HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO

Appeal Nos. 12-03

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

ELIZABETH SUE DAY, Appellant,

v.

Agency: Mayor's Office of Education and Children and the City and County of Denver, a municipal corporation.

INTRODUCTION

For purposes of these Findings and Order, Elizabeth Sue Day shall be referred to as "Appellant." The Mayor's Office of Education and Children shall be referred to as "MOEC." The City and County of Denver shall be referred to as the "City". They will be referred to collectively as the "Agency." The Rules of the Career Service Authority shall be abbreviated as "CSR" with a corresponding numerical citation.

A hearing on this appeal was held June 9, 2003, before Robin R. Rossenfeld, Hearing Officer for the Career Service Board. Appellant was present and was represented by Cheryl Hutchison, AFSCME. The Agency was represented by Chris Lujan, Esq., Assistant City Attorney, with Pam Harris serving as the advisory witness.

The Hearing Officer has considered the following evidence in this decision:

The following witnesses were called by and testified on behalf of the Agency:

Appellant, Kay Franklin, Maxine Quintana, Nadine Sotelo, Carol Boigon, Pam Harris

The following witnesses were called by and testified on behalf of the Appellant:

Appellant

The following exhibits were offered and admitted into evidence on behalf of the Agency:

1-12

The following exhibits were offered and admitted into evidence on behalf of the Appellant:

None

The following exhibits were admitted into evidence by stipulation:

1-11

The following exhibits were offered but not admitted into evidence and therefore not considered in this decision:

None

NATURE OF APPEAL

Appellant is appealing her one-week suspension for alleged violations of various provisions of CSR §§16-50 and 16-51. She claims she does not remember receiving prior discipline (*i.e.*, verbal reprimands) and that the suspension is unwarranted. Appellant is requesting that the suspension be removed and she be provided with back pay and benefits.

ISSUES ON APPEAL

Whether Appellant violated CSR §§16-50-A. 7), 8), 13), 18, and 20 and 16-51 A. 4), 10) and 11)?

If Appellant violated any provisions of CSR §§16-50 or 16-51, was suspension warranted or should a lesser discipline have been imposed?

PRELIMINARY MATTERS

The Agency filed a Motion to Dismiss on the grounds of abandonment of the appeal on May 15, 2003, due to Appellant's failure to serve the City Attorney with a Prehearing Statement within twenty days of the Prehearing Order. Because there was evidence in the file of Appellant's intention to pursue this matter, including, but not limited to the filing of the Prehearing Statement with the Hearing Officer, an entry of appearance by Appellant's representative, a request from Appellant to vacate the hearing date and reset the hearing, and the serving and filing of the Amended Prehearing Statement by Appellant on May 28, 2003, ten days before the hearing, all showing Appellant's interest in pursuing this matter, the Motion to Dismiss was denied.

The Agency also filed Motions *in Limine* relating to admission of Appellant's prior disciplinary history and to exclude evidence of Appellant's job performance. The Motion with regard to the admission of evidence regarding past disciplinary history was granted. The Motion to exclude evidence related to job performance was denied. The issues of past discipline and job performance were both issues properly before the Hearing Officer with regard to the level of discipline to be imposed. Appellant's claim that she did not receive prior discipline was a question to be resolved at the hearing. The issue of her performance history was limited by Appellant to the time frames mentioned in the Notice of Discipline and was relevant to the extent that it might mitigate against the suspension.

FINDINGS OF FACT

1. Appellant is a staff account in the Head Start Program with the Mayor's Office of Education and Children. She has held that position since June 1, 1999.

2. Since November 27, 2002, Appellant has worked on the 11th floor of the

Wellington Webb Building. Her office space is a cubicle. Previously her office was located at 214 Court Street, where she had a separate, enclosed office with a door.

3. Appellant admitted slamming her door less than five times in her old office. She recalled only one incident, claiming she was in a hurry and not angry.

4. Kay Franklin, Appellant's direct supervisor, remembered an incident on July 30, 2001, when Appellant slammed her door because she was frustrated that she was missing an "official function slip" that was needed to pay a bill. She also mentioned an instance in November 2001 when a complaint was received from a person from "outside the office" about Appellant. Ms. Franklin "mentioned it to" Appellant. She also recalled an incident on January 9, 2001. She did not recall if she spoke to Appellant about slamming the door, but she did remember talking to her about an unauthorized absence from work. She admitted she never informed Appellant she was receiving a verbal reprimand when she spoke to her about these incidents nor was there a record of any verbal reprimands in Appellant's personnel files. All the "verbal reprimands" referred to in the Notice of Disciplinary Action come from Ms. Franklin's personal files.

5. Nadine Sotelo, an Administrative Assistant II with Head Start, recalled that Appellant slammed her door a few times.

6. On January 15, 2003, Appellant arrived at work at 7:00 a.m. She went to get the payroll information that she needed to perform her job duties an hour or so later. She left her desk for a wile. When she came back, the documentation had been removed from her desk. When she discovered that the information had been removed from her desk, she stated, "I wish they'd let me do my fucking job." Appellant admitted that she said this in a "very loud" voice. Others testified that she was yelling.

7. The outburst was heard by Nadine Sotelo, Connie Baca, Maxine Quintana and Nancy Gilder, co-workers in MOEC. While Ms. Sotelo and Ms. Baca have cubicles adjoining Appellant's, Ms. Quintana is located two aisles (25-30 feet) away. (*See*, Exhibit 12)

8. Appellant testified that the statement was a "general statement" and was not made to anyone in particular. She testified that she did not know why she had said it.

9. Appellant admitted that she was angry and that she frightened both herself and others by her outburst. She stated that she wanted to apologize because the behavior was inappropriate. However, she also testified that what she did was not "wrong."

10. Ms. Quintana stated that she was frightened by the incident. She stated that Appellant was "more than angry." Ms. Quintana described it as a state of "pure rage" or "violent rage." She stated that Appellant was "throwing a fit by herself in her own cubicle" and was throwing stuff into Ms. Franklin's cubicle across the way.

11. According to Ms. Sotelo, after the initial incident, Appellant left her cubicle to make copies and returned a few minutes later. At that time, Appellant said she was still upset and angry and that she was "going somewhere" to "cool off."

12. When first questioned by Mr. Lujan during the Agency's case-in-chief, Appellant initially did not testify that she left her desk to make copies, returned, and then went out to the balcony. She just stated that she went out to the balcony. Later, during Appellant's case-in-

chief, she testified that she went out on the balcony twice, once right after the incident and again after making the copies and taking some documents over to Treasury, at least half an hour later. She said she had to go out to the balcony the second time because she was still upset.

13. After her outburst, Appellant walked out of the office to the 11th floor balcony. She was not sure she told anyone where she was going, although she may have told Ms. Sotelo. Appellant admitted that she was afraid of heights and that she had told her co-workers this when they moved to the Webb Building. She also stated that she was "numb" when she walked out to the balcony.

14. Ms. Franklin was away from her desk at the time the incident occurred. When she returned, Ms. Baca and Ms. Quintana came up to her and told her that there had been an incident and that "someone' needed to be called. Ms. Quintana was visibly upset by the incident. On their advice, Ms. Franklin called Pam Harris, the Head Start Director, and Ms. Franklin's direct supervisor, who was out of the office at a meeting.

15. Ms. Sotelo agreed that Ms. Quintana was the person most upset by the incident.

16. Ms. Franklin relayed the information of the incident to Ms. Harris and also stated that she did not know where Appellant was. Ms. Harris instructed Ms. Franklin to contact security and to find Appellant to make sure she was safe.

17. Ms. Harris spoke to Ms. Franklin, Ms. Baca, and Ms. Quintana. She stated that Ms. Baca was "very serious" and that Ms. Franklin and Ms. Quintana were scared and concerned.

18. After receiving the telephone call, Ms. Harris when back to the office. She got back approximately half an hour later.

19. In the meantime, some of Appellant's co-workers found her on the balcony. Appellant testified that she was not aware of anyone finding her on the balcony at this time.

20. When Ms. Harris arrived, Ms. Quintana went down to get building security, but they did not come up.

21. Ms. Harris asked where Appellant was. She was told that another staff member fond her on the balcony. Ms. Harris was concerned because Appellant had previously told her that she was afraid of heights and that she was even concerned about taking the elevator to the 11th floor. Ms. Harris went to Appellant to talk to her. She described Appellant as upset, speaking in low tones and crying intermittingly. Appellant said she was mad at herself for losing control. When Ms. Harris told Appellant she had frightened her co-workers, Appellant replied that she hadn't. She said, "They are adults and should act like it."

22. Appellant told Ms. Harris she wasn't going to hurt herself. Ms. Harris asked if Appellant was contemplating suicide and Appellant responded, "No."

23. Ms. Harris spoke to her about seeing a private therapist or a church counselor. Appellant stated that she was not happy about going to the Office of Employee Assistance because she did not think they held confidences. She also rejected the other "solutions" as she had no money for private counseling and the church-counseling alternative was not feasible.

24. Ms. Harris left Appellant and went back into her office. She spoke with Ms. Franklin, Ms. Quintana and the City Attorney. They decided to put Appellant on investigatory leave. Ms. Quintana went to write up the notice for Appellant.

25. Ms. Harris then went back out to the balcony and asked Appellant to come with her, that she needed to give her some information. Appellant refused to come at first. Ms. Harris again asked her to come in and talk to her and Ms. Franklin.

26. Appellant met with Ms. Harris and Ms. Franklin in Adele Phelan's office. Appellant assumed they were going to talk to her about the Office of Employee Assistance. Instead, she was given the notice of investigatory leave. Appellant was asked to sign for it, which she refused to do. Ms. Harris read the notice to Appellant. To make sure Appellant understood the notice, she also told Appellant that she had be at home while on investigatory leave. Ms. Franklin asked Appellant if she had any questions; Appellant replied she did not.

27. The letter placing Appellant on investigatory leave says, in part:

> While on investigatory leave, you must be available during your normal working hours at the address and phone number you have provided to this Agency.

(Exhibit 4)

28. Ms. Harris then told Appellant that she would accompany her back to her cubical. Appellant walked out, slamming the door open as she went. Ms. Harris said, "This is what we are talking about." Appellant, looking sorry, replied. "Oh." Appellant then went to her cubicle with Ms. Harris following her.

29. Appellant testified that she remembered the door slamming. She explained that it was due to the door swinging "easily", that it offered no resistance. She said she did not mean to slam it.

30. Appellant dropped the investigatory leave letter in her office.

31. Ms. Harris followed Appellant out of the office and rode down in the elevator with her. Nothing was said in the elevator since others were present. When they got to the lobby, Ms. Harris she was sorry that "this is so hard for you." Appellant did not respond.

32. On January 16, Appellant was called three times at home. Ms. Harris had told Appellant that she would make contact with her before noon even if she had no information about what was going to happen. The first time Ms. Harris called Appellant, there was no answer. Since she thought she might have dialed a wrong number, she called immediately again. There was still no answer nor voice-mail or an answering machine. She later called Appellant after four that afternoon.

33. When Ms. Harris spoke to Appellant that afternoon, Appellant told her she was aware of the earlier calls, telling her the times of the calls and the number of rings.

34. During the Agency's case-in-chief, Appellant testified that she was outside putting the trash out when the first call came in. She used "*69," which indicated the last number calling. She said she recognized the number as coming from the Agency. She did not call back. When Ms. Harris asked her later that day why she did not return the call, Appellant

told her she was still "too upset." She said that she had no idea whether or not there were one or two calls. She also said that she doesn't know why no message was left.

35. According to a memo written by Ms. Harris on January 16, when she asked Appellant why she had not been at her phone earlier, Appellant responded that she "wasn't gong anywhere." When Ms. Harris explained that she was required to be available by phone, Appellant told her that it was "a matter of interpretation." Ms. Harris told her that it meant answering the phone when it rang. When Ms. Harris asked Appellant how she was doing, Appellant said she wouldn't say because Ms. Harris would use it against her. When Ms. Harris told Appellant that she did not have any information to share with her, but that she hoped to call the next day, Appellant responded "Whatever." (Exhibit 9)

36. During Appellant's case-in-chief, she testified that she told Ms. Harris that she had "been at lunch" when Ms. Harris called earlier.

37. Appellant asked Ms. Harris who had called Office of Employee Assistance and why. At first Ms. Harris asked why that was important. Appellant replied that then it didn't happen. Ms. Harris asked why that was important. Appellant said that she detested liars. Ms. Harris then told her that Ms. Franklin and Ms. Quintana called.

38. According to Ms. Franklin, she gave Appellant the number for the Office of Employee Assistance on January 15.

39. On January 16, Appellant forwarded a voice message to Ms. Franklin with an "introductory remark" of "whatever." Appellant testified that, during the day on January 16, she called the office to pick up her messages. She stated that she was having problems with the new phone system and was unable to forward the message. When she finally succeeded in getting the messages, she commented, "Oh, whatever" into the phone. This was not meant to be a message to Ms. Franklin.

40. On January 17, Appellant called Ms. Franklin by mistake. She meant to call her own phone. When she reached Ms. Franklin, Appellant was "shocked" and just hung up.

41. Ms. Franklin called Appellant on January 17 to tell her to come back to work on Tuesday, January 21 (January 20 being Martin Luther King's Birthday, a day off). Ms. Harris told Ms. Franklin to have another person listen to the phone call.

42. The first time Ms. Franklin called Appellant, Appellant just cried. Since Ms. Franklin was unsure that Appellant understood that she was to come back to work on Tuesday, Ms. Franklin called again. This time Appellant indicated she understood she was to come back to work.

43. Appellant admitted that she was initially given the Notice of Contemplation of Discipline on January 22. At that time, Appellant stated that she did not remember getting any of the written reprimands listed in the letter.

44. The affidavit of service of the Notice of Contemplation of Discipline was not completed on January 22. It was actually completed on January 29. (Exhibit 3)

45. The predisciplinary meeting was held on January 29, conducted by Carol Boigon, then-Executive Director of the Mayor's Office of Education and Children.

46. During the predisciplinary meeting, Appellant did not disagree that she had been served on January 22. She read a statement into the record. (Exhibit 7) stated that, after the initial incident, she went to the balcony for a while, came back, made some photocopies, went to the Treasury with the documents and came back. Then she went out to the balcony for the second time, where Ms. Harris found here.

47. On February 7, 2003, Ms. Boigon issued the notice of disciplinary action, suspending Appellant for five days beginning February 10, 2003, for violations of CSR§§ 16-50 A. 7, 8, 13, 18, and 20 and 16-51 A. 4), 10, and 11).

48. Ms. Boigon testified that she originally favored a more severe discipline, either a thirty-day suspension or dismissal because Appellant's behavior was violent, threatening, angry and included swearing. Ms. Harris indicated that she believed it to be too severe a discipline. Ms. Franklin agreed she should be more moderate in order to "give Sue a chance."

49. Appellant filed this appeal in a timely manner on February 10, 2003.

50. Appellant denied having received a copy of Executive Order 112 on Workplace violence prior to the incident. There was testimony that Appellant went through employee orientation, so she should have received and reviewed it then. However, Appellant admitted that, even if she had knowledge of Executive Order 112, that knowledge would not have prevented the incident on January 15.

51. Appellant testified that, since this incident, she has received anger management counseling and apologized to at least some of her co-workers. She stated that it seems so frivolous to lose her temper over the payroll stubs. She was mad at herself for that specific reason. She also stated that she liked Ms. Franklin and that she would have reacted the same way no matter who had taken the stubs.

DISCUSSION AND CONCLUSIONS OF LAW

The City Charter C5.25 (4) requires the Hearing Officer to determine the facts in this matter "de novo." This has been determined to mean an independent fact-finding hearing considering evidence submitted at the de novo hearing and resolution of factual disputes. *Turner v. Rossmiller*, 35 Co. App. 329, 532 P.2d 751 (Colo. Ct. of App., 1975)

This is an appeal of a disciplinary action. Therefore, the Agency has the burden of proof.

The gravamen of this matter consists of two separatwe and distinct types of issues. The first concerns Appellant's behavior on January 15, 2003. The second concerns her conduct while she was on investigatory leave. The Hearing officer will look at each of these separately.

The evidence clearly establishes that Appellant had an angry outburst on January 15, which frightened at least three of her co-workers, one of whom was at least twenty-five feet away when it started. While Appellant minimized how loud she was and denied that she was throwing things around, she admits that she used an obscenity and that she was still upset with herself at

least an hour later,[1] when she returned from her errand at Treasury, so upset that she went out the balcony a second time to "cool off." Appellant also admitted that she was afraid of heights, a fact known to her co-workers. The question is whether this behavior is a violation of CSR §16-50 A. 8) (threatening, fighting with, intimidating, or abusing employees of officer of the City and County of Denver), CSR §16-510 18) (conduct in violation of an Executive Order which has been adopted by the CSA, to wit: Executive Order No. 112 regarding workplace violence), and/or CSR §16-51 A. 4) (failure to maintain satisfactory working relationships with co-workers).

Appellant stated that her outburst was not directed towards anyone in particular, that the "they" she referred to was meant in the "general" sense. Therefore, there was no direct threat in her behavior. However, there is still a violation of CSR §16-50 A. 8). Appellant's conduct was threatening and intimidating several to her co-workers. Ms. Quintana, who was the one the furthest away from the incident, was the one most upset by it. Not only did she state that she was frightened by what was happening, others confirmed that she was still visibly upset at least half an hour or more later when Ms. Franklin and Ms. Harris returned to the office to handle the matter. Ms. Quintana's reaction demonstrates the magnitude of Appellant's outburst. It was not mere muttering under her breath or even a sudden, loud, singular statement, such as one might have after stubbing a toe, but an extended period of "pure rage," rage that was still upsetting Appellant over an hour later. It is apparent that Appellant's behavior was at a level that fulfills the requirements to make out a violation of CSR §16-50 A. 8).

The Agency argues that the same behavior makes out a claim under CSR 16-51 A. 4), failure to maintain a satisfactory working relationship with co-worker, other City and County employees or the public. The Hearing Officer disagrees. There is a distinction between this provision of the CSR and CSR §16-50 A. 8). Otherwise, there would be no reason for the two separate provisions. CSR § 16-51 A. 4) provision requires that proof that Appellant wasn't able to work with others. CSR §16-50 A. 8) concerns threatening or intimidating conduct. There was no evidence that Appellant was actually unable to work with others. Her outburst was not directed at any one person (or, if it was, the person, Ms. Franklin, was not present). (*Cf., In the Matter of Joseph Moorehead*, CSA Appeal No. 143-02, where this Hearing Officer found that the employee was rude and petulant directly to his supervisors.) The violation of CSR §16-51 A. 4) is dismissed.

Appellant is also charged with violating the Executive Order on workplace violence (Executive Order No. 112), a violation of CSR §16-50 A. 18). Specifically, Appellant violated the provision stating that "intimidating, threatening or hostile behaviors" will not be tolerated in the workplace. The same facts that establish the violation of CSR §16-50 A. 7) establish that Appellant was engaging in activities prohibited by the Executive Order.

Appellant's defense to this allegation is simple. During the hearing, she testified that she had never been given a copy of Executive Order No. 112. There was testimony that Appellant went through employee orientation and should have been acquainted with the Executive Order. But even if Appellant had never seen Executive Order No. 112, this is not a legal excuse for its violation. The Rule requires that the Executive Order be one adopted by the Career Service Board. The Hearing Officer takes judicial notice that this Executive Order complies with this

[1] It is unclear exactly how long Appellant was upset. It was over an hour and possibly as long as two and a half hours. The Agency, in its closing argument, states that Appellant admitted that it took her two and a half hours to cool off; the record is not that clear. The witnesses are inconsistent about the exact time that the incident began, some placing it as early as just after 8:00 (Appellant) and others placing it as late as between 9:00 and 10:00 (Ms. Sotelo and Ms. Harris). It was close to 11:00 before Appellant came in from the balcony with Ms. Harris.

requirement. While ensuring that employees are given copies of the Executive Order and having them sign for it might be better evidence than a general statement to the effect that it should have been covered during the employee's orientation, this is not fatal to the charge. Further, Appellant testified that, even if she had known about Executive Order No. 112, she still would have acted the way she did on January 15. This admission that she would have violated it anyway obviates the need to establish that she had actual knowledge of it. The violation of CSR §16-50 A. 18) is established.

The Agency argues that Appellant violated CSR §16-50 A.13) each time she went out to the balcony on January 15 since she did not ask her supervisor's permission to do so. This argument does not fly. Not only were no supervisors around when Appellant went out to the balcony, it is disingenuous for the Agency to assert that Appellant was not right in leaving the area until she could "cool down" from her outburst. To require her to remain in the office and possibly continue the inappropriate behavior that was upsetting those around her is illogical. The allegation of a violation of CSR §16-50 A. 13), as far as it concerns Appellant's actions on January 15, is dismissed.

The other grounds for discipline involve Appellant's conduct on January 16 and 17, while she was on investigatory leave. The Agency alleges that Appellant failed to comply with the instructions contained in the letter of January 15 (Exhibit 4). The Agency alleges that Appellant was not "available during" her normal working hours on January 16 and 17, in violation of §16-50 A. 7) (refusing to comply with the orders of an authorized supervisor) and §16-50 A. 13) (unauthorized absence from work).[2] The evidence of these violations include the fact that Appellant did not answer the phone Ms. Franklin called Appellant twice around 11:30 on January 16 and that Appellant was cried and did not respond to Ms. Franklin when she called on the afternoon of January 17. The Hearing Officer finds that the failure to return Ms. Franklin's phone calls constitutes violations of CSR §§16-50 A. 7) and 13), but that the crying incident does not.

Before Appellant left on investigatory leave, she was explicitly told that she was to be "available " at her phone number during her normal business hours. Appellant claims that she was available, but that she was at lunch/taking out the trash when Ms. Franklin called. This is not a legal excuse.

The *Illustrated Oxford Dictionary* (1998) includes in its definitions of "available" as "of a person **a.** free **b.** able to be contacted." Ms. Franklin was unable to contact Appellant at 11:30 on January 16. Therefore, she was not "available."

While the Hearing Officer might have agreed that Appellant had the "right" to go out to the curb to dump her trash, thereby keeping her away from the telephone for a few moments, she does not agree that the short absence from the house excuses the violation. According to Appellant, she heard the phone ring. (She even admitted to Ms. Harris later that day that she had counted the rings and knew that there were two phone calls). When she came back in, she called "*69" and got the phone number, which she recognized as being Ms. Franklin's. Instead of calling Ms. Franklin right back, or even calling her in an hour after she finished her "lunch," Appellant brushed Ms. Franklin off and ignored the telephone call(s) completely. This action by Appellant establishes that she clearly was refusing to be contacted by Ms. Franklin on January 16; she made herself

[2] The Notice of Discipline also includes a violation of §16-51 A. 10) (failure to comply with instructions of an authorized supervisor). The Agency did not address this violation in its closing argument so it appears that the Agency has abandoned this violation. In any case, this violation is dismissed as the evidence establishes the violation of §16-50 A. 7), making the §16-51 A. 10) redundant.

unavailable, in direct contradiction of the authorized orders given to her the previous day. Therefore, the violation of CSR §16-50 A. 7) has been established.

Appellant's behavior on January 16 also establishes a violation of CSR §16-50 A. 13) since her "absence" at 11:30 was not authorized. Perhaps, had Appellant called Ms. Franklin back within an hour, Ms. Franklin would have approved the "lunch break," but the Hearing Officer will not speculate on how Ms. Franklin might have reacted had Appellant acted responsibly.

The incident on January 17, when Ms. Franklin had to call Appellant back twice because Appellant was crying all through the first phone call and was otherwise non-responsive, does not constitute a violation of the CSR. Appellant was "able to be contacted" for the first call, her highly emotional state notwithstanding. The Hearing Officer concludes that the January 17 phone calls are not violative of the CSR.

The violations of CSR §§16-50 A. 20) and 16-51 A. 11) are dismissed as Appellant's conduct was covered by specifically enunciated provisions of Rule 16.

The next issue before the Hearing Officer is the appropriateness of the discipline. The Agency argues that the one-week suspension is appropriate. Appellant argues that is not, given that there was no prior discipline in accordance with the Rules and that Appellant's "upset" warrants only a written reprimand.

The Agency, in its Notice of Contemplation of Discipline and Notice of Discipline, refers to several "verbal reprimands" for Appellant's alleged failures to maintain satisfactory working relationships with her co-workers and for unauthorized absences from work. At the hearing, Ms. Franklin admitted that she did not tell Appellant that she was getting a verbal reprimand or place a notation in Appellant's personnel file on any of the cited occasions. She stated that she spoke to Appellant about the issues and noted the conversations in her own files. This is insufficient to establish any verbal reprimands were given to Appellant under CSR §16-20 1) a), which requires that verbal reprimands must be accompanied by notations in both the supervisor's and agency's files on the employee. Therefore, the Hearing Officer is not considering the "verbal reprimands" in determining whether the one-week suspension is appropriate.

CSR §16-20 2) encourages progressive discipline "[w]herever practicable." The Rule goes on to state:

> However, any measure or level of discipline may be used in any given situation as appropriate. This rule should not be interpreted to mean that progressive discipline must be taken before an employee may be dismissed.

Similarly, the Rule does not require the interpretation that progressive discipline must be taken before the employee can be suspended.

In this case, the Agency has proven two separate and distinct instances of inappropriate conduct, instances that happened a day apart. Neither of these instances is minimal. Appellant engaged in a violent outburst that frightened her co-workers for several hours afterward. Then, the next day, she chose to ignore the calls from her supervisor even though she knew she was to be available throughout the working day. The outburst alone, which supports several violations of CSR §16-50, the Rule describing grounds for immediate termination, is ample reason to substantiate the imposition of the one-week suspension. Coupling that with Appellant's intentional act of ignoring Ms. Franklin's call, the one-week suspension is more than justified.

The Hearing Officer commends Appellant for obtaining counseling and for apologizing to her co-workers, but those actions do not negate the appropriateness of the one-week suspension.

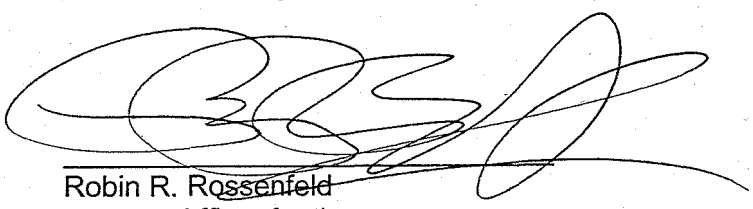
In reaching this conclusion, the Hearing Officer has considered Appellant's testimony during the hearing, as well as statements she made to Ms. Harris on January 15 and during her predisciplinary meeting. On January 15, when told that she was upsetting her co-workers, Appellant's response to the effect that they were adults and should get over it shows that, at the time, she was totally unaware and/or unconcerned with the effect of her conduct on others. During the predisciplinary meeting, she minimized her actions and talked/wrote about how she felt deceived by Ms. Harris and others. This attitude continued at the time of the hearing in June. Appellant testified that she was upset with herself for her conduct on January 15. However, she continued to assert that she did nothing wrong. Appellant's embarrassment over the situation is not enough to demonstrate that she has fully processed why what she did was unacceptable behavior for the workplace.

The Hearing Officer concludes that the imposition of the one-week suspension is appropriate under the circumstances of this case. Appellant's request to reduce the discipline to a written reprimand is denied.

ORDER

Therefore, for the foregoing reasons, the Hearing Officer MODIFIES the appeal as follows: the violations of CSR §§16-50 A. 70, 8, 13, and 18 are SUSTAINED; the violations of CSR §§ 16-50 A. 20, and 16-51 A. 4), 10) and 11) are REVERSED; and the imposition of the one-week suspension is SUSTAINED. The appeal is DISMSSED with prejudice.

Dated this 9th day of October 2003.



Robin R. Rossenfeld
Hearing Officer for the
Career Service Board