

BEFORE THE HEARING OFFICER OF THE CAREER SERVICE AUTHORITY OF  
THE CITY AND COUNTY OF DENVER, STATE OF COLORADO

Appeal No. 324-01

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

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IN THE MATTER OF THE APPEAL OF

**Pamela C. Armstead, Appellant**

v.

**Agency:** Department of Aviation, Denver International Airport, and the City and County of Denver, a municipal corporation.

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**Nature of Appeal**

Appellant is appealing a two week suspension without pay that was the result of an investigation into allegations of Agency employees, on Agency time, travelling to Appellant's house in an Agency vehicle and working on her personal vehicle.

**Introduction**

A hearing on this appeal was held before Michael A. Lassota, Hearing Officer for the Career Service Board. Appellant was present and represented by John Mosby, Esq. The Agency was represented by Assistant City Attorney Robert A. Wolf with Jim Thomas as advisory witness for the Agency.

The following witnesses testified on behalf of the Agency: Mr. Robert Campbell, Mr. Istvan (Steve) Lohner, Mr. Keith Williams, Mr. Henry Reynolds, Mr. Turner West, and Mr. Jim Thomas.

The following witnesses testified on behalf of the Appellant: Ms. Dascha Armstead, Mr. Dan Brown, Ms. Elizabeth Coyle, Mr. Matt Kramer, Mr. Keith Tunson, and Appellant, Ms. Pamela Armstead.

Exhibits 1,2,3,6,A and B were admitted into evidence and were the only exhibits considered in this decision.

**Issues on Appeal**

Whether the Agency proved by a preponderance of the evidence that the Appellant violated Career Service Rules?

If so, whether the suspension was justified by the Agency or was the Agency arbitrary and capricious by suspending Appellant.

### **Jurisdiction**

The alleged conduct which caused the Agency to take disciplinary action happened on June 2<sup>nd</sup>, 2001. The Appellant was sent notice that disciplinary action was being contemplated against her on August 14<sup>th</sup>, 2001. The pre-disciplinary meeting was held on August 21<sup>st</sup>, 2001. And, Appellant was notified of the disciplinary action against her on September 5<sup>th</sup>, 2001. The Appellant filed her appeal with the Career Service Hearing Office on September 10<sup>th</sup>, 2001. Jurisdiction of the Hearing Officer to hear and decide this appeal was not contested.

Based upon these facts I find the appeal to be filed in accordance with CSR § 19-10 (b), giving me authority under CSR § 19-27 to affirm reverse or modify the actions of the Agency.<sup>1</sup>

### **Relevant Facts**

1. On June 2<sup>nd</sup>, 2001, Agency employees Keith Williams and Steve Lohner on Agency time, in an Agency Vehicle, were directed by their Supervisor Robert Campbell, to go to Appellant's house to work on her personal vehicle. These are all employees of the Fleet Maintenance Division, Department of Aviation, Denver International Airport (DIA).
2. On June 4<sup>th</sup>, 2001, Janet R. Bayless, Atlanta Investigations, delivered her previously contracted report to Bruce Baumgartner, Manager of the Department of Aviation, DIA.

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<sup>1</sup> CSR § 19-10(d) provides:  
Actions Subject to Appeal

An applicant or employee who holds career service status may appeal the following Administrative actions relating to personnel.

- b) Actions of an appointing authority: Any action of an appointing authority resulting in dismissal, suspension, involuntary demotion, disqualification, layoff, or involuntary retirement other than retirement due to age which results in alleged violation of Career Service Charter Provisions, or Ordinances relating to the Career Service, or the Personnel Rules.

CSR § 19-27 provides:

The Hearings Officer shall issue a decision in writing affirming, modifying, or reversing the action, which gave rise to the appeal. This decision shall contain findings on each issue and shall be binding upon all parties.

3. In that report Bayless was asked to interview employees of the Fleet Maintenance Department at DIA regarding issues relating to their employment that surfaced in a previous employee survey.
4. One of these issues was that Agency employees may have been working on Appellant's personal car on Agency time.
5. Dan Brown, Director of Maintenance, Department of Aviation, DIA, investigated these allegations, on his own, as part of his job responsibilities.
6. At a subsequent staff meeting, Jim Thomas, Human Resources Manager, Department of Aviation, DIA, was asked by the Public Information Officer if Thomas had any knowledge of an employee calling the news media about the allegations of Agency employees working on Appellant's personal car.
7. An outside investigation was authorized by Thomas to investigate these allegations and Janet R. Bayless, Atlanta Investigations, was hired to do this investigation.
8. Bayless delivered her investigation report on August 3<sup>rd</sup>, 2001, Agency Exhibit 6.
9. Thomas made recommendations to discipline Appellant to Turner West, Deputy Manager of Aviation for Maintenance and Engineering, Department of Aviation, DIA based on his interviews with employees regarding the allegations and the Bayless report.
10. Official notice of contemplated disciplinary action against Appellant was sent to Appellant on August 14<sup>th</sup>, 2001, informing her of the allegations against her, of a pre-disciplinary meeting on August 21<sup>st</sup>, 2001, at which she could be represented and correct any errors in the Agency's information or facts, tell her side of the story, and present mitigating information as to why disciplinary action should not be taken against her, Agency Exhibit 1.
11. Thomas, West, and Brown conducted the pre-disciplinary meeting for the Agency. Appellant appeared unrepresented.
12. Appellant explained why she felt the allegations were untrue and why they were raised in the first place, that she had been treated unfairly because she was a woman, that she was harassed by the whole process, and there was a conflict between Appellant and Robert Campbell.
13. Because of the statements Appellant made in the pre-disciplinary meeting, Thomas felt compelled to investigate further.
14. Campbell and Lohner were re-interviewed by Thomas using prepared questions.
15. Appellant's record was reviewed for disciplinary action, none was noted.
16. Appellant was given official notification of a two week suspension without pay on September 5<sup>th</sup>, 2001, Agency Exhibit 2.
17. Appellant filed an appeal with the Hearing Office on September 10<sup>th</sup>, 2001, Agency Exhibit 3.

## Discussion and Conclusions of Law

As a Career Service Employee, under the Career Service Rules, Appellant can only be disciplined for cause.<sup>2</sup> Appellant was disciplined for violating the following Career Service Rules:

### § 16-50 Discipline and Termination

#### A. Causes for dismissal

The following may be the cause for dismissal of a career service employee. A lesser discipline other than dismissal may be imposed where circumstances warrant. It is impossible to identify within this rule all conduct which may be cause for discipline. Therefore, this is not an exhaustive list.

- 1) Gross negligence or willful neglect of duty.
- 2) Dishonesty, including but not limited to: altering or falsifying official records or examinations; accepting, soliciting, or making a bribe; lying to superiors or falsifying records with respect to official duties, including work duties, disciplinary actions, or false reporting of work hours; using official position or authority for personal profit or advantage, including kickbacks, or any other act of dishonesty not specifically listed in this paragraph.
- 20) Conduct not specifically identified herein may also be cause for dismissal.

Charter § C5.25-2 states in relevant part that “ personnel rules shall provide that...dismissal shall be made only for cause, including the good of the service.”

Career Service Rule 15-10 provides in relevant part: “{t}he conduct of every employee shall at all times reflect credit on the career service.”

### § 16-51 Causes for Progressive Discipline

- A. The following unacceptable behavior or performance may be cause for progressive discipline. Under appropriate circumstances, immediate dismissal may be warranted. Failure to correct behavior or committing additional violations after progressive discipline has been taken may

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<sup>2</sup> CSR § 5-62 provides:

Employees in Career Status

An employee in career status

- 1) may be disciplined or dismissed only for cause, in accordance with Rule 16, DISCIPLINE.

subject the employee to further discipline, up to and including dismissal from employment. It is impossible to identify within this rule all potential grounds for disciplinary action: therefore, this is not an exclusive list.

- 3) Failure to maintain satisfactory working relationships with co-workers, other City and County employees, or the public.
- 7) Unauthorized operation or use of any vehicles, machines or equipment of the City and County of Denver.
- 11) Conduct not specifically identified herein may also be cause for progressive discipline.

The City Charter, § 5.25 (4) and CSR § 2-104 and § 2-10 (b) (4) require the Hearing Officer to determine the facts in this matter “*de novo*.” This requires an independent fact-finding hearing considering evidence submitted at the *de novo* hearing and a resolution of factual disputes. *Turner v. Rossmiller*, 532 P.2d 751 (Colo. App., 1975).

The party advancing a claim or position in a civil proceeding, such as this hearing, has the burden of proving that claim or position by a “preponderance of the evidence.” The Agency advanced claims of Career Service Rule violations against Appellant. Therefore, the Agency has the burden of proof.

To prove something by a “preponderance of the evidence” means to prove that it is more probably true than not. Colorado Civil Jury Instruction, 3:1.<sup>3</sup> The ultimate credibility of the witnesses and the weight given to their testimony is to be decided by the Hearing Officer. *Charnes v. Lobato*, 743 P.2d 27 (Colo. 1987). As the trier of fact, the Hearing Officer determines the persuasive effect of the evidence and whether the burden of proof has been met. *Metro Moving and Storage Co. v. Gussert*, 914 P.2d 411 (Colo. App. 1995).

Appellant contends, in her appeal, that she did not violate any Career Service Rules and that her suspension by the Agency was arbitrary and capricious. In *Carney v. Civil Service Commission*, 30 P.3d 861 (Colo. App. 2001), the Court of Appeals was asked to decide if the trial court concluded incorrectly that a portion of a police promotional exam was arbitrary and capricious. The basis for review is found in the Colorado Rules of Civil Procedure and is instructive because review is based on the evidence in the record.<sup>4</sup> The court goes on to say in a 106 (a) (4) action a reviewing court

<sup>3</sup> The notes on use of Instruction 3:1 state: Generally, in all civil cases, “the burden of proof shall be by a preponderance of the evidence,...” citing C.R.S. § 13-25-127.

<sup>4</sup> Rule 106. Forms of writs abolished (a) (4) (I)

(a) Habeas corpus, Mandamus, Quo Warranto, Certiorari, Prohibition, Scire Facias and Other Remedial Writs in the District Court... In the Following cases relief may be obtained in the district court by appropriate action under the practice prescribed in the Colorado Rules of Civil Procedure.

must uphold the decision of the governmental body unless there is no competent evidence in the record to support it. "No competent evidence" means that the governmental body's decision is "so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority." *Board of County Commissioners v. O'Dell*, 920 P.2d 48,50 (Colo. 1996). Appellant's reliance on this standard is incorrect. If necessary, this is the standard a court must use to review the decision in this appeal. The standard Hearing Officers use in deciding CSR 16 appeals is whether or not the Agency had cause to terminate or discipline an employee.

Appellant points to the transcript of the interview of Robert Campbell by Jim Thomas to illustrate, that because there is conflict between her and Campbell, the decision to suspend her was "arbitrary and capricious." I look to those same pages to determine if the Agency had cause to discipline Appellant. On pages 16 and 17 of that transcript Thomas asks Campbell:

JT Ok. Now, I want to apologize in advance for the following question, as I do this investigation, I've got to eliminate any possibilities, so, I'm not trying to make accusation or offense, like I preface it before I ask them, here they come. The first question would be, do you have an ulterior motive for pursuing this action against Pam Armstead?

RC Um, I think I can answer that about the same way I answered Dan Brown, in the conversation with Dan the Director. I would hate to see Pam lose her job behind anything like this. I merely said to Dan that for me personally, she's made my life a living hell for the past six years that she's been there.... So, if you ask me if I have a sour taste in my mouth about her, yes, but as far as trying to get her, no.

Earlier in the interview, at pages 2, 3 and 4, to determine if Career Service Rules had been violated, Thomas asked Campbell the question that goes to the heart of the issue in this appeal.

JT At the heart of the issues is did Pam Armstead request or direct you to send mechanics to her house to work on her person [sic] vehicle? Pg.2

RC Well, I think it means, you see, when I told everyone I think this whole event needs to be prefaced with the conversation Friday.... Saturday, approximately around between 11:00 and 11:30, somewhere around there, I got a call from her and she said the car still won't start..., I don't know if I

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(4) Where any governmental body or officer or any lower judicial body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law.

(I) Review shall be limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer.

day I sent them over to her house to look at it. And, uh, I left there probably around 4:00 and they hadn't gotten back. Pg.3

JT Did you feel that it was a directive to send them to [sic], mechanics to her house? Pg.3

RC Yep, because I wouldn't have sent them on my own, I know that is wrong and I'm not going to take that responsibility. Pg.3

JT Um, but you came out of that conversation feeling it was a directive. Pg.4

RC Yep, because...I, yes because there, I was only, you know, uh, this. Well, for me, this hasn't been the first time. Uh,... Pg.4

JT Hasn't been the first time...? Pg.4

RC That I've sent someone over to house to work on her vehicle. Now, the first time, I didn't know he was going over there to work on her vehicle... Well, when he came back. I told, I told him, I says "Hey, uh, how ya gonna make up your time on this? Where ya gonna make your time to?" and he said "She'll take care of that" – that was good enough for me. Pg.4

JT Was Ken Swensen on duty when he did that? Pg.4

RC Oh, yea, Oh, yea. Pg.4

Appellant, though cross examination of Thomas, questioned the reliability of Campbell regarding the statements related to who said what about sending who, if anybody, to Appellant's house on Page 10.

JT Ok, so, um, awkward question I've got to ask you, sir. Have you altered your story in any of the conversations you've had either with Dan Brown, first or second conversation with the investigator, with the manager or \_\_\_\_\_ . Pg.10

RC And, so, I said "Well, what do you want me to do? You want me to send someone?" and she said "Yea" and I said "Well I'll send Keith". That's the only alter, altering that I could, 'cause I don't think she came right out and said "Send Keith", only when she came out and suggested sending someone with Steve Loner along with Keith. Pg.10

Thomas continued to follow-up on this discrepancy through more direct questioning, until he was satisfied Campbell was not being deceptive and Career Service Rules were violated.

JT Justifiable, sir.... "AT approximately 12: p.m. on Saturday, June 2<sup>nd</sup>, you telephoned Mr. Robert Campbell, Mechanic Line Supervisor, while Mr. Campbell was on duty at the Fleet Maintenance of the Aviation Department. During that conversation, you instructed Mr. Campbell to send two mechanics to your home to diagnose and, if possible fix your personal vehicle" Do you feel that's an accurate statement? Pg.12

RC I feel it's accurate except for in the part, you know, where you said whether mine had been changed... But I remember that if I would have suggested anything it would have been Ken, first, number one because he's worked on her car and knows it. Uh, that's the only change that could have been. Like I say, the to send Steve Loner, I didn't have any suggestion there, that suggestion came form her – to send Steve Loner. That would be the only change. Pg.12

JT So, you're, you're area of not being sure was how the conversation started, but when you were clear that she wanted a mechanic sent to the home, then you were comfortable it was a directive, it wasn't (fades out). Pg.13

RC Yes, yes. Pg.13

JT And in that conversation there was discussion about two mechanics being sent? Pg.13

RC Correct. Pg.13

JT Specifically, you mentioned Steve Loner by name. Pg.13

RC Yeah. She mentioned him, I didn't ask or volunteer Steve Loner at all. She more or less said, "Send Steve Loner, too." Pg.13

JT And once again, being redundant, it was about her personal vehicle. It was not about her City assigned vehicle. Pg.13

RC Correct. The City assigned vehicle never came up in the conversation. Never at all. Pg.13

As part of his follow-up investigation, Thomas also interviewed Istvan (Steve) Lohner. The transcript of that interview was admitted into evidence as Appellant Exhibit A. At the bottom of page 9 and page 10, Thomas asked questions to determine if Appellant had violated Career Service Rules.

JT Ok, um, was there any discussion between you and Keith about any instructions Pam had given Keith? Pg.9

- SL (inaudible) I mean, he got the same instructions I did. We were standing right next to each other when Bob told us to go out there.
- JT Oh, I understand that.
- SL Oh, how he, you mean how we got to that, knew to get to the house?
- JT Well, no sir, Um, if he went to the door and you stayed in the vehicle, did he like come back to the vehicle and say something that he had gotten instructions from Pam to do something or was it, was anything more said?
- SL Well he came out and so did she.
- JT Ok.
- SL She was there, too.
- JT Did she give you guys any instructions on ...
- SL She just told us that she had put a new battery in and there was no, ... At that point, he went in to the, he went to the car and got inside and we opened the hood or and started the, I checked the battery hold that \_\_\_\_\_ make sure there was enough voltage in any battery that she had in there.
- JT Did Pam witness you doing that?
- SL Oh, yea.
- JT Did at any time she tell you not to do it?
- SL Uh, huh, (negative) No, she even helped and brought us extra tools that we needed . . . .

At the conclusion of his investigation, Thomas made recommendations to Turner West to discipline Appellant. At the required pre-disciplinary meeting, at which the Appellant could be represented by counsel, she appeared alone. Appellant testified that she told her side of the story, and produced receipts of repair stating the car was under warranty so she could not have anyone else but the car dealer work on it. There was testimony from Appellant that she did not believe she violated any Career Service Rules; however, specifics were lacking.

During the Appeal Hearing, Appellant testified that she had never been disciplined before and that the 14 day suspension should be reversed because no one in the City ever worked on her vehicle. The evidence obtained from The Agency's extensive investigation indicates otherwise.

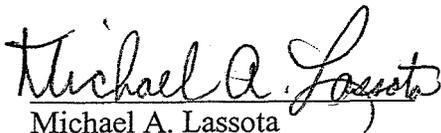
**CONCLUSION**

1. Considering all of the evidence and circumstances, the Agency has proved by a preponderance of the evidence, that Appellant has violated Career Service Rules, therefore; the Agency had cause to discipline Appellant.
2. Because Appellant is in such a high level management position, the Agency's action of suspending Appellant for two weeks without pay was related to the seriousness of the offense, and appropriate.

**ORDER**

For the foregoing reasons, the action of the Agency suspending Appellant for two weeks without pay is AFFIRMED without modification.

Dated this 22<sup>nd</sup> day of January, 2002.



Michael A. Lassota  
Hearing Officer  
Career Service Board

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