this standard. [8/11/09 Vieira testimony 8:52:00, 8:59:35]. The Appellant did not respond to this claim. Vieira and Salazar's co-workers who inherited his cases also found client complaints against Salazar were excessive. [8/11/09 Vieira testimony 9:02:25]. The Appellant did not respond to this allegation.

The Appellant complained Bettis cut short his December 2008 PIP and, had he been given until the projected termination of the PIP in April, could have completed all requirements. The Appellant misperceives the December PIP requirements. He failed to complete his weekly assignments. Bettis was not obligated to wait until benefits were denied Salazar's clients to cut short the originally-anticipated duration of his PIP. A supervisor may cut short a PIP where interim assignments are not timely met. For reasons stated here and immediately above, the Appellant violated CSR 16-60 K. by a preponderance of the evidence.

**6. CSR 16-60 L. Failure to observe written departmental or agency regulations, policies or rules.**

It was unclear from the Agency's case what written agency policy or rule was at issue. Consequently no finding enters and this claim remains unproven.

**8. CSR 16-60 O. Failure to maintain satisfactory working relationships with co-workers, other City employees, or the public.**

Several Agency witnesses testified without rebuttal to Salazar's rude behavior toward clients and his lack of responsiveness to them. Vieira testified she verified complaint calls regarding Appellant's rudeness, lack of response, attitude and demeanor, and found he threatened to withhold benefits if they complained [8/11/09 Vieira testimony 8:52:00]. Hosl inherited one half of Salazar's cases after his dismissal. Even though she was friendly with Salazar and helped him frequently, she testified Salazar's former clients complained to her they were glad they finally had a case worker who would return their phone calls. [8/11/09 Hosl testimony 9:35:13]. The Appellant did not rebut these witnesses' observations. He merely supplied testimonials from clients who were pleased with his service. [Exhibits EE, FF]. This violation is proven by a preponderance of the evidence.

**9. CSR 16-60 S. Unauthorized absence from work; or abuse of sick leave or other types of leave; or violation of any rules relating to any forms of leave defined in Rule 11 LEAVE.**

The Agency appears to base this claim upon the generalized findings by Bettis and Salazar's co-workers that he was frequently not at his desk. Bettis cited her PEPR comments concerning Salazar's absence from his desk on May 2, 2008. [Exhibit 5-4; 6/25/09 Bettis testimony 10:56:01]. Salazar's co-workers testified they frequently did not know where Salazar was. [6/25/09 Hooker testimony 2:57:10; 8/11/09 Hosl testimony 9:33:51]. First, as stated above, the Agency may not "save up" a reason to discipline an employee if it did not discipline the employee near the time of the discrete incident. Second, the observations by Bettis and Salazar's co-workers that Salazar was often not found at his desk, do not rise to the level of specificity required to find a violation of this rule. Discipline based upon generalized observations denies the recipient an opportunity to challenge the underlying basis. This claim fails for each reason stated in this paragraph.

**10. CSR 16-60 T. Reporting to work after the scheduled start time of the shift.**

The Agency's basis for alleging this violation was not apparent from a review of the exhibits, testimony and the case file. This claim is dismissed for failure of proof.

**11. CSR 16-60 U. Unauthorized performance of work by non-exempt employees outside of the established work schedule.**

Salazar's December 2008 PIP specified he was to work only during his scheduled hours. Pertinent to this rule violation, Salazar's PIP specified "[y]ou are not authorized to be at work after your shift ends without prior approval/authorization from me." [Exhibit 3-1]. The Agency alleged Salazar worked, without authorization, beyond his scheduled shift, 8:00-4:30, on January 13, 2009. [Exhibit 2-4].

Salazar replied Bettis forced him to work overtime on January 13 because she gave him a case at 4:25 and told him to resolve it, then told him to clock out on time. Salazar inferred Bettis was therefore requiring him to work off the clock after his 4:30 quitting time. [Exhibit BB-2 and Exhibit 2-4]. Bettis replied she instructed him to sign out because his shift was over and never instructed Salazar to stay after his designated hours to work on a case on January 13 or any other day.

Even if Salazar's interpretation of Bettis' instruction was possible, Bettis' explanation is more credible. Bettis had already made it clear to Salazar that she distrusted his adherence to his work schedule and the therefore required him to adhere to his work schedule in his December 2008 PIP. [Exhibit 3-1]. As cited above, Bettis had already ordered Salazar not to work beyond his scheduled shift hours. Given this prior instruction, Salazar's subsequent interpretation is less credible. This rule violation is proven by a preponderance of the evidence.

**8. CSR 16-60 Z. Conduct prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City.**

To sustain this violation, the agency must prove the Appellant's conduct hindered the agency mission, or negatively affected the structure or means by which the agency achieves its mission. In re Simpleman, CSA 31-06, 10 (10/20/06). The second part is violated only if there is actual injury to the city's reputation or integrity, In re Compos, CSA 56-08, 15 (12/15/08), something the Agency did not allege in this case. The first phrase of the rule is engaged if the Agency is hindered in its ability to perform its mission. *Id.*

The most critical function of the Agency is to acquire and continue to provide benefits for those qualifying clients. The failure of a Case Management Coordinator to perform his duty could well deprive a recipient of necessary medical care, food, or even result in death. [6/25/09 Bettis testimony 10:01:29]. At least one of Salazar's clients, an elderly client with colon cancer, was unable to receive treatment while her file languished on Salazar's desk. [see discussion under 16-60 A., *Neglect of Duty*, above; 6/25/09 Dixon testimony 3:32:24]. This kind of fundamental impact on an agency's mission is the archetype of a violation under CSR 16-60 Z. Salazar also failed to close a case where a client had moved out of the country, yet benefits continued to be paid. The cost to recuperate the loss is obviously substantial while the likelihood of recovery is faint, meaning the lost funds became unavailable for use by the Agency, thereby diminishing its effectiveness under CSR 16-60 Z.

**V. DEGREE OF DISCIPLINE**

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-20 to consider the severity of the offense, an employee's past record, and the penalty most likely to achieve compliance with the rules. CSR 16-20.

A. Severity of the proven offenses. The Appellant's failure to process client files timely violated the very mission of the Agency. The cost to clients is documented above.

B. Past record. In April 2008 Salazar received a verbal reprimand for his poor performance and failure to follow his supervisor's orders. In October 2008 he received a written reprimand for neglect of duty and failure to follow a supervisor's orders. The record is significant in that it shows a continuing deficit in performance.

C. Likelihood of achieving compliance/bias. Salazar failed to show progress in performance through two PIPs. Throughout the PIP process and continuing through the entire disciplinary process, Salazar either minimized his performance issues or continued to insist he didn't have any, despite ample evidence to the contrary. His continued failure to acknowledge wrongdoing suggests a lesser penalty would not have corrected the inappropriate behavior. Johnston considered the entire range of disciplinary possibilities, the disciplinary file, pre-disciplinary meeting, previous

evaluations, Salazar's PIP results, and reports from Salazar's supervisors. Bettis, whose input was the most important factor in Johnston's final determination of discipline, went out of her way to work with Salazar, communicating almost daily with him, crafting weekly tasks to provide the opportunity for Salazar to catch up on his delinquent duties, making herself available to him at all times, and even risking a downgrade of her own performance to protect him. She was unflappable and humble even in cross-examination. Her sincere effort to assist Salazar to become a better employee was unassailable, so the allegation of bias against her was without merit. Despite Bettis' extensive efforts, Salazar failed to meet his obligations to clients and to the Agency.

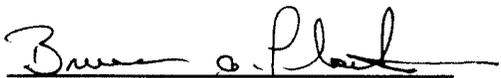
For the reasons stated immediately above, Johnston's election to dismiss Salazar was within the range of alternatives available to her as a reasonable and prudent administrator, and was not clearly excessive or based substantially upon considerations not supported by a preponderance of the evidence. In re Garcia, CSA 175-04, 8 (7/12/05).

## VI. ORDER

A. The Agency's termination of the Appellant's employment on March 19, 2009, is **AFFIRMED**.

B. Much of the testimony and many of the exhibits in this case refers to DSS clients. The privacy of those individuals must be respected. Little would remain of the file, exhibits and testimony, if all private information were redacted. Moreover, it would take an inordinate time to accomplish such a task. Finally, the parties have agreed the case file and exhibits should be sealed. Consequently, the case file and exhibits in this case are **ORDERED TO BE SEALED**.

DONE September 25, 2009.

  
Bruce A. Plotkin  
Career Service Hearing Officer