HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO
Appeal No. 26-09

DECISION

IN THE MATTER OF THE APPEAL OF:

VIVIAN WEEKS, Appellant,

vs.

DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT,
and the City and County of Denver, a municipal corporation, Agency.

I. INTRODUCTION

The Appellant, Vivian Weeks, appeals the termination of her employment from the Denver Sheriff's Department (Agency) on March 20, 2009. A hearing concerning this appeal was conducted by Bruce A. Plotkin, Hearing Officer, on June 2 and 3, 2009. The Agency was represented by Franklin A. Nachman, Assistant City Attorney, while the Appellant was represented by Douglas Jewell, Esq., Bruno, Colin Jewell, & Lowe, P.C. The following Agency exhibits were admitted: 1-3; 5-15; 18-29. Appellant's exhibits A-B; D-F; G1-G4; H-BB; EE-FF; II2; JJ; KK2, KK2a, KK3, and KK4 were also admitted. The Agency called the following witnesses to testify: Sgt. Derrick Wynn; Captain Jacob Kopylov; Sgt. Phil Swift; Dir. of Corrections & Undersheriff Bill Lovingier; and Deputy Mgr. of Dept of Safety Mary Malatesta. The Appellant testified on her own behalf, and also called as her witnesses Deputy Johnny Rico, and Deputy Shawn Duffy. For reasons stated hereunder, the Agencies dismissal is modified to a 120 day suspension.

II. ISSUES

The following issues were presented for appeal:

A. whether the Appellant violated any of the following Career Service Rules (CSR): 16-60 B., E., L., M., or Z.;

B. if the Appellant violated any of the aforementioned Career Service Rules, whether the Agency's decision to dismiss her conformed to the purpose of discipline under CSR 16-20.

III. FINDINGS

The Appellant did not dispute the salient facts as alleged by the Agency. The Appellant was a deputy sheriff for seven years. She had been assigned to every post except the male tier at the city jail. During the year prior to her termination, the Appellant was assigned to the DUI intake post every Wednesday and Thursday. The assigned deputy is responsible for booking, frisking inmates, removing newly arrested inmates' shoes and belts, finger printing, and finally, placing them in a holding cell. The Appellant had been concerned about her frequent assignment to that detail as it requires frisking drunk male inmates who tend to be especially abusive toward female officers. Non-witness supervisors Roberson and Rastide agreed the DUI intake post is a bad place for a female officer. [6/3/09 Appellant testimony]. The Appellant had asked several male superiors, without success, not to be assigned to that post.

On October 16, 2008, the Appellant was assigned to the DUI intake post. A newly-arrived drunk male inmate was persistent in leering, cursing, taunting, and making obscene comments to Appellant. He yelled at her "you wish you had a dick...suck my dick...fuck you, you're a fucking bitch, you wanna grab my dick... I'd fuck you." He was uncooperative with both the Appellant and Deputy Rico who assisted in escorting the inmate to the holding cell. Once in the holding cell, the Appellant ordered the inmate to drop to his knees so that his shoes and belt could be removed per department policy. The inmate failed to comply. After some time, Appellant and Rico obtained compliance, and inmate stopped resisting as he lay face down on the cell floor. Rico had his right knee in the inmate's lower back, and had control of both his arms behind his back. [Exhibit 24]. As the Appellant stepped over the inmate to leave the holding cell, she kicked him once. [Exhibits 23-25]. The inmate sustained no injury, and told medical staff he was unhurt. [Wynn cross-exam].

The Appellant's immediate supervisor, Sgt. Wynn, had been observing the Appellant and Rico's handling of the inmate, including the Appellant's kick. A short time after the incident, he ordered the Appellant to write an incident report concerning the inmate contact. The Appellant submitted Exhibit 25, in which she denied kicking the inmate, and instead wrote she tripped over him. Wynn reported the incident to Capt. Kopylov who convened an immediate meeting and asked Sgt Wynn to attend. The Appellant asked to bring a representative of her choosing, however the representative was unavailable. Sgt. Duffy agreed to attend as the Appellant's representative. No Garrity advisement was given. During the meeting, Kopylov sat on the edge of his desk and Sgt. Wynn stood while the Appellant remained seated below them. Kopylov told the Appellant several times she would or could be fired. [Kopylov testimony; Appellant testimony; Duffy testimony; Exhibit KK p.3]. Kopylov asked the Appellant if she kicked the inmate. She replied she tripped over him, but did not intentionally kick at him.

Following that meeting, Kopylov called for an internal investigation. [Kopylov cross-exam]. Sgt. Swift conducted the ensuing investigation. Swift interviewed the Appellant on December 8, 2008, and again on January 7, 2009. She readily admitted she kicked Gonzales and admitted she did not tell the truth to Kopylov at the meeting immediately

following the incident. Following Swift's investigation, the Appellant was placed on investigatory leave February 24, 2009.

During her pre-disciplinary meeting on February 25, 2009, the Appellant agreed the internal affairs report concerning her interaction with the inmate on October 16 was correct, apologized for her actions, and admitted lying to Capt. Kopylov when he asked if she had kicked inmate Gonzales on 10/16/08. [Lovingier testimony; Appellant testimony].

Deputy Manger of Safety Mary Malatesta was the ultimate decision maker for discipline. On March 20, 2009, she issued a letter terminating the Appellant's employment effective March 23, 2009, for her admitted misconduct. This appeal followed timely on April, 2, 2009.

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 Appellant violated one or more cited sections of the Career Service Rules, and to prove its decision to terminate the Appellant's employment complied with the purposes of discipline, under 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 alleged by the Agency

1. CSR 16-60 B. Carelessness in performance of duties and responsibilities.

Malatesta stated the Appellant was careless in the application of her duty to treat inmates safely and humanely, used force carelessly, and was careless in dishonestly reporting the incident to Kopylov. The Appellant's admission of the facts underlying these allegations establishes that she violated this rule.

2. CSR 16-60 E. Any act of dishonesty, which may include, but is not limited to... Lying to superiors... with respect to official duties, including work duties, disciplinary actions...

The Appellant admitted she departed from telling the truth to Kopylov by denying she kicked an inmate as well as in her report to him. At times, the Appellant appeared to deny she violated this rule because the dishonesty was not "during the course of an investigation. Neither CSR 16-60 E., nor the Agency's rule concerning departure from the

the truth distinguishes between dishonesty during formal and informal investigations, as conducted by Kopylov. Consequently, the Appellant departed from the truth under CSR 16-60 E., and under DSD rule 200.4.

Malatesta also found the Appellant was dishonest in other ways. The Appellant's admission is sufficient to have established a violation of this rule. However, Malatesta based her decision to dismiss the Appellant upon the totality of the circumstances, thus for purposes of the degree of discipline, it is important to assess the remainder of the Agency's claims under this rule.

What remained unclear after the Appellant's admission, and one of the few factual disputes in this case, was whether the Appellant kicked the inmate in the groin or the buttocks. The Agency's recordings, even at half speed, do not establish whether the Appellant's kick was to the inmate's buttocks or groin. Therefore, this facet of the Agency's claim is not established by a preponderance of the evidence.

Malatesta also testified the Appellant was dishonest by denying she screamed and cursed at the inmate, and was otherwise out of control. [Malatesta testimony]. This assessment was based upon Wynn's recollection of the incident. Wynn's testimony was directly refuted by Rico, who was present during the incident and recalled no such actions by the Appellant. Since credibility was not made an issue for either witness, this Agency claim is not proven by a preponderance of the evidence.

3. CSR 16-60 L. <u>Failure to observe written departmental or agency regulations, policies or rules</u>. The Agency claimed the Appellant violated the following Agency rules.

a. 200.2: Deputy Sheriffs and employees, if a witness to the use of force, shall not fail to report the use of force to a supervisor nor fail to make a complete report to a supervisor. The Appellant admitted she failed to include her use of force in her report to Kopylov. This violation is established.

b. 200.4 Deputy Sheriffs and employee shall not depart from the truth, knowingly make misleading statements, or falsify any report, record, testimony, or work related communications. The Appellant's admission that she departed from the truth with Kopylov establishes her violation of this rule.

c. 300.10 Deputy Sheriffs and employees shall not indulge in immoral, indecent or disorderly conduct that would impair the orderly performance of duties or cause the public to lose confidence in the Department.

Malatesta claimed the following conduct constituted immoral conduct by the Appellant: abuse of an inmate, failure to report, use of profanity, screaming, kicking, and standing on the leg of the inmate. She defined indecent conduct as that conduct which is inappropriate, [Malatesta testimony], and determined the same conduct by the Appellant which was immoral, was also indecent. *Id.* Malatesta found the Appellant engaged in

disorderly conduct when she lost control of herself by using profanity, and kicking. *Id.* Immoral behavior is generally defined as that behavior which is contrary to community norms, particularly with respect to sexual behavior. [*See, e.g.* **WEBSTER'S UNABRIDGED DICTIONARY** (Deluxe Edition 1979)]. The Agency's description of the Appellant's conduct does not fall within that generally accepted definition. Indecent also commonly connotes immodest or obscene conduct, not at issue here. *Id.*

Disorderly conduct in our community generally connotes violent or obstreperous conduct calculated to provoke a breach of the peace, and requires someone's peace was actually disturbed. [Denver Revised Municipal Code DRMC 38-89]. The testimony was conflicting with respect to whether the Appellant was yelling, screaming or using profanity with Gonzales. Wynn testified she screaming and yelling, however Rico did not hear her yell or use obscenities. Credibility was not made an issue for either witness, and the Agency presented no evidence the Appellant otherwise caused a public disturbance. For these reasons I find the Agency did not prove, by a preponderance of the evidence, that the Appellant yelled, used obscenities, or otherwise engaged in disorderly conduct which either impaired the orderly performance of her duties or caused the public to lose confidence in the Agency. Consequently this Sheriff's Department Rule is not proven by a preponderance of the evidence.

d. 300.19 Deputy Sheriffs and employees shall not violate any lawful rule, duty, procedure or order. The Agency addressed the evidence for this allegation more specifically above, and below.

e. Deputy Sheriffs and employees shall not indulge in any conduct that is contrary to Career Service Authority (CSA rules and regulations). The Agency addressed the evidence for this allegation more specifically above, and below.

4. CSR 16-60 M. <u>Threatening, fighting with, intimidating, or abusing employees, or officers of the City, or any other member of the public, for any reason</u>.

Malatesta found the Appellant's abuse of the inmate was a violation of this rule because inmates are members of the public. I respectfully disagree. First, there are separate rules that govern deputies' treatment of inmates, so that a violation of this rule would be superfluous. In addition, the words "inmate" and "public" are commonly understood as antithetical, not synonymous, to indicate an individual's removal from the general public, not his inclusion.[1]

5. 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.

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[1] *See, e.g.* Colorado Revised Statutes (CRS) 17-1-205 (2008). "If any event ...presents a serious threat to the safety, health, or security of the inmates, employees, or the public...;" <u>People v. Leske</u>, 957 P.2d 1030, 1043 (Colo. 1998) ("A sentencing court abuses its discretion if it fails to consider the nature of the offense, the character and rehabilitative potential of the offender, the development of respect for the law and the deterrence of crime and the protection of the public).

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). An important part of the Agency mission is the safekeeping and humane treatment of inmates. The Appellant's admitted conduct, kicking a subdued inmate who no longer posed an immediate threat, violated a core tenet of the Agency. This violation is proven.

V. DEGREE OF DISCIPLINE

This was an unusual hearing in that the Appellant readily admitted wrongdoing, and, by-in-large, challenges only the degree of discipline, even confessing she deserves a substantial suspension. Since the Appellant admitted the conduct which establishes violations of the above-referenced rules, what remains is whether the Agency's choice to dismiss the Appellant complied with the purposes of discipline under CSR 16-20. The primary purpose of discipline under the Career Service Rules is to correct inappropriate behavior or performance if possible. CSR 16-20. Malatesta acknowledged "I began by saying 'is there a way to salvage this employee, can we save this employee?' That is the beginning of my analysis" [Malatesta testimony]. Malatesta determined the Appellant's actions were not correctable based on the following additional considerations under CSR 16-20.

A. Gravity of the offenses.

1. Appellant's kick to inmate. The Agency's determination to hold deputies to exacting standards of inmate care and honesty is within the purview of the Agency's administrative authority. The Sheriff's Department has determined that inmate abuse by a deputy is among the most egregious of offenses. "I don't think that you can create a situation that is more of a hindrance to the ability of the Agency to carry out its mission than to violate its core tenet that inmates must be treated safely and humanely...kicking an inmate is a clear violation... this gentleman, although he had engaged in horribly demeaning conduct, by the time [Deputy Weeks] took this action, he was compliant, so there was no other excuse for this, other than revenge and anger...so it is an extraordinarily egregious violation to abuse an inmate in any circumstance, let alone an inmate who is compliant." [Malatesta testimony].

Lovingier testified any improper contact with an inmate is excessive force. I do not decide that issue here, as Malatesta was the ultimate decision maker, and it is unclear if she shared that view; however, in terms of the degree of discipline, the actual force used and circumstances must be considered. Certainly, intentional force directed at a compliant inmate with intent to inflict harm is an egregious abuse of a deputy's power and should weigh more heavily in the degree of discipline than placing a hand on a shoulder. The Agency's consideration of the degree of force used as a "stomp" [Wynn] or "extraordinarily egregious" [Malatesta] is not supported by the best evidence, the video recording of the incident, which shows no stomp, but a swift kick of no great intensity to the inmate's buttocks or groin. Whether the Appellant's kick was aimed for the buttocks or

the groin was not clear in the recording. Even a slight kick aimed for the groin would have indicated an intent to inflict, or careless disregard of inflicting, harm. Neither was shown by a preponderance of the evidence. Nonetheless, the contact was wrongful, even though no injury was shown. One wrongful contact may justify dismissal, however, all the following circumstances, must be taken into account.

2. Dishonesty. In addition to abuse of an inmate, the Agency has determined, within its purview, that dishonesty by a deputy is an egregious violation. "One of the things we require - that has to be the basis for our functioning as a Department of Safety and the Sheriff's Department - is being able to rely on the complete honesty of our deputies." [Malatesta testimony].

Malatesta testified that dishonesty during the course of an investigation justifies termination. The Appellant attempted to distinguish between the meeting convened by Kopylov and the subsequent internal affairs investigation. While Malatesta also distinguished between Kopylov's meeting with the Appellant and the formal IAB investigation,[2] it is apparent the purpose of the Kopylov meeting was to investigate Wynn's allegation of wrongdoing by the Appellant.

While some of the Agency's claims concerning dishonesty were proven, some of the more "egregious" dishonesty claims were not proven, for example that the Appellant "stomped on" the inmates groin, or that she was screaming and out of control.

B. Past Record.

Malatesta described the Appellant's record as numerous "episodes of complete disregard for the rules of the department." [Malatesta6/3 @ 10:07]. It is therefore worth examining, in some detail, the prior disciplinary history of the Appellant. Since the Agency hired her in 2002 the Appellant was assessed only reprimands comprising the following.[3]

1. In August 2005 the Appellant was verbally reprimanded for reasons which included allegations of departure from the truth and failure to follow protocol in dealing with a belligerent inmate. The Agency's claim of departure from the truth was based two allegations: first, that the Appellant's "written account of the incident and your verbal account during the investigation differ." [Exhibit 21-5]. The Appellant disputed, at the time, as well as during the present hearing, that her accounts differed. The Agency did not reply. Second, the Agency claimed "it appears you may be misrepresenting the position of the officers." *Id.* The Appellant replied she simply told what she remembered. [Appellant testimony]. The Agency did not rebut her contention.

2. The Appellant received a written reprimand in October 2005 for failing to report the

[3] Because reprimands are not appealable, a collateral attack is permitted at a subsequent hearing where a prior reprimand was considered as an aggravating basis for discipline in the current case.

use of force by another deputy where the Appellant held the inmate's shoulder. The Agency also alleged she departed from the truth. The Appellant replied she failed to understand how not remembering the incident, as she reported at the time, constituted a departure from the truth. [Appellant testimony].

3. In October 2006 the Agency assessed a verbal reprimand to the Appellant for one excessive absence under then-current Departmental Rule 2053.1. [Exhibit 19]. The Appellant explained she had sick children at the time, so that she was not allowed to take them to day-care, and her husband was stationed in Iraq so was unable to assist. This case is unrelated to the present case, and the above-referenced rule is no longer enforced without consideration of the circumstances of each case.

4. In January 2008 the Agency assessed a written reprimand against the Appellant, when she was assigned to book in new inmates, for processing an inmate based on a warrant that belonged to a different inmate, with the result that the inmate she booked was held four days without cause. The Appellant acknowledged her carelessness was the cause of the unwarranted incarceration. [Appellant testimony].

5. In November 2008 the Agency assessed a written reprimand failing to book in an inmate timely, and failing to seek assistance for an inmate in need of medical attention. [Exhibit 26]. The Appellant replied the inmate was drunk, uncooperative, and she merely was letting the inmate "sleep it off" in order to avoid a potential physical confrontation by waking her. She also testified she checked on the inmate several times during the night. [Exhibit 26-4; Appellant testimony]. The Appellant's explanation failed to justify her failure seek a medical check for the inmate. The proof of neglect of duty, CSR 16-60 A., and carelessness in the performance of duty, CSR 16-60 B., are common to that case and to the present case.

In summary of the Appellant's past record, following the Appellant's explanation at hearing, and the Agency's failure to rebut her explanations for several prior reprimands, the Appellant's disciplinary history cannot be considered egregious with respect to either of the Agency's principle contentions: inmate abuse or departure from the truth. Past carelessness has been proven.

While progressive discipline is not required under the Career Service Rules, it may not be ignored. "Whenever practicable, discipline shall be progressive." [CSR 16-50 A. 1]. In cases that do not follow the progressive disciplinary model, the Agency should be able to explain why progressive discipline would have been ineffective. In this case, the most aggravating factors relied upon by the Agency were not proven by a preponderance of the evidence, so that it is not apparent progressive discipline would be ineffective in correcting the defective behavior or performance. On the other hand, while the Appellant deflected much of the Agency's claim that her disciplinary history was as egregious as indicated by Malatesta, her disciplinary record reflects a not-entirely explained history of carelessness, and indifference to inmate abuse by others. The Agency's claim of prior dishonesty was weaker as shown by the discussion of the Appellant's past record, above.

C. Other factors.

1. Fairness under CSR 16-20. The Appellant argued that in the appeals of other deputy sheriffs, the Agency terminated deputies who refused to acknowledge wrongdoing and were unwilling to change their behavior,[4] while in this case the Appellant acknowledged wrongdoing in the early stages of investigation, acknowledged a need to improve, and expressed a sincere willingness to change. She claims the Agency's actions signal a policy of zero-tolerance. Malatesta denied the Agency has moved to a zero tolerance policy for dishonesty and inmate abuse. "I begin looking at every case with the assumption that I will keep this deputy if at all possible."

Despite Malatesta's representation, this case appears to signal, if not zero tolerance, a new implacability in the Denver Sheriff's Department where nearly any improper contact with an inmate, or dishonesty, or both, will be sanctioned by the severest penalties. Strict enforcement, however, may not contravene the purpose of discipline under the Career Service Rules, "to correct inappropriate behavior or performance, if possible." CSR 16-20.

2. Delay in Appellant's admission of wrongdoing. Another factor in Malatesta's determination that the Appellant's actions justified dismissal was the delay in the Appellant's "coming clean." Malatesta stated

> There was an opportunity when she was talking to Captain Kopylov, [and] when she wrote her report [to him]. She could have easily said 'I lost my temper,' as she did later, and very admirably; and truthfully, had she done it at that point, this may be an entirely different case."

[Malatesta cross-exam].

In response, the Appellant maintained that during her meeting with Kopylov and Wynn immediately after the incident, Kopylov repeatedly told the Appellant she could or would be fired over the incident. Duffy confirmed that Kopylov repeatedly and angrily told the Appellant she could be fired for the incident. Duffy's credibility was not questioned and I find his recollection to be accurate. In addition, the Appellant's first choice of representative was unavailable to accompany her to the meeting with Kopylov and Wynn. While the Agency maintained, on one hand, that she was free to decline answering questions at that meeting, the Agency also acknowledged she could have been disciplined for declining to do so.

Under these circumstances, the Appellant's could reasonably fear the Agency had chosen an inexorable path toward dismissal. Moreover, the unavailability of her first choice of a representative to attend the meeting would reasonably exacerbate her sense of an inevitable outcome. Asked why the Appellant did not seek guidance from an

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[4] *Citing* In re Simpleman, CSA 05-06, (5/10/06), 31-06 (5/24/06), *affirmed* In re Simpleman, *CSB* 05-06, 31-06 (*8/2/07*); In re Rogers, CSA 57-07 (3/18/08); In re Norman-Curry CSA 28-07, 50-08 (2/27/09).

employee group, she responded that Sgt. Wynn, her accuser, was the president of the deputy union that would represent her. It is reasonable the Appellant would therefore determine the union would not fairly assist her.

The Appellant's claim, that a Garrity advisement, [Garrity v. New Jersey, 385 U.S. 493 (1967)], should have been provided before her meeting with Kopylov and Wynn, is irrelevant. The purpose of a Garrity advisement is to protect a law-enforcement officer who admits wrongdoing during an internal investigation from subsequent criminal prosecution. The District Attorney's office declined to prosecute this case. [Malatesta testimony.]

3. Other factors. In addition to the Agency's failure to prove all its claims concerning the egregiousness of the physical contact between the Appellant and inmate, or the Appellant's dishonesty, the Agency also failed to prove the Appellant's conduct was immoral, indecent or disorderly conduct under DSD rule 300.10.

During the course of the internal affairs investigation and during her appeal hearing, the Appellant readily acknowledged she made two terrible mistakes: she kicked an inmate in anger ("I knew right when we walked out of the cell I messed up and I did something really stupid." [Exhibit 14@ 17:30); then she panicked and lied to Kopylov both verbally and in her report. [Exhibit 14; Appellant testimony]. There is nothing in the record to indicate the Appellant would not work diligently to change those behaviors.

There are substantial differences between this appeal and other appeals cited by the parties where the Agency dismissed a deputy for inmate abuse, dishonesty or both. One is the severity of the offense.[5] Another is the willingness of this deputy to accept responsibility for her actions and willingness to change.[6] The Appellant made two mistakes in this case. She kicked an inmate who was no immediate threat to her and she was dishonest about the incident immediately afterward.

There is no simple equation that ensures by accepting responsibility for wrongdoing, a deputy will avoid dismissal. The seriousness of the offenses and the prior record require a case-by-case analysis. What this case boils down to is that, while there is no question the Appellant violated Career Service Rules, the circumstances of this case do not warrant dismissal. The primary function of the Career Service disciplinary rules, to rehabilitate employees from their mistakes, is not served by punishing those who acknowledge wrongdoing and sincerely wish to reform where: 1. the underlying violations do not mandate dismissal per se; 2. the totality of the circumstances indicate the employee's expression to reform is sincere; 3. the totality of the circumstances indicate a

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[5] *Compare, e.g.* In re Norman-Curry, CSA 28-07, 50-08 (2/27/09) (repeatedly slamming the head of an inmate into plexiglass window)

[6] *Compare, e.g.*, In re Simpleman, CSA 31-06, 10-11 (10/20/06), affirmed CSB(8/2/07) (Agency dismissal affirmed where a deputy sheriff continued to deny wrongdoing in the face of strong evidence to the contrary); In re Diaz, CSA 72-06, 3 (CSB 9/20/07) (dismissal affirmed where employee refused to acknowledge a need for improvement despite numerous mistakes and an extensive disciplinary history).

reasonable probability of lasting reform. For reasons stated above, the Appellant has met these criteria. The degree of discipline chosen by the Agency was based upon considerations not supported by a preponderance of the evidence, was not tailored to the circumstances of the Appellant's misconduct including her past record, and did not fairly consider progressive discipline.

VI. ORDER

The Agency's dismissal of the Appellant on March 20, 2009 is modified to a 120 day suspension.

DONE July 20, 2009.

Bruce A. Plotkin
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this decision within fifteen days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of delivery below. CSR § 19-60, 19-62. The Career Service Rules are available as a link at www.denvergov.org/csa.

All petitions for review must be filed as follows to:

Career Service Board
c/o CSA Personnel Director's Office
201 W. Colfax Avenue, Dept. 412, 4th Floor
Denver, CO 80202
FAX: 720-913-5720
EMAIL: Leon.Duran@denvergov.org

AND

Career Service Hearing Office
201 W. Colfax, 1st Floor
Denver, CO 80202
FAX: 720-913-5995
EMAIL: CSAHearings@denvergov.org.

S:/Share/hearings/Cases/Weeks,Vivian26-09/DECISION.doc