

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

JOSE SANTISTEVAN, JR.,
Respondent-Appellant,

vs.

DENVER PARKS AND RECREATION,
and the City and County of Denver, a municipal corporation,
Petitioner-Agency.

Appellant, Jose Santistevan, Jr., was a Senior Recreation Supervisor for the City's Parks and Recreation Department (Agency). Appellant managed operations and staff at La Familia Recreation Center as well as the city-wide Youth Sports Program. The Denver Auditor's Office conducted an audit which resulted in the finding of alleged discrepancies and irregularities in business operations over which Appellant exercised authority. Eventually, the Agency brought charges against Appellant for this mismanagement and demoted him to the position of Recreation Coordinator. This was a two-level demotion in that the position directly below Senior Recreation Supervisor is Recreation Supervisor. It appears that Recreation Coordinator is not a supervisory position.

Appellant appealed his demotion to a Hearing Officer. The Hearing Officer found that Appellant had pressured a subordinate Recreation Supervisor to issue a free recreation center pass to his son's girlfriend without providing proof of eligibility for her to receive the pass at no cost. In describing the girlfriend to the supervisor, Appellant described her as a struggling college student who liked to work out, while neglecting to mention that the woman was his son's girlfriend.¹

The Hearing Officer also found that Appellant had improperly issued two free DHHA passes to a city employee and her husband. The Hearing Officer found that Appellant issued the free passes not because the two were entitled to free passes, but merely to help out a fellow city employee.²

¹ Hearing Officer Decision, 2d full paragraph, page 3.

² Hearing Officer Decision, 2d full paragraph, page 4.

The Hearing Officer also determined that Appellant had violated rules which prohibit an employee from clocking in and out for other employees. The Hearing Officer found that Appellant committed this violation for two employees, fewer than the number of employees originally alleged by the Agency in its Disciplinary letter to Appellant.³

Though the Hearing Officer found the Agency had proved these acts of misconduct, the Hearing Officer exonerated Appellant of numerous other acts of alleged misconduct. The Hearing Officer ultimately modified the discipline imposed to a one-level demotion, to the position of Recreation Supervisor. The Hearing Officer justified this action based on the fact that she had exonerated Appellant of many more charges than the Agency had originally alleged but failed to prove, believing therefore, that the two-level demotion was not supported by sufficient facts proven in the record and that a two-level demotion was too severe and in violation of the purpose of discipline as stated in our Rules.⁴

The Agency, in its appeal, has alleged that the Hearing Officer misinterpreted several Career Service Rules. For example, the Agency claims that the Hearing Officer, in her decision, misinterpreted Career Service Rule (CSR) 19-60(Z), as applied to Appellant's providing free PLAY⁵ passes, by reading into it a requirement that it is only applicable to family members.⁶ While we are not sure the Hearing Officer actually did this, to be clear, CSR 16-60(Z) is applicable to misconduct regardless of whether the prejudicial conduct did or did not involve or include family members.

The Agency also argues that the Hearing Officer misinterpreted CSR 16-29(D) (which prohibits acts of dishonesty) when she found that Appellant had not violated this Rule by issuing free rec passes to a city employee and her husband because he did not believe his doing so constituted theft of city property or funds. Rule 16-29(D) prohibits "[a]ny act of dishonesty, which may include, but is not limited to, lying, or improperly altering or falsifying records, examination answers, or work hours." In issuing the free rec passes to a city employee, Appellant was certifying, by his actions, that these two individuals were entitled to receive those free passes. The record indicates that Appellant knew this was not the case. We find that Appellant's issuing of free rec passes to individuals he knew were not entitled to them amounts to violations of CSR 19-26(D).

Irrespective of our findings above regarding the Hearing Officer's misinterpretation of Career Service Rules, we believe we are compelled to reverse the Hearing Officer's ultimate decision concerning the penalty imposed. Pursuant to CSR 19-61(C), we may reverse a Hearing Officer's decision where that decision is of a precedential nature involving policy considerations that may have effect beyond the appeal at hand.

³ Hearing Officer Decision, top of page 8.

⁴ Hearing Officer Decision, bottom of page 10.

⁵ PLAY stands for Parks and Recreation Looking to Assist You.

⁶ The language of the Hearing Officer's decision causing the Agency concern is "the Agency succeeded in proving only its claim related to Gabriela Flores, *who is not a family member*. This allegation is therefore unfounded." (Decision at 4; R. at 346)

In this case the Hearing Officer has determined that Appellant committed acts of misconduct while performing his supervisory duties. We believe these acts of misconduct to be more severe than assessed by the Hearing Officer. We believe that forcing a subordinate to improperly issue a free pass is a serious act of misconduct which calls into question Appellant's fitness and character to act in a supervisor capacity. We believe that improperly issuing free passes to city employees is a serious abuse of a supervisor's position. We believe that improperly entering other employees' time in the city's time keeping system is a serious, obvious, and knowing breach of city policy which places the City in potential legal jeopardy. All of these actions committed by Appellant and proven at hearing, lead us to believe that Appellant is no longer qualified to act as a supervisor for the City and County of Denver. Demoting him one level, to a Recreation Supervisor position, does nothing to remedy the situation of having a person unfit to supervise serve in a supervisory position. Appellant has demonstrated unfitness to serve in any supervisory position, be it a first line supervisory position or his former second level supervisory position. The Agency's demotion of Appellant to a non-supervisory Coordinator's position was not only reasonable – but, in our minds, absolutely necessary.

For all of these reasons, the Hearing Officer's decision is REVERSED. We re-impose the Agency's disciplinary action of demoting Appellant to the position of Recreation Coordinator.⁷

SO ORDERED by the Board on September 7, 2017, and documented this 16th day of November, 2017.

BY THE BOARD:


Chair (or Co-Chair)

⁷ The Agency has also argued that the Hearing Officer erred in finding that Appellant was not guilty of violating rules concerning the improper entry of time for other employees other than the two for which she found a Rules violation. By our reading of the Hearing Officer's decision and the record, there is no question that Appellant violated known, clear, and published rules prohibiting the entry of time in the city's time keeping system for all of these other employees. The Hearing Officer, however, failed to find Appellant accountable for those violations based on a defense of necessity. Because we have reversed the Hearing Officer's decision regarding discipline irrespective of whether Appellant should have been held accountable for these additional time keeping issues, we decline to rule on the issue of whether "necessity" should or should not be a permissible defense under the circumstances presented by this case. Similarly, we decline to decide any other issues raised by the Agency as unnecessary for our determination on this appeal.

Board Members Concurring:

Nina Pull

[Signature]
[Signature]

[Signature]

CERTIFICATE OF DELIVERY

I certify that I delivered a copy of the foregoing Decision and Order on November 16, 2017, in the manner indicated below, to the following:

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s/George Branchaud for the Career Service Board