INTRODUCTION

On February 21, 2012, Hearing Officer Rhonda Rhodes heard this appeal. Petitioner appeared pro se. Assistant City Attorney Franklin Nachman represented the former Manager of Safety, Ashley Kilroy, and the City of Denver.

Officer Jaramillo, Sergeant Steven Clayborn, Lieutenant Donna Starr-Gimeno, Katrina Jaramillo, and former Manager of Safety Ashley Kilroy testified under oath. The Hearing Officer admitted Respondent’s Exhibits 1-44.

The Hearing Officer heard and considered the statements and arguments on behalf of the Petitioner and on behalf of the City, the Prehearing Statements, the exhibits admitted at the hearing, and the sworn testimony of the individuals identified supra.

Pursuant to Rule 12, Section 9 of the Rules and Regulations of the Civil Service Commission of the City and County of Denver, the Hearing Officer issues these Findings, Conclusions and Order.

THE APPEAL

On October 13, 2011, former Manager of Safety Kilroy issued a Departmental Order of Disciplinary Action in Case No. P2011-04-071 to Officer Armando Jaramillo. The Order stated in relevant part:

You are hereby suspended without pay for forty-two (42) days for violation of RR-116, and fined forty (40) hours for violation of RR-102.1 as it pertains to Airport Security Rules and Regulations Part 20.04-16 Critical Violations (Big Six).
On October 21, 2011, Petitioner timely appealed his discipline.

RULES AND REGULATIONS

The Rules and Regulations at issue in this appeal are:

RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (Theft)
Officers shall not conspire with another person or persons to commit any act in violation of a City ordinance, state or federal statute.

RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders
Officers shall obey all Departmental rules, duties, procedures, instructions, and orders; the provisions of the Operations Manual; and Mayoral Executive Orders.

As it pertains to:
Airport Security Rules and Regulations Part 20.04-16 Critical Violations (Big Six), which states:

No individual to whom an Airport ID Badge or Security Key(s) (including Intelikey(s)) has been issued shall intentionally perform any of the following acts. The intentional commission of any such acts due to their critical negative effect on the safety and security of Airport employees and the traveling public, is reason for immediate confiscation and suspension (and possible permanent revocation) of the Airport ID Badge, issuance of a Violation Notice, and Violation Notice Hearing in accordance with Section 20.04-8:

(a) Loaning (or borrowing) the Airport ID Badge or Intelikey to anyone under any circumstances;
(b) Allowing unauthorized individuals or vehicles into the Restricted Area;
(c) Blocking and/or damaging doors, gates, or card readers, and/or leaving doors or gates open that could be a Restricted Area access route for unauthorized individuals;
(d) Bypassing the security system, passing back an airport ID Badge or Intelikey, or providing access to unauthorized individuals;
(e) Altering the Airport ID Badge; or
(f) Interfering with security screening, security procedures, and personnel.

ISSUES

The Respondent contends that the Manager properly found that Officer Jaramillo violated both rule specifications in his October 13, 2011 letter of
discipline. Respondent likewise contends that the suspension and fined time was appropriate. Petitioner stipulated in his opening statement that he committed the acts supporting the specifications against him, but contends he did not commit conspiracy and the punishment was excessive.

**FINDINGS OF FACT**

As stated *supra*, Petitioner stipulated on the record that he committed the acts supporting the charged specifications. Accordingly, the facts in this case are essentially undisputed. In 2010 and 2011, Petitioner Jaramillo worked as an officer for the Denver Police Department (“DPD”) assigned to Denver International Airport (“DIA”). On April 25, 2011, Frontier Airlines employee Steven Chagolla, a retired DPD Officer, approached DPD Sargeant Pinder who was on duty at DIA. See Exs. 23 & 26. Mr. Chagolla complained to Sgt. Pinder that Officer Jaramillo was allowing his wife, Katrina Jaramillo, a Frontier Airlines employee to use Petitioner’s Airport ID Badge to access DPD airport parking. See Ex. 24 & 26. After Mr. Chagolla’s disclosure, Sgt. Pinder conveyed the information to Lt. Starr-Gimeno in the supervisory chain of command at DIA. See Exs. 24 & 26.

Lt. Starr-Gimeno gathered DIA and DPD documentation about Officer Jaramillo’s DIA badge use and work schedule from October 2, 2010 to March 1, 2011. See Exs. 24 & 27. She then contacted the Internal Affairs Bureau (“IAB”) and Sgt. Steven Clayborn investigated the allegations against Officer Jaramillo in Case NO. P201104071. Sgt. Clayborn interviewed Officer Jaramillo and his wife, who both admitted that Mrs. Jaramillo used Officer Jaramillo’s Airport ID Badge multiple times to exit DIA parking facilities. See Ex. 18. Officer Jaramillo stated that on the days his wife worked at DIA, at the end of his shift he would drive to the Passenger Drop-Off level and give his DIA badge to her, which she would then use to exit the parking garage. See *id*. Officer Jaramillo stated his wife did not use the access ticket she pulled upon entry to DIA parking to pay when she exited the parking lot and either left the pulled ticket in her car or threw it away. See *id*. Petitioner likewise admitted that on the days he did not work at DIA, he gave his DIA badge to his wife to use for parking at DIA. See *id*. Petitioner acknowledged he allowed his wife to use his Airport ID Badge for parking purposes for approximately five months. See *id*.

DIA Airport Security confiscated and suspended Officer Jaramillo’s DIA badge on May 6, 2011. See *id*. DPD then transferred Petitioner from DIA to District Three. See Ex. 11. After a May 13, 2011 hearing, DIA Airport Security suspended Mrs. Jaramillo’s DIA badge for 90 days. See Ex. 18. Frontier Airlines then terminated her employment. See *id*.

Sgt. Clayborn generated a spreadsheet showing Petitioner’s DIA badge use, his work schedule, and Mrs. Jaramillo’s work schedule from October 2, 2010 to March 1, 2011. See Ex. 19; see also Exs. 29, 31, 33 & 34. Based upon the
information on his spreadsheet, he determined that on at least 29 occasions Officer Jaramillo provided his DIA badge to his wife to allow her to park at DIA without paying. See e.g., at Ex. 19. Relying on his spreadsheet, Sgt. Clayborn additionally identified 23 questionable occurrences, but could not substantiate that on those additional dates Officer Jaramillo provided his DIA badge to his wife. See id. Utilizing the 29 confirmed times that Mrs. Jaramillo used Officer Jaramillo’s Airport ID badge, he then calculated the loss to the City of Denver as $522 ($18/day parking fee charged during that period of time). See id. Sgt. Clayborn twice presented the case to Assistant District Attorney Doug Jackson for prosecution, who refused both times “citing ‘[i]nternal investigation and sanction is more appropriate.’” Id.

DIA Airport Security provides the second highest level of access to all areas of DIA to DPD Officers assigned to the airport. Before obtaining the Airport ID Badge, DPD Officers receive DIA security training and must pass an initial test on the DIA security measures. Further, the DPD Officers assigned to DIA had to annually retake and pass the DIA Airport Security test. The first of the Airport Security Rules, Critical Violations (Big Six) states that “[n]o individual to whom an Airport ID Badge. . . has been issued shall. . . loan[. . .] the Airport ID Badge to anyone under any circumstances. . .” See Ex. 10, p. 3.

Based upon Officer Jaramillo’s conduct documented in IAB Case P201104071, Lt. Michael Quiñones found that Petitioner violated two rules: RR-116 and RR-102.1. Ex. 10. Cpt. Gallagher concurred with the recommended violations and the original recommended penalty was a 30 day suspension for RR-116 violation and two fined days for the RR-102.1 violation. See Ex. 9. Division Chief Mary Beth Klee likewise sustained the violations but increased the penalty for the RR-116 violation to a suspension of 42 days and the RR-102.1 violation to 40 fined hours. See id. Chief of Police Whitman sustained both violations and concurred with the discipline penalty Division Chief Klee recommended. See id. at p. 1.

Manager of Safety Kilroy found that Officer Jaramillo’s actions in relation to IAB P201104071 violated RR-116 and RR-102.1. Exs. 1 & 2. Manager Kilroy imposed discipline in the aggravated range for each of the violations (Category E and C), concurring in the 42 day suspension and 40 fined hours for the two violations, respectively.

Although Officer Jaramillo stipulated to the underlying facts supporting the two rule violations, he contends that Sgt. Pinder told him it was “OK” to park at DIA using his Airport ID Badge when he was on vacation. Therefore, according to him, he did not know it was wrong for him to give his badge to his wife for her to exit the DIA parking area. He also testified that there were numerous instances that he gave his Airport ID Badge to his wife for exiting because he did not know it was wrong. Petitioner testified that he was not using his Airport ID Badge to get around parking rules or not to pay parking fees. Mrs. Jaramillo acknowledged that Frontier Airlines provided a shuttle lot for employee parking
but she parked on Level 1 or other areas of the DIA parking garage and utilized her husband’s badge for exiting the garage.

CONCLUSIONS

The Hearing Officer has independently reviewed the matter de novo and taken into consideration the totality of the circumstances of Officer Jaramillo’s actions. The Hearing Officer considered the evidence and witnesses on both sides, the perception and first hand knowledge of the witnesses, the experience and knowledge of the DPD Officers, and the decisions at each point in the chain of command.

The Hearing Officer notes that the discipline recommendations by Officer Jaramillo’s chain of command as to his actions documented in IAB P20110417 are fairly consistent. See Exs. 4, 5, 8, 9, 10, 11, 12, 13, 14, 15 & 16. Additionally, although Officer Jaramillo admitted he committed the acts which formed the basis for the violations, he contends he did not understand the rule expressly declared that under no circumstances was he to loan his Airport ID Badge to anyone.

The Hearing Officer finds Officer Jaramillo’s testimony less than credible considering the unequivocal wording of the rule. Further, the evidence is undisputed that Petitioner received training on the Airport Security Rules, passed an initial test to receive his Airport ID Badge, and had to test annually thereafter to maintain the Badge. That is, the plain reading of the Airport Security Rule and the fact he tested successfully on the rule at least twice directly contradicts his statements he did not know it was wrong to give his Airport ID Badge to his wife. The evidence also reveals the sole reason he gave his Airport ID Badge to his wife was to allow her to exit the DIA Airport Parking Garage without paying.

Additionally, both Officer Jaramillo and his wife developed and employed the plan which deprived the City of Denver of revenue. Petitioner and Mrs. Jaramillo admitted that on the days his wife was also working at the airport after Petitioner ended his DIA shift and exited the police parking at DIA with his Airport ID Badge he would then circle back to DIA Level 6 where he would hand off the same DIA Airport ID Badge to her. Mrs. Jaramillo then also exited using his Airport ID Badge without paying the $18 parking fee, even though she had pulled a ticket to enter the garage. These admissions likewise contradict Officer Jaramillo’s claim he had no intent to, nor knowledge that, he was violating one of the “Big Six” rules.

As to Petitioner’s claim he had no intent to conspire to commit theft, the Colorado Revised Statutes provide guidance. The statutory definition of intent is found at Col. Rev. Stat. §18-1-501. At subsection 6, the statute provides that “[a] person acts "intentionally" or "with intent" when his conscious objective is to cause the specific result proscribed by the statute defining the offense.” Id. at (5). Applying this statutory definition to Officer Jaramillo’s admitted actions
reveals that when he provided his Airport ID Badge to his wife so she could use the badge to exit the parking garage, his objective was to allow her to do so without paying and resulted in a deprivation of revenue to the City of Denver. This conduct likewise satisfies the statutory definition of theft.¹

Further, the discipline in this case appropriately rests in the aggravated range of Categories E (RR-116 violation) and C (RR-102.1 violation). First, Airport Security Rule 20.14, the “Big Six” violations, are so named because these rules are considered the most egregious violations considering that the DIA Airport ID Badge allows the DPD Officer to access most every area at DIA. In fact the Airport ID Badge allows the holder to access even “sterile” areas such as the airfield and all concourses without undergoing TSA screening. Accordingly, when Petitioner provided his DIA Airport ID Badge to his wife he violated the trust DIA has in DPD Officers assigned to the airport as well as the privileges the Badge afforded. Second, his actions reflected poorly on officers assigned to DIA, especially considering the report of this violation came from a Frontier Airlines employee. Third, the City undisputedly lost revenue when he provided his Airport ID Badge to his wife to exit the parking garage. Fourth, Manager Kilroy credibly testified that when Officer Jaramillo allowed his wife to use his DIA Airport ID Badge he jeopardized DPD’s relationship with DIA Airport Security and the Director of Parking. Finally, his actions tarnished the DPD’s image as officers are charged with enforcing not only laws, but also rules and regulations.

Based on these facts and conclusions, the Hearing Officer finds that Manager of Safety Kilroy’s imposition of discipline in the aggravated range for Category E at 42 days suspension and Category C at forty hours fined time is reasonable under the DPD Disciplinary Matrix.

DEcision

RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (Theft)

The Hearing Officer sustains the specification of Conspiracy to Commit Conduct Prohibited by Law as to theft.

¹ The Colorado Revised Statutes also provide:
(1) A person commits theft when he knowingly obtains or exercises control over anything of value of another without authorization, or by threat or deception, and:
(a) Intends to deprive the other person permanently of the use or benefit of the thing of value; . . . .

Col. Rev. Stat. §18-4-401.
RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders

The Hearing Officer sustains that the specification of Duty to Obey Departmental Rules as it pertains to Airport Security Rules and Regulations Part 20.04-16 Critical Violations (Big Six).

ORDER


Dated this 22nd day of March, 2012.

/s/Rhonda Rhodes
Rhonda Rhodes, Hearing Officer

Notice of Appeal Rights

Pursuant to Charter § 9.4.15(E), and Rule 12 § 11 (1) and (2), the decision of the Hearing Officer may be appealed to either the Civil Service Commission, or directly to District Court. Any appeal to the Commission shall be initiated by filing a Notice of Appeal with the Commission, within fifteen (15) calendar days of the date noted on the Commission’s certificate of service/mailing of the Hearing Officer’s decision. Any appeal to District Court shall be initiated in accordance with the Colorado Rules of Civil Procedure currently in effect.