DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

CHERIE BLACK, Appellant,

vs.

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

The hearing in this appeal was held on April 24, 2014 before Hearing Officer Valerle McNaughton. Appellant was present and represented herself. Assistant City Attorney Andrea Kershner represented the Agency in the appeal, and Angela Thomas served as the Agency's advisory witness. The Agency called the following as witnesses: Angela Thomas, Geraldine Bettis and Heather Hewitt. Appellant testified on her own behalf.

I. STATEMENT OF THE APPEAL

Appellant Cherie Black appealed a three-day suspension imposed by the Agency on January 13, 2014. The parties stipulated to Agency Exhibits 3, 4, 6 and 17. Appellant's Exhibit D was admitted at the hearing.

II. ISSUES FOR HEARING

The issues in this appeal are whether the Agency established by a preponderance of the evidence that Appellant's conduct violated the Career Service Rules (CSR) alleged in the disciplinary letter, and whether a three-day suspension was a reasonable penalty for the proven violations.

III. FINDINGS OF FACT

Appellant Cherie Black is a Case Management Coordinator III for the Family and Adult Assistance Division of the Denver Department of Human Services (Agency). In that capacity, Appellant provides public assistance services for long-term care clients, including verification of eligibility and authorization of payment for service providers, including nursing homes.

The Agency is held to federal and state standards for timeliness of its public assistance payments. It therefore tracks eligibility and payment information for each recipient through the Colorado Benefits Management System (CBMS), a shared database for public assistance benefits used by the State of Colorado and the counties who administer benefits for their local residents. The Agency continually emphasizes to its employees that timely processing of
payments is a key service goal. Delays in payments can compromise a service provider's ability to accept patients dependent on public assistance, which may lead to a shortage of available providers for the Agency's clients. (Thomas, 9:20 am; Appellant, 11:50 am.) In addition, payment delays may lead to a request for an administrative hearing by public assistance recipients. (Thomas, 9:25 am.)

The Agency uses a process called a virtual transfer to authorize payments for nursing homes and other service providers. Midland Group is a private company that contracts with the City and County of Denver to handle the first steps in the payment process. Midland Group employees are located in city offices, and review the case documents on behalf of the Agency. They verify whether services have been provided, and update the CBMS case database to indicate whether payment should be made. Agency caseworkers then authorize payments based on those updates. Case comments on CBMS must be brief, since they are intended to communicate only the facts necessary to determine case status, including any reasons for delay. (Thomas, 9:15 am.) Appellant participated in the 2013 training on the verification process, and thereafter performed that function without objection. (Thomas, 9:01 am; Exhs. 4, 6.)

On July 3, 2013, Patient N was admitted to Amberwood Court Care Center, a long term residential and medical facility. On July 25th, Midland employee Brad Cook entered the patient's long term care application onto CBMS. (Exh. D-15, D-17a.) In late October, 2013, Amberwood's business manager called the Agency to report that she had not received the Medicaid payment approval form known as the 5615. (Exh. D-12, D-10.) The next day, Appellant asked Brad Cook for the 5615. Cook replied that he did not have the form. (Exh. D-13.) Appellant admits that she did not note her actions on the CBMS case comments section. (Appellant, 11:51 am.)

On November 1, 2013, Appellant's supervisor Angela Thomas asked Appellant to complete the virtual transfer for Patient N. Appellant responded that Brad did not have the file, and she did not want to process the case unless she could see the documentation and confirm that the information was true and correct. Appellant and Thomas looked for the paper file, but did not find it. (Appellant, 12:05 pm.)

That same day, Thomas sent Appellant and Operations Supervisor Geraldine Bettis a summary of their conversation, and ordered her to process the case by the end of the day. (Exh. D-5.) Bettis sent a separate email asking her to "provide confirmation via email before you leave today to let us know you have completed the case." Appellant replied that she would process the request by entering their email exchange into the case comments, and would complete the transfer as soon as she received the 5615. (Exh. D-2, D-4.) Bettis immediately informed her that "entering the email into case comments is not appropriate", and directed her to follow the work process in keeping with her training. "I am concerned you are refusing to follow standard protocol as a CMCIII staff look to you as the subject matter expert." If the email was entered into CBMS, it would be visible to anyone with access to the state-wide system. (Bettis, 10:23 am.)

Appellant received the 5615 on Nov. 1st, but did not complete her section of the form until Nov. 4th, 2013. (Exh. D-1, D-10.) Appellant admitted at hearing that she did not follow her supervisors' Nov. 1st orders to complete the case and confirm that she had done so by close of business that day. Appellant testified that she did not feel comfortable approving the payment because she had seen other mistakes made by the Midland contractor, and was concerned that she would be held responsible if the case was audited. She admitted that the process
repeatedly slipped her mind. "You have so many things going on at once that things fall through the cracks. I have been working on this problem that I have." (Appellant, 11:51-11:59 am.)

Three days later, Appellant responded that the case comment template training manual did not forbid entering emails into case comments. She also stated that she felt the need to "take extra steps to protect and cover myself" before completing the transfer form "due to previous experiences." She added that "(t)he (form) should have been completed ... by whomever rolled the individual into the nursing facility ... For the record I am not refusing nor have I ever refused to follow standard protocol I am simply questioning them, which is well within my rights. The 5615 has been sent." (Exh. D-4, D-17b.)

The standard protocol used by the Agency is that a caseworker must complete the virtual transfer begun by the Midland employee without requiring a copy of the 5615, since it had already been reviewed by that employee. "Process the case with the information that is in CBMS, run EDBC and file the case back in the drawer." (Exh. 4-4; testimony of Angela Thomas, 9:03 am.) Since Appellant was the only employee who could authorize the payment under Agency procedures, she bore the ultimate responsibility for the delay. Appellant was presented with the request for payment as early as July 29, 2013, but did not complete her authorization under Nov. 4, 2013. (Exh. D-10, D-11.)

Deputy Division Director Heather Hewitt issued the Agency's decision in this case. She found that Appellant was aware of her duty to enter case comments in order to provide an accurate picture of the case status to state auditors and co-workers using the system. Hewitt concluded that she neglected that duty by not completing the case comments in a timely manner. Hewitt found that Appellant also failed to perform the virtual transfer assigned to her, and failed to follow her supervisor's order to complete the case and confirm that she had done so by Nov. 1st. Based on Appellant's failure to meet her established standard of performance to enter information into CBMS, Hewitt determined that Appellant had violated CSR § 16-60 K. (Hewitt, 11:18 - 11:21 am.)

The Deputy Director also found violations of the Agency's regulations under CSR 16-60 L. Hewitt saw Appellant's failure to complete the virtual transfer as evidence of lack of teamwork with Cook, and her failure to note her actions in case comments as a violation of the handbook's requirement to document all action taken. (Hewitt, 11:21 am; Exh. 3-3.) Hewitt also found that Appellant failed to demonstrate accountability by her failure to accept responsibility for the delay at the pre-disciplinary meeting. Appellant's failure to document was deemed to show a lack of respect for the client. 11:27 am.)

IV. ANALYSIS

The Agency bears the burden to establish the asserted violations of the Career Service Rules by a preponderance of the evidence, and that a three-day suspension was within the range of discipline that can be imposed under the circumstances. In re Carter, CSB 87-09, 2 (7/1/2010.)

A. VIOLATION OF DISCIPLINARY RULES

1. Neglect of duty under CSR § 16-60 A.

Neglect of duty requires proof that an employee failed to perform a duty he knew he
was obligated to perform. In re Serna, CSB 39-12, 3-4 (2/28/14), citing In re Compos, CSB 56-08 (6/18/09).

The Agency found that Appellant knew of her duty to add case comments when she performed work on a payment request. It also found that Appellant's supervisors reminded her of that duty as it applied to Patient N. (Exh. D-4.) Hewitt found that Appellant ignored that duty after being instructed to perform it, and has not yet added her case comments to CBMS. Appellant admitted at hearing that this duty continues to slip her mind. Her direct supervisor has provided strong coaching to Appellant about the importance of entering comments, but noted that Appellant continues to neglect this duty. (Thomas, 9:06, 9:26 am.) The evidence is undisputed that Appellant neglected her duty on Oct. 24 and Nov. 1, 2013 to add case comments on the payment request for Patient N, in violation of this rule.

2. Failure to comply with lawful order and perform assigned work, § 16-60 J.

This rule prohibits an employee from failing to do assigned work which she is capable of performing. In re Mounjim, CSA 87-07, 7 (7/10/08), affirmed CSB 1/8/09. Work that is merely careless or inadequate does not violate this rule. In re D’Ambrosio, CSA 98-09, 7 (5/7/10). As a separate violation, the rule also prohibits an employee from willful failure to obey an order of a supervisor. In re Abbey, CSA 99-09, (8/9/10); In re Mounjim, CSB (1/8/09).

The Agency found that Appellant violated both sections of the rule. Appellant admits that she did not complete the virtual transfer until well after the case was handed off to her by Brad Cook. Appellant’s supervisors presented evidence that they instructed her to finish the transfer. Appellant admitted that she responded by stating she would do so only after she saw the 5615 justifying the action. Setting such a precondition was unreasonable; since Appellant knew based on her training and experience that reviewing the 5615 had already been done. Appellant had satisfactorily completed the work under the standard protocol before this time, without first seeing the 5615. Neither her fear of being blamed in an audit nor her reservations about the accuracy of her co-worker's review justified her failure to perform the assigned work.

Appellant also concedes that she did not follow her supervisor’s orders to complete the case and confirm that she had done so by the end of the day on Nov. 1st. She informed her supervisor that she did not complete the virtual transfer because she did not want to bear responsibility if the 5615 was inaccurately completed by her co-worker. She also testified that she believed the work should have been completed by the employee who admitted the patient to the Medicare facility. (Appellant, 11:53 am.) However, Appellant never communicated these objections to the Agency until she received this assignment. In any event, they do not constitute grounds for disobedience to an order. Thus, the Agency established that Appellant violated both parts of CSR § 16-60 J.

3. Failure to meet established standards of performance, § 16-60 K

An employee’s failure to meet established standards of performance is proven by evidence of an employee’s failure to meet a clearly communicated standard of performance. In re Mounjim, CSA 87-07, 8 (7/10/08).

The performance standard at issue here is the duty to enter updates into the state and county computer system, CBMS. (Hewitt, 11:20 am.) However, this defined duty in Appellant’s job description does not identify the manner in which this duty is to be performed. The Agency
relies instead on the supervisor's emailed order that Appellant was to complete this duty that day. Such an order by itself is not an established performance standard enforceable under this rule.

4. Failure to observe departmental regulations, § 16-60 L

To prove a violation of this rule, the Agency must prove only that there was a clear and reasonable written policy, and the employee was aware of the policy but failed to follow it. In re Rodriguez, CSA 12-10, 13 (10/22/10); In re Mouniim, CSB 87-07 (1/8/09).

The Agency first cites its inter-agency transfer procedure under a joint agreement with DHS and the Colorado Department of Health Care Policy and Finance dated Dec. 2012. (Exh. 3-2.) This procedure requires notification and exchange of documents between the originating and receiving eligibility sites. However, it does not appear to direct any action by the DHS employee who processes the payment authorization. Thus, the procedure does not relate to the actions taken by Appellant, whose assignment was to enter final approval for payment of Amberwood, the receiving eligibility site.

The disciplinary letter also sets forth numerous general standards of conduct in the Agency handbook, including accountability, respect, teamwork, and communication. (Exh. 3-2, 3-3.) The Deputy Director found that Appellant's emails and failure to do the work demonstrated a lack of respect for her supervisor and Patient N, and a failure to work as a team with Brad Cook.

Employment rules must be sufficiently clear to give a career service employee reasonable notice of the conduct intended to be prohibited. In re Gutierrez, CSB 65-11, 2 (4/4/13.) For that reason, general principles intended to express an agency's values are unenforceable by discipline. See In re Serna, CSA 39-12, 8 (5/23/13); In re Leslie, CSA 10-11, 11 (12/5/11). Moreover, the Agency's finding that Appellant's failure to complete her work was also disrespectful to her supervisors and the patient is unsupported by any evidence at hearing.

Finally as to this rule, the Agency claims that Appellant violated its file documentation and audit procedures by failing to add case comments to the CBMS. The procedure requires that "all changes to a file must include clearly written notes that reflect the following: what action was taken and the circumstances; the date the note was added to the file (and) a signature to indicate who created the note." (Exh. 3-3.) Appellant admitted that she was trained on this procedure and had performed it, although sometimes she forgot to do so. She conceded that in this instance she never added case comments about the actions she took for Patient N. The Agency therefore established that Appellant violated a known written policy under this rule by virtue of her failure to enter case comments on Oct. 24 and Nov. 4, 2013.

5. Failure to maintain satisfactory work relationships with co-workers or members of the public, § 16-60 O

The rule is violated by "conduct that an employee knows, or reasonably should know, will be harmful to co-workers, other City employees, or the public, or will have a significant impact on the employee's working relationship with them." In re Burghardt, CSB 81-07, 2 (8/28/08).
The Deputy Director concluded that Appellant's actions harmed her working relationships with her supervisors, her co-worker Brad Cook, and Amberwood Care Center. There was no persuasive evidence supporting this conclusion. Hewitt testified that since she issued the discipline, she has less trust in the accuracy of Appellant's entries in CBMS. (Hewitt, 11:29, 11:35 am.) Angela Thomas stated that the incident caused her concern that the behavior would become continuous, and would affect a lot of their clients. Thomas noted that since the discipline, Appellant has failed to add case comments in other cases, and that has affected her own confidence in Appellant's work. (Thomas, 9:25 am.)

An ordinary work error may temporarily, and predictably, lessen a supervisor's reliance on an employee's accuracy. However, it is not sufficiently serious to prove that the erring employee should have known it would significantly impact her working relationships. The Agency presented no credible evidence that Appellant should have known her actions would significantly damage these relationships. See In re Leslie, CSA 10-11, 15 (12/5/11); In re Norman-Curry, CSA 28-07, 10 (2/27/09). I find that the Agency failed to establish that Appellant's conduct violated this rule.

6. Conduct prejudicial to the department or that brings disrepute on the city. § 16-60 Z

Section 16-60 Z is violated by employee conduct that results in actual harm to the agency's mission, and/or actual harm to the City's reputation or integrity. In re Jones, CSB 88-09A (9/29/10), affirming In re Jones, CSA 88-09 (5/11/10). Since the Agency presented no evidence or argument in support of this rule, and none is apparent in the record, I find the Agency failed to establish that Appellant violated § 16-60 Z.

B. DEGREE OF PENALTY

Progressive discipline requires that an Agency impose discipline after considering an employee's past record and the nature of the offense. Since discipline is intended to be corrective rather than punitive, it "shall be reasonably related to the seriousness of the offense", and be appropriate in type and amount "to achieve the desired behavior and performance." CSR § 16-20.

Appellant contends that a three-day suspension was too harsh for her failure to complete the case comments and her three-day delay in complying with her supervisor's order. Appellant concedes that she did not obey the order of two supervisors to complete the payment approval, and does not dispute that timely payments to providers is an important part of her job. Her inaction caused the Agency to delay paying a $7,000 nursing home bill. I consider it significant that Appellant made a conscious decision not to obey the orders because she wanted to avoid being blamed if the payment request was audited and found improper. As noted in section A.2 above, Appellant's position was unjustified. In light of the intentional nature of Appellant's actions, causing delay in a large payment to a nursing home, I do not find that the discipline was outside the range of reasonable discipline.

Moreover, the evidence indicates that the penalty was not beyond the level needed to correct the behavior. Since the discipline was imposed, Appellant has not consistently met the performance standard to enter case comments. This fact, although not known at the time discipline was imposed, tends to support a conclusion that the suspension was insufficient to achieve the desired performance.
Order

Based on the foregoing findings of fact and conclusions of law, the Agency's disciplinary action imposed on January 13, 2014 is AFFIRMED.

Dated this 9th day of June, 2014.

Valerie McNaughton
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

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

All petitions for review must be filed with the:

Career Service Board

c/o OHR Executive Director's Office
201 W. Colfax Avenue, Dept. 412, 4th Floor
Denver, CO 80202
FAX: 720-913-5720, EMAIL: CareerServiceBoardAppeals@denvergov.org

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

AND opposing parties or their representatives, if any.

I certify that on June 9, 2014, I delivered a copy of this Decision and Order to the following:

Cherie Black, Cherie.black@denvergov.org (via email)
Andrea Kershner, ACA, Andrea.Kershner@denvergov.org (via email)
HR Services, HRServices@denvergov.org (via email)