FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

IN THE MATTER OF THE APPEAL OF:

MARTHA DOUGLAS, Appellant,

Agency: CAREER SERVICE AUTHORITY, and
THE CITY AND COUNTY OF DENVER, a municipal corporation.

INTRODUCTION

These consolidated matters come before the Career Service Hearings Office on appeal by Martha Douglas, filed respectively on August 29 and September 10, 2002. Ms. Douglas challenges the Career Service Authority’s denial of her grievance filed after the Agency issued her a “Below Expectations” performance rating for her alleged failure to meet expectations in several performance areas. Appellant further appeals the Agency’s subsequent decision to terminate her for failing to maintain established standards of performance after she received three consecutive “Below Expectations” performance ratings.

For purposes of this Decision, Ms. Douglas shall hereinafter be referred to as "Appellant." The Career Service Authority shall be referred to as "the CSA" or "the Agency." The rules of the Career Service shall be referenced as "CSR" with a corresponding numerical citation. The Performance Enhancement Program shall be referred to as “PEP.” Performance reports generated under the program shall be referred to as “PEPRs.”

A hearing in this matter was held before Personnel Hearing Officer Joanna Lee Kaye ("hearing officer") on January 7 and 8, 2003 at the Career Service Authority Offices. Appellant was present and was represented by Cheryl Hutchinson of the AFSCME. The Agency was represented by Assistant City Attorney Robert D. Nespor, with Compensation Classification and Benefits Manager, Yasmine Chapman, present for the entirety of the proceedings as advisory representative for the Agency.

Appellant testified on her own behalf and called CSA Director Jim Yearby, Ms. Chapman, Financial Systems Manager Jo Anne Burl, Administrative Support Assistant IV Paulette Washington, and Denver Police Department employee Laura Abeyta-Martinez.

The Agency called the following witnesses: Associate Benefits Analyst Heather Britton, and ASPEN Project Personnel Services Supervisor Jody Smith.
The parties stipulated to the admission of Appellant’s Exhibit C and the Agency’s Exhibits 1, 2, 7-12, 14-18. Appellant’s Exhibit B, and Agency Exhibits 6 and 19, were offered during the hearing and admitted without objection.

No additional exhibits were offered or admitted.

PRELIMINARY MATTERS

1. The Hearing Officer’s Jurisdiction

The hearing officer finds she has jurisdiction over the appeal of Appellant’s grievance filed in response to her “Below Expectations” PEPR, pursuant to the following CSR rules:

13-50 Grievances and Appeals Relating to Performance Enhancement Program Reports

An employee may file a grievance pursuant to Rule 18 GRIEVANCE PROCEDURE, and may appeal that grievance in accordance with RULE 19 APPEALS, insofar as it relates to Performance Enhancement Program Reports...

18-12 Grievance Procedure

...4. Filing with the Career Service Authority. If the employee still feels aggrieved after receipt of [the Agency] decision [concerning the grievance], or the agency head has not responded within ten calendar days, and the grievance concerns an alleged violation of the Charter provisions relating to the Career Service, ordinances relating to the Career Service, or the Career Service rules, and the employee wants to pursue the grievance further, the employee must appeal to the Hearings Officer of the Career Service Board in accordance with the provision of RULE 19 APPEALS.

Section 19-10 Actions Subject to Appeal

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

...e) Grievance of Performance Enhancement Program Reports: If the grievance of Performance Enhancement Program Report is appealed to the Career Service Hearing Officer, the only basis for reversal of the Performance Enhancement Program Report shall be an express finding that the rating was arbitrary, capricious, and without rational basis or foundation. Only overall ratings of “Below Expectations” may be appealed...

(Emphasis added.)

The hearing officer further finds she has jurisdiction over Appellant’s subsequent termination, pursuant to the following additional subsection of CSR Rule 19-10:
b) Actions of appointing authority: Any action of an appointing authority resulting in dismissal... which results in an alleged violation of the Career Service Charter Provisions, or Ordinances relating to the Career Service, or the Personnel Rules.

Jurisdiction over Appellant's Below Expectations PEPR and termination were not disputed by either party to this case.

2. Burden of proof

The City Charter, C5.25 (4) and CSR 2-104(b) (4) require the hearing officer to determine the facts of the case “de novo.” This means that she is mandated to make independent determinations of the facts and resolve any factual disputes. See, e.g., Turner v. Rossmiller, 535 P.2d 751 (Colo. App. 1975.)

In civil administrative proceedings such as this one, the level of proof required for a party to prove its case is a preponderance of the evidence. See, e.g., 13-25-127, C.R.S (2003). In other words, to be meritorious, the party bearing the burden must demonstrate that the assertions it makes in support of its claims are more likely true than not.

In this case, there are two separate types of action that have been consolidated in a single appeal. The first type of action is the “Below Expectations” PEPR. The second is the disciplinary action arising from three such consecutive PEPRs. Each type of action carries its own standard by which the hearing officer must review it.

a. Burden of proof in a “Below Expectations” PEPR.

As set forth above under CSR 19-10 e), where an employee challenges a “Below Expectations” PEPR, the only basis for reversal is an “express finding that the rating was arbitrary, capricious, and without rational basis or foundation.” It has previously been determined that the burden of showing this lies with the employee. See, e.g., In the Matter of Phillip Cedillo, Appeal No. 29-02 (Decision entered 8/14/02). It is a well-settled principle of law that in order to demonstrate that an act is arbitrary and capricious, it must be shown that “a reasonable person, considering all the evidence in the record, would fairly and honestly be compelled to reach a different conclusion. If not, no abuse of discretion has occurred and the agency decision must be upheld.” See, Wildwood Child & Adult Care Program, Inc. v. Colo. Department of Public Health Care and Environment, 985 P.2d 654, 658 (Colo. App. 1999). If the reviewing tribunal can find a rational basis to arrive at the same judgment as was made by the agency, then the agency’s decision must be upheld. See, Franklin Sav. v. Dir. Office of Thrift Super, 934 F.2d 1127 (10th Cir. 1991).

The governing rules define performance ratings as follows:

13-23 Levels of Performance

An employee’s performance shall be rated according to the following criteria:
Outstanding -- Consistently exceeded expected accomplishments of the job and made a major contribution to the agency.

Exceeds Expectations -- Consistently exceeded expected accomplishments of the job.

Meets Expectations -- Consistently met expected accomplishments of the job.

Below Expectations -- Employee failed to meet a significant portion of the employee’s expected accomplishments.

(Emphasis added.)

The rules do not define what constitutes a “significant portion of expected accomplishments,” which if not met warrants an overall PEPR rating of “Below Expectations. In the absence of such a definition, terms used in the CSA rules are to be given their plain and ordinary meaning. Webster’s Dictionary, Home and Office Edition (1998), defines “significant” as having “meaning,” or being of “considerable influence or effect.”

In addition, CSA PEP Plans rank responsibilities in terms of importance as “Priority I,” Priority II,” etc. Webster’s (above) further defines the word “priority” as something that logically or by importance takes precedence over other items. The prioritization of job responsibilities strongly suggests that higher priorities carry more weight than lower priorities because they reflect those duties of greater importance to the Agency. Thus, use of the term “Priority I” can reasonably be understood to connote those job duties of highest “significance,” the successful discharge of which is at the essence of meeting or exceeding performance expectations.

Therefore, the hearing officer concludes that since an overall PEPR rating of “Below Expectations” may be given for failure to meet a “significant portion of expected accomplishments,” it stands to reason that a ratings of “Below Expectations” on Priority I job responsibilities should be given more weight when determining their effect on the overall rating.  

1 The question remains how many Priority I job responsibilities an employee must fail before an overall rating of “Below Expectations” is warranted. It is worth noting that in the Phillip Cedillo case (above), Hearing Officer Robin R. Rossenfeld quoted relevant language from the Career Service Manual published January 17, 2001, respecting the creation and use of PEP Plans and PEPRs as tools in the CSA personnel system. As quoted in that case, the CSA Manual states in part that the “PEPR asks the supervisor to determine if the employee achieved one of the following ratings:

Below Expectations: Employee failed to meet performance standards set for any Priority 1 Job Responsibilities.

Meets Expectations: Employee met the performance standards specified in the PEP Plan for the Priority 1 Job Responsibilities…”

This language tends to suggest that a rating of “Below Expectations” on only one Priority I job responsibility may lead an overall rating of “Below Expectations.” However, neither party in the present case offered the CSA manual into evidence. Therefore, the hearing officer looks to this reference only as some basic guidance on the question, and does not specifically apply the manual’s language in this case. The determination of whether any given overall
The issue of an overall "Below Expectations" PEPR is separate from the issue of the appropriate level of discipline in the event of three such PEPRs. Such disciplinary actions require a different standard of review.

b. Burden of proof in the event of dismissal based on three consecutive "Below Expectations" PEPRs.

It is well established in this tribunal that the Agency responsible for disciplining a Career Service employee affirmatively bears the burden of establishing, by a preponderance of the evidence, that it had just cause for the disciplinary action. See, In the Matter of Leamon Tapian, Appeal No. 35-99 (Hearing Officer Michael L. Bieda, 11/22/99).

Some guidance to the appropriate level of discipline appears in the CSR rules as follows:

Section 16-10 Purpose

The purpose of discipline is to correct inappropriate behavior or performance. The type and severity of discipline depends on the gravity of the infraction. The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record. The appointing authority or designee will impose the type and amount of discipline she/he believes is needed to correct the situation and achieve the desired behavior or performance.

(Emphasis added.)

Thus, the severity of discipline must be "reasonably related" to the nature of the offense in question given the employee's past record. See, Leamon Tapian (above). It is a well-established principle of employment law that in determining whether the discipline is reasonably related to the offense, it must be "within the range of reasonable alternatives available to a reasonable, prudent agency administrator." See, In the Matter of William Armbruster, Appeal No. 377-01 (decision entered 3/22/02), citing Adkins v. Div. of Youth Services, 720 P.2d 626 (Colo. App. 1986). In determining whether the discipline is within the range of reasonable alternatives, the hearing officer will not disturb the Agency's determination of the severity of the discipline, unless it is clearly excessive or based substantially on considerations that are not supported by a preponderance of the evidence. See, e.g., William Armbruster, above; In the Matter of the Appeal of Dolores Gallegos, Appeal No. 27-01 (entered 3/21/01).

It is undisputed that three consecutive PEPRs give the Agency just cause to issue some type of discipline. However, Appellant argues that even though there may be three consecutive "Below Expectations" ratings, this alone does not necessarily lead to the conclusion that the most severe disciplinary option – termination – is warranted. Appellant thus urges that in the event the third PEPR is sustained, the hearing officer should conclude that termination is not within the

"Below Expectations" rating is arbitrary, capricious, and without rational basis or foundation must be made on a case-by-case basis, depending on the facts and authority in evidence.
range of reasonable alternatives, in light of the severity of the behavior and performance problems leading to this rating. 2

The Agency argues that any three consecutive “Below Expectations” PEPRs should automatically be considered sufficient grounds for dismissal under the following CSR rules:

Section 13-10 Purpose

The evaluation of an employee’s performance is intended to assist the employee in becoming a more effective worker. This evaluation is designed to inform the employee of the manner in which he or she is meeting the standards of performance established by the supervisor. In no event shall an employee’s employment performance rating be a substitute for disciplinary action under Rule 16 DISCIPLINE. It may be used, however, to establish attempted non-disciplinary corrective action in support of subsequent disciplinary action under Rule 16 DISCIPLINE for unsatisfactory work performance...

* * *

Section 16-20 Progressive Discipline

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

* * *

Section 16-50 Discipline and Termination

A. Causes for dismissal.

The following may be cause for dismissal of a career service employee. A lesser discipline other than dismissal may be imposed where circumstances warrant...

...19) Failure to meet established standards of performance in three successive rating periods.

Notably, the above section is titled “Causes for dismissal.” When viewed in comparison with CSR 16-51 A, titled “Causes for progressive discipline” it is clear that the Career Service Board considered the items set forth under CSR 16-50 more serious than those appearing under CSR 16-51.

2 It should be noted here that neither of the first two “Below Expectations” PEPRs have been reviewed on appeal. Therefore, the justification set forth for the ratings in those two PEPRs is not reviewable and is taken herein as fact.
However, the plain language of these rules, particularly use of the permissive term “may” in CSR 16-10 and 16-50 A., does not support the proposition that a violation of any item under CSR 16-50 in itself automatically warrants termination. Rather, the language suggests that the appropriate level of discipline should be based on the merits of each case, taking into consideration both mitigating and aggravating circumstances. Therefore, the same should apply to cases brought subsection A. 19).

On the other hand, there are certain circumstances to be considered with respect to PEPR cases that are not present in other cases brought under CSR 16-50. For instance, it stands to reason that under a progressive discipline system, at least one factor to be weighed in opting for a level of discipline other than termination is to give the employee notice and an opportunity to correct the inappropriate behavior or performance. See, CSR 16-10 (above). In the case of PEPRs, however, the governing rules set forth below illustrate that the program is already constructed with the intent to provide notice to employees of objectionable aspects of their performance, and a chance to respond.

Section 13-40 Below Standard Ratings

13-41 Quarterly Reports

Whenever the overall evaluation of a [PEPR] is “Below Expectations,” an additional report shall be required at the end of three (3) month’s time and each three (3) months thereafter until the employee has achieved a rating of “Meets Expectations” or above.

Thus, the PEPR process addresses inappropriate performance (as set forth in CSR 16-10, above) and provides the employee the chance to improve as needed, before the case is even brought within the scope of CSR Rule 16 governing discipline. This rule, when read together with CSR rules 13-10, 16-10 and 16-50 A. 19) (above), implies that the employee is to be given three such chances to improve performance in any area rated “Below Expectations,” and is further reasonably expected to do so within those three time periods.

All this in turn presumes that if the employee is to have three such rating periods to improve performance in the areas of concern, those areas of concern are the same performance areas. An employee cannot be expected to improve on a moving target within the time limits set out above if (s)he has received no prior notice of a need for improvement because the performance area previously rated as “Below Expectations” was different. Thus, the hearing officer concludes that for three consecutive “Below Expectations” ratings to constitute presumptive grounds for termination under CSR 16-50 A. 19), they should all three address the same or sufficiently similar performance areas to have put the employee on notice of a need for improvement.

In cases not involving PEPR-based dismissals, such a determination is typically made on a case-by-case basis depending on a variety of considerations, such as the severity and number of current infractions, prior disciplinary actions and whether they are for similar offenses, and the appointing authority’s overall explanation for its justification of the severity of the discipline.
improvement in those areas. If the three PEPR’s do not address the same or sufficiently similar performance areas to have provided the employee such notice, then a lesser discipline may be warranted.

Based on the above analysis, the hearing officer concludes as follows. In the event of three “Below Expectations” PEPRs, termination may be presumed within the range of reasonable alternatives, if the itemized ratings in the three consecutive PEPRs rated at “Below Expectations” are consistent with respect to the same or similar Priority I duties in a manner sufficient to have put the employee on notice that these areas are in need of improvement, thus giving the employee a meaningful opportunity in both prior PEPRs to improve in those areas during the both the previous consecutive rating periods.

**ISSUES**

Pursuant to the above analysis, the hearing officer concludes that the following issues must be resolved in this case:

1. Whether Appellant has shown by a preponderance of the evidence that any or all duty items rated “Below Expectations” in the PEPR under appeal are arbitrary, capricious, and without rational basis or foundation.

2. As to the items rated as “Below Expectations” that have not been shown to be arbitrary, capricious and without rational basis or foundation, in the PEPR under appeal, whether or not they represent Priority I responsibilities, or otherwise comprise a “significant portion of expected accomplishments” thus justifying an overall rating of “Below Expectations.”

3. Whether the items in the three consecutive PEPRs rated at “Below Expectations” are sufficiently consistent to have put Appellant on notice in both prior PEPRs that the same or similar duties were in need of improvement, thus creating a presumption that termination of Appellant is “within the range of reasonable alternatives.”

**FINDINGS OF FACT**

1. The ASPEN Project is a pilot computer project initiated by the City and County of Denver in 1997. The purpose of the ASPEN Project is to transfer and integrate the entire city’s various computer systems into a single software program application known as “PeopleSoft.”

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4 It is also presumed that since the PEPRs in question are rated overall as “Below Expectations,” the areas rated as “Below Expectations” thus needing improvement in all three PEPRs represent a “significant portion of expected accomplishments,” as discussed above.

5 This ruling is specifically not meant to exclude termination in the event that the items consistently “Below Expectations” are not Priority I duties, or where the “Below Expectations” ratings are based on failure to meet expectations in different areas of performance. The discussion here only addresses when the circumstances create a presumption that termination is warranted, in light of the Agency’s assertion that it is warranted any time there are three “Below Expectations” PEPRs. Again, each case must be determined on its own merits.
2. PeopleSoft is an “enterprise system,” which means the system can process information for every aspect of a given enterprise, including budget management, human resources, Payroll, purchasing, benefits, etc. PeopleSoft allows for the customized creation and integration of separate “modules” for the myriad aspects of the enterprise, which modules in turn share information as necessary. Information entered in one module can “flow” into another module where that information is also relevant. For instance, a new employee’s information may be entered into a Human Resources personnel module, with elements of this information relevant to the employee’s benefits then flowing into the benefits module.

3. The ASPEN Project was originally headed by a consulting company. Representatives from the various agencies within the City and County of Denver, who were knowledgeable of the computer needs of their respective agencies, were temporarily assigned to ASPEN as liaisons to relay their Agencies’ computer needs. The technical process of adapting the application to the particular needs of the various agencies is done by technical experts called “developers.” A primary function of the agency representative was to assist the developers in their construction of “functional specifications,” or detailed technical explanations of the needs of an agency. Based on the information provided, the developers created modules designed to serve the distinct needs of various agencies. Any given module contains “tables” designed to execute the various functions required within that module. Due to the evolving needs of the City, many of these processes continue.

4. The construction of a new table, or the correction of an existing table which is not functioning properly, is initiated by the creation of a “STAT” report. A STAT report is a tracking device that records the work request and any work done on the request. STAT reports can either be generated by a knowledgeable City employee with access to the application used to generate a STAT, or by ASPEN helpdesk staff who receive phone calls from inquiring users, and construct STAT reports themselves based on the information gathered during the telephone discussion. A developer and, if necessary, a liaison, are assigned to create functional specifications. The developer, working with the liaison as necessary, generates or modifies tables in order to accomplish the requested task.

5. CSA Personnel Director Jim Yearby testified that the employees assigned to the ASPEN Project as agency liaisons were expected to gain sufficient knowledge of PeopleSoft that when they returned to the CSA they would be able to operate the fully developed modules independently of ASPEN consultants sufficiently to manage the workload. However, there remains a certain level of dependence on ASPEN due to continuing changes in the needs of various agencies, as well as ongoing problems with software modules already developed.

6. There were no individuals originally assigned to the ASPEN Project with any expertise or responsibility for analyzing existing business practices. Therefore the original design and implementation of PeopleSoft was based on existing practices as relayed by the agency liaisons. Mr. Yearby testified that Classification Specifications for the position of “Business Analyst” were developed for the ASPEN Project sometime late in 2001, based on an evolved understanding of the project’s needs. Mr. Yearby testified that the business analysts have begun to undertake improvements of some of the existing business systems, as well as communicating the needs of those systems to the program developers. Mr. Yearby testified
that a business analyst familiar with CSA's Human Resources and Benefits was not hired until sometime during the year previous to the hearing in this case.

7. CSA's Benefits Unit (hereafter "Benefits") is responsible for administering all employment benefits for employees in the Career Service personnel system, such as the Denver Employee Retirement Program ("hereafter DERP"), medical benefits through CIGNA, Kaiser, or Denver Health, life insurance, the Consolidated Omnibus Budget Reconciliation Act "(COBRA)", Health Insurance Portability and Accountability Act ("HIPAA"), and the like. CSA is responsible for making sure that each employee is provided the city's benefit package. It is critical to the city's employees that this function is executed properly. For this reason the successful and accurate completion of "open enrollment," a yearly process during which all employees are permitted to make any necessary changes to their benefits, is considered a project of top priority in Benefits. Open enrollment occurs during approximately the last three months of each year.

8. It is estimated that there are 8,700 employees in the CSA system. There are seven staff members in Benefits. The City also administers benefits programs and packages for employees outside the Career Service, including the Denver Police and Fire Departments, so the human resources module of the PeopleSoft application must incorporate these programs as well.

9. Appellant was hired by Benefits on January 20, 1999 as a Senior Personnel Analyst. At the time of her hire in Benefits, Appellant testified, she had no prior training in PeopleSoft, and no prior experience with writing tables, functional specifications or STAT reports. However, within approximately one month of her hire, in the latter part of February, 1999, she was "loaned" to ASPEN as the liaison for Benefits, to assist in the operation of the Benefits "module."

10. When Appellant arrived at ASPEN, the designing phase of the benefits-related portion of the project was nearly complete, and the tables within the benefits module had already been written. Since the design phase of the project was almost complete upon her arrival, Appellant did not have the on-the-job exposure to writing tables or the construction of the benefits module that other liaisons had who were at ASPEN during the design phase had. The parts of implementation which remained were the incorporation of the eligibility rules of various benefits programs, and testing tables in the benefits module that had already been created. Appellant participated in these phases of the project.

11. Appellant had no formal training in aspects of PeopleSoft during her tenure at ASPEN. Appellant's training while at ASPEN was in the eligibility rules for the benefits programs. She worked with the consultant assigned to the benefits program, Anita Canafax, CSA Associate Analyst Deborah Bassett, and Denver Police Department employee Laura Abeyta-Martinez.

12. Ms. Bassett was also "on loan" from CSA as a liaison for the Payroll department. Ms. Bassett attended PeopleSoft training in Denver very early on in the ASPEN Project. Ms. Bassett was a liaison to the developers during the creation of the benefits tables, and thus was familiar with the customized module.
13. Ms. Abeyta-Martinez was assigned at ASPEN in October of 1998, shortly after the program had begun. Ms. Abeyta-Martinez attended training in PeopleSoft in Dallas, Texas, and was knowledgeable of the CSA benefits system as well as the PeopleSoft software. She was involved in the design and implementation of PeopleSoft in benefits, human resources and position management (i.e. hiring, demotion, and other personnel actions). Ms. Abeyta-Martinez testified that Appellant was not yet assigned at ASPEN during the time she and others were being trained in PeopleSoft.

14. In about November or December of 1999, Ms. Abeyta-Martinez was told she could not train CSA employees in PeopleSoft, apparently as part of the push for CSA to become independent of ASPEN. However, she was informed shortly thereafter that she could start training CSA employees again. Ms. Abeyta-Martinez worked with Appellant in December of 1999 or January of 2000. She testified the only training she gave Appellant at that time was on “disconnects,” or problems in which changes to one module did not flow properly into other modules. She testified that Appellant had come to her with additional training requests, but that to her knowledge, Appellant never received the additional training she requested. Ms. Abeyta-Martinez could not recall specifically what additional training Appellant requested, but that she knew Appellant never had exposure to or working knowledge of the larger PeopleSoft system, how tables functioned, or how benefits functions interacted with human resources and position management functions.

15. Ms. Abeyta-Martinez testified that to her knowledge, nobody received formal training in the creation of functional specifications. She testified that initially, most of the functional specifications were written by consultants, and that later her “training” in writing these documents was while on the job at ASPEN. In Ms. Abeyta Martinez’ opinion, CSA cannot become independent of ASPEN because CSA employees have never been trained on how to write their own tables.

16. In September of 1999, PeopleSoft “went live,” or was initiated as the City’s operating computer system in place of the previous fragmented systems. Appellant remained at ASPEN doing “production,” or the use of PeopleSoft applications in day-to-day work related to benefits.

17. Appellant worked at ASPEN until March of 2000, when she was returned to CSA Benefits. Around this time, most of the agency liaisons were also sent back to their respective agencies to begin production. One representative for each module remained behind to continue any remaining necessary work at ASPEN.

18. When Appellant returned to CSA, her supervisor was Compensation Classification and Benefits Manager, Yasmine Chapman. Ms. Chapman was hired around the end of September of 1999. She was not the supervisor who had hired Appellant.

19. Ms. Chapman was never trained in how to write tables or construct functional specifications. She testified these were never part of her job duties.
20. Ms. Chapman testified that upon Appellant’s return to CSA in or around March of 2000, Appellant told Ms. Chapman she was knowledgeable in PeopleSoft, had received a lot of training during her tenure at ASPEN, and that she was competent to train employees in that area. In her self-assessment she rated herself as proficient (mostly 5’s on a scale of 5) in PeopleSoft. Appellant testified that she intended this rating to represent her desired level of proficiency, rather than her actual level of proficiency, and that she told Ms. Chapman as much at the time of the self-evaluation in question.

21. In June of 2000 a PEP Plan was prepared for Appellant’s position in Benefits (Exhibit 18). The PEP Plan has attached to it a memorandum from Appellant to Ms. Chapman commenting on the content of the various performance categories. Most of Appellant’s comments in this memo are in approval of the existing language. This memo suggests that Ms. Chapman authored the draft of the PEP Plan that appears in Exhibit 18. Appellant’s June, 2000 PEP Plan (Exhibit 18) sets forth the following categories:

<table>
<thead>
<tr>
<th>PRIORITY</th>
<th>JOB RESPONSIBILITIES</th>
<th>EXPECTED ACCOMPLISHMENTS</th>
<th>RESOURCE</th>
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<tbody>
<tr>
<td>I</td>
<td>1. Serves as functional lead for designing and implementing PeopleSoft Benefits Program</td>
<td>Must have comprehensive understanding of PeopleSoft system. Determines the appropriate procedures for implementing and linking various programs.</td>
<td>Aspen, Supervisor</td>
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<tr>
<td>I</td>
<td>2. Provides oversight to benefits staff</td>
<td>Provides direction, guidance and training to benefits staff. Evaluates staff performance, prepares [PEPRs]. Completes PEP reviews prior to due date. Maintains effective working relationships, resolves differences. Implements corrective actions when necessary. Has regular staff meetings to keep benefits employees appraised of all activities.</td>
<td>Supervisor CSA Employee development</td>
</tr>
<tr>
<td>II</td>
<td>3. Develops written procedures for various benefits</td>
<td>Written procedures must be comprehensive and simple to follow. Procedures for each benefit function should be completed by 12/31/2000.</td>
<td>Supervisor</td>
</tr>
<tr>
<td>I</td>
<td>4. Prepares billings for carriers, submits to auditor’s office for payment</td>
<td>Reconciles billings, resolves discrepancies, issues checks. Payments must be submitted timely, within a week after deductions taken.</td>
<td>Auditor’s office, Supervisor, Carriers</td>
</tr>
<tr>
<td>III</td>
<td>5. Analyzes and resolves problems related to employee benefits</td>
<td>Works closely with carriers to insure eligibility issues are resolved in a timely manner. Mediates disputes regarding coverage issues.</td>
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<tr>
<td>II</td>
<td>6. Demonstrates comprehensive</td>
<td>Must understand all benefits provided by the city.</td>
<td>Supervisor</td>
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<td></td>
<td>Customer Services</td>
<td>Services and process improvements. Will attend at least one training session regarding benefits administration. Research and determine feasibility of membership in Benefits Association.</td>
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<tr>
<td>I</td>
<td>7. Customer Services</td>
<td>Responds to customers in a timely and accurate manner. Phone calls and e-mails are responded to within 24 hours, unless out of the office. Insures that calls and messages are forwarded and all mail is handled during prescheduled absences.</td>
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<tr>
<td>II</td>
<td>8. Provides training to payroll technicians and department representatives</td>
<td>Convenes monthly meeting to discuss benefits issues and problems. Establishes agenda, schedules room, prepares materials, and arranges for speakers as necessary. Notice should go out a minimum of ten days prior to the meeting.</td>
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<td>II</td>
<td>9. Communication</td>
<td>Maintains effective communication with all internal and external customers. Keeps supervisor informed of relevant business issues concerning CSA. Attends weekly meetings with supervisor, and prepares weekly status reports.</td>
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<tr>
<td>II</td>
<td>11. Training</td>
<td>As assigned, attends training sessions on benefits, or other human resources topics. Expected to enroll in and complete a minimum of four sessions in the Supervisor Series.</td>
<td></td>
</tr>
<tr>
<td>II</td>
<td>12. Increases proficiency in technology to increase accessibility of benefits information</td>
<td>Through the course of the rating period, employee will be expected to increase knowledge and skill in the use of Windows NT and the PeopleSoft system. Implements effective imaging system. Follows up on feasibility of benefit self-enrollment on line. Insures the implementation of a Benefits Hot Line Integrated Voice Response (IVR).</td>
<td></td>
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22. On November 30, 2000 Appellant received a written reprimand. The written reprimand was for violations of 16-51 A. 2), "Failure to meet established standards of performance including either qualitative or quantitative standards" and 16-51 A. 4), "Failure to maintain satisfactory working relationships with co-workers, other City and County employees or the public."

23. Ms. Bassett left the CSA in March of 2001. Ms. Abeyta-Martinez acted as the lead for CSA Benefits in her stead. In or around May of 2001, Ms. Chapman hired Associate Analyst Heather Britton to replace Ms. Bassett. In her former position at World Com, Ms. Britton had written both tables and functional specifications for PeopleSoft, and was experienced from both the technical and user ends. Ms. Britton worked a few hours per week at ASPEN and spent the rest of her time at CSA during the relevant times.

24. On July 24, 2001 Appellant received a written reprimand. This written reprimand was for a violation of 16-51 A. 4), "Failure to maintain satisfactory working relationships with co-workers, other City and County employees or the public."

25. Jody Smith was assigned to ASPEN as the Personnel Services Supervisor in September of 2001. She was still in that position at the time of the hearing in this case. Her duties are to oversee all Human Resources information that is processed through PeopleSoft.

26. Appellant and Ms. Abeyta-Martinez both claim to have been the “lead person” responsible for coordinating open enrollment efforts for 2002, which occurred October through December of 2001. Ms. Abeyta-Martinez testified that she “watched over” open enrollment as the “functional lead” during the fall of 2001 for the enrollment year 2002. She testified that initially that year, Benefits staff came to ASPEN and tried to enter the information themselves, but they did not know how the tables worked so Ms. Abeyta-Martinez had to re-enter the information. Therefore, she loaded the CSA benefits information into the tables for processing, as well as the data for police and fire.

27. The City’s life insurance carrier is Standard Life. In November of 2001, an employee complained to Ms. Chapman that the employee’s life insurance benefits had been reduced because of his age. Upon investigation it was discovered that, contrary to the Revised Municipal Code, coverage was in fact being reduced because of age. Since the benefit reduction was in the contract with Standard Life, this required a renegotiation of the contract. It was further discovered that incorrect life insurance changes were being implemented for part-time employees as well.

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6 See, In the Matter of Martha Douglas, Appeal No. 317-01 (Decision entered 7/12/02).

7 See, footnote 6, above.
28. Once the contract was renegotiated, the appropriate changes to the software had to be made. As functional lead, those changes were Appellant’s responsibility. Appellant was made aware of the need for these changes in or around November or December of 2001. Ms. Chapman frequently asked Appellant how the changes were coming, and Appellant told her it was being worked on.

29. Appellant testified that the contract changes were not brought to her attention until late in 2001 during open enrollment, during which no changes to the program could be made. Appellant further testified that Standard Life Insurance representative Brenda Stevens asked that CSA make no changes to the program until the contract was signed, and that this did not occur until the latter part of 2002.

30. Appellant testified that she wrote a STAT report to seek changes to the Standard Life program in or around April of 2002, shortly after the STAT application had been installed on her computer. She testified that unbeknownst to her, the comments section of her STAT application was not functioning properly and the STAT report was not correctly submitted to Ms. Smith at that time.

31. On January 16, 2002 Appellant received a PEPR with an overall rating of “Below Expectations” (Exhibit 9). Attached to this PEPR was the June 2000 Performance Enhancement Program (“PEP”) Plan (Exhibit 18). The “Job Responsibility” categories, or duty items listed in the PEP Plan, are the same as those in the PEPR. The ratings for each duty item included in this PEPR are set forth below in the Discussion section. The January 16, 2002 PEPR set the three-month review for May 1, 2002. Appellant appealed this PEPR but the appeal was dismissed as untimely.

32. In approximately April of 2002, Appellant told Ms. Chapman that the Standard Life problem had not been assigned to a developer yet. Ms. Chapman grew concerned, called ASPEN and spoke with ASPEN’s Personnel Services Supervisor, Jody Smith, to inquire as to the cause for the delay because the changes were critical to the accurate administration of these benefits. Ms. Smith told her that ASPEN did not have any STAT or functional specifications for the project, which are necessary before the project can be addressed by a developer. Appellant then began working to get the functional specifications generated.

33. On April 26, 2002 Appellant received a PEPR with an overall rating of “Below Expectations” (Exhibit 10). Appellant’s PEP Plan prepared in June of 2000 (Exhibit 18) was attached to this PEPR as well. Once again, the duty items listed in the PEP Plan are the same as those in the PEPR. The ratings for each job responsibility category included in this PEPR are set forth below in the Discussion section. The April 26, 2002 PEPR set the three-month review for August 1, 2002. Appellant did not appeal this PEPR.

34. Meanwhile, Appellant e-mailed Ms. Smith in approximately mid-May on the Standard Life issue to see what the delay was, and learned at that time that Ms. Smith had never received the STAT. Appellant testified that ASPEN then requested a list of outstanding STAT reports

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8 Apparently Appellant’s original PEP Plan has never been altered.
Appellant had sent which Appellant then provided. She testified that the Standard Life STAT was assigned to a developer at that time. Appellant testified that the modification required by the Standard Life contract changes were not “straightforward” and that they had to go into Human Resources tables in order to solve the problem. Appellant testified that this problem was uniquely difficult and that given her lack of training in creating functional specifications she did her best in working with the developers.

35. In approximately May of 2002, Ms. Smith contacted Ms. Chapman and told her that Appellant apparently did not understand the STAT and functional specifications process. Ms. Smith requested that Ms. Britton work with Appellant on this process. The developer subsequently told Ms. Chapman that Appellant was having difficulty communicating what needed to be done. The Agency contends that the Standard Life issue was subsequently assigned to Ms. Britton and was resolved in or around July of 2002.

36. DERP (retirement) benefits payments are typically deducted from payroll checks generated during the regular bi-monthly pay cycles. However, occasionally a payroll check is generated at times other than during one of the regular pay periods, such as on an employee’s retirement date. The tables for processing the DERP Program were malfunctioning from the time of their creation sometime in 1998. The tables were not making the appropriate DERP deductions during these “off-cycle” payroll payments. In addition, frequently new employees would receive one paycheck before their benefits applications were processed, meaning that the system would not deduct their first DERP contribution. These errors had long-term ramifications for the DERP accounts, including lower retirement benefits to employees for whom some contributions are never made.

37. Ms. Chapman testified that problems with the DERP program were known from the beginning. She testified that resolving these problems were Appellant’s responsibility. She testified that Appellant had told her (presumably sometime prior to the early part of 2002 although it is not clear when) that the DERP problems had been resolved, and she believed this to be the case until she learned they had not been corrected, she thinks around the first part of 2002.9

38. Ms. Abeyta-Martinez had been working to put together a functional specification for the off-cycle DERP interface corrections when she went on Family Medical Leave at some time (which is unclear from the records) in the spring of 2002. At some point thereafter, Appellant looked into the DERP interface issue to find out why there was no progress on it and discovered that the functional specifications had not yet been assigned to a developer. Appellant brought this issue to the attention of ASPEN, and the project was assigned to developer Gabe Passerelli. Appellant contends that Mr. Passerelli was not experienced in handling interfaces, so she worked closely with him on it. Appellant testified this was the first time she ever worked with a developer on any issue, and reiterated that she had never had training or experience in writing functional specifications. Ms. Britton also worked with them on the DERP project, however, this issue was also somewhat foreign to her and her involvement was more for training purposes. After the group ran into various problems on

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9 It is entirely unclear from the record why, after this application was malfunctioning since 1988, it languished unaddressed until this time.
the project, Appellant approached Ms. Chapman for permission to seek further assistance from ASPEN. Appellant testified that "the next thing" she knew, she was removed from the DERP interface project. At that time, the project was reassigned to Ms. Britton.

39. Ms. Smith did not recall how the DERP interface problem was initially brought to her attention, but there were some e-mails on it and she received a STAT report possibly in mid-May. She testified that the project’s STAT "sat at ASPEN" until Mr. Passerelli was able to begin working on it. Ms. Smith testified that "everybody" was unhappy with output during that time because the only two developers from May to July of 2002 were Mr. Passerelli and Lori Vigil. She testified that ASPEN had weekly meetings during which they would go through all the requests and set priorities due to short-handedness. The DERP interface problem was assigned in late May or early June.

40. Ms. Smith testified that Mr. Passerelli came to her in mid-July, 2002 (around the 10th to the 12th) and told her that he had gotten as much information about the DERP interface issue as he could get from Appellant, and asked her if there were not someone else who could offer any additional information. Within a day of this conversation, the developers’ supervisor, June McKenna, came to Ms. Smith and asked if there were anyone else at CSA other than Appellant with whom Mr. Passerelli and Ms. Vigil could work on the DERP and Standard Life projects, since they both felt they had gotten all the information they could from Appellant. Ms. Smith testified that subsequently, presumably after Appellant’s removal when Ms. Britton was asked to take the lead, Mr. Passerelli requested that Appellant be kept on the project.

41. Ms. Britton testified that initially, her role in the DERP project was to work along side Appellant. Then at some point in or around July of 2002 she received a call from Jody Smith stating that the developer currently working on the DERP interface was having problems understanding Appellant and could not work with her. Ms. Smith stated something to the effect that "I’m trying to protect my staff," and asked Ms. Britton if there were not anybody else who could work on the project. Ms. Britton told Ms. Smith she needed to go to Ms. Chapman with this request. Not long thereafter Ms. Britton was made the lead on that project. She testified she did not seek this out. The DERP project was transferred to her in the second week of July of 2002 (see, Exhibit 12).

42. Ms. Smith testified the initial DERP request had seemed very straightforward. When Mr. Passerelli started to research how the changes might be incorporated, he found problems in the programming that went back to the program’s original implementation. Thereafter, Ms. McKenna sought and received approval to approach the original developers of the DERP interface for assistance in the program’s repair.

43. Ms. Britton testified at the time of the hearing that the DERP interface problem had only recently been finally resolved.

10 Ms. Britton originally testified that this happened around May of 2001. She later corrected herself to indicate that this interaction happened in approximately July of 2002.
44. Financial Systems Manager Jo Anne Burl requested to have Appellant return as a participant in getting the benefits programming problems resolved. Ms. Chapman was not aware of this request.

45. Appellant contends that she was not offered training on how to work the STAT application, whereas Heather Britton was. She testified that one day Ms. Britton was getting ready to go to ASPEN and Appellant asked her what she was doing. Ms. Britton said she was going for training by Ms. Smith on STAT reports. Appellant did not know about this training and invited herself along because she also needed training. Appellant testified that Ms. Smith appeared “very surprised to see me there.” Ms Smith then trained them; however, Appellant testified, she came to learn this training was very basic and did not include a lot of information she needed to employ the application effectively.

46. Ms. Britton testified that this training occurred in early May of 2002. She testified that she and Appellant were at ASPEN, probably working on the DERP interface project, and as they walked by Ms. Smith’s office, Ms. Smith offered *impromptu* to show them how to use the STAT application. She testified that Appellant sat at Ms. Smith’s computer and operated the program under Ms. Smith’s direction while she looked on. She testified the entire training took between an hour and an hour and a half.

47. Ms. Smith testified that she did not recall one way or the other whether this training was prearranged, but initially described it as Appellant being at ASPEN and asking some questions, and Ms. Smith having her sit down at the computer and showing her while Ms. Britton looked on.

48. In approximately May of 2002, Ms. Chapman requested that Appellant seek solutions to a chronic problem of establishing benefits coverage for newborns. While the contracts allow for a thirty-day grace period during which employees must enroll their newborns, employees frequently forget and fail to enroll their infants on time. In such cases, without a special negotiation with the carrier the baby is not covered until the following January after open enrollment (during which the parent presumably enrolls the infant). Ms. Chapman contends that she requested that Appellant consult with vendors and Payroll clerks to solicit suggestions on how to avoid this problem. Ms. Chapman contends that Appellant never did this, and that Appellant did not develop or write any procedures to minimize or eliminate this problem as Ms. Chapman had asked her to do. However, Ms. Chapman concedes that Appellant did send some information to the Payroll technicians about what to do to have the newborns covered.

49. Appellant contends that around late June or early July 2002, she did circulate procedures for insuring the enrollment of newborns to all Benefits employees and Payroll technicians on the e-mail system, and it is expected that the employees will print up such e-mails and add them to their policy manuals as is the procedure Appellant has set up in the past. However, Appellant did not produce a copy of the manual or the e-mail regarding procedures for insuring the enrollment of newborns during the hearing in this case.

50. One of the health care plans the city offers is CIGNA. In the case where two CSA employees are married but work for different agencies, under the CIGNA contract the
couple’s health care premiums are split, with each agency paying part of the premium. Appellant testified that historically, CSA has sent the premiums under the husband’s social security number, and that CSA’s software is arranged thus. However, at some point, a new CIGNA representative unfamiliar with the process began processing its data on married couples depending on whose social security reached its system first. Thus, in some cases the coverage was being processed under the husband’s social security number, and in some under the wife’s. This caused an interface problem between CIGNA and CSA Benefits, creating the appearance to CIGNA that in some cases a given employee’s premium was being either only half-paid or not paid at all.

51. In approximately May of 2002, Benefits began getting complaints from some married couples covered under CIGNA that they were being told one spouse was not covered. Ms. Chapman testified that she called CIGNA herself and spoke with a senior accounts representative by the name of “Nancy.” Nancy told Ms. Chapman they had received a number of complaints from employees that they were being processed under their husbands’ social security numbers. Nancy told Ms. Chapman that during several of these calls, employees complained that they had difficulty in dealing with Appellant to get any resolution on the problem and that they instead relied on an ASPEN employee, Grant Chappell, to get the situation resolved. The senior account representative did not testify at the hearing in this case.

52. Ms. Chapman testified that she asked Appellant to develop written procedures for the processing of CIGNA split couples for the policy manual, but that Appellant failed to do this.

53. Appellant testified she communicated this inconsistency to CIGNA during a telephone conference, and directed them to use only the husband’s social security number as before. Appellant testified that as soon as this was resolved she sent an e-mail concerning the appropriate procedure to the Payroll technicians and benefits staff. However, once again, neither the e-mail nor the manual have been entered into evidence to demonstrate this assertion.

54. Law America was a prepaid legal plan offered to employees through a local law firm for a payroll deduction. CSA had received a series of complaints from employees about the local law firm not accepting Law America clients. These employees called Benefits. Ms. Chapman called the law firm to inquire about the problem and they told her Law America was not making payments for its services as agreed, even though the CSA had been paying Law America. Ms. Chapman asked Appellant to call the law firm to follow up on whether they were getting payment from Law America. Ms. Chapman testified that Appellant might have made calls to the firm, but that she did not know. She asked Appellant to analyze the problem and put together a recommendation of potential solutions. She further asked Appellant to resolve the employee issues and complaints. Ms. Chapman testified that while Appellant “did what was requested,” she sent back Appellant’s work product concerning this request several times for explanation, and Ms. Chapman eventually took on the responsibility because she was dissatisfied with what Appellant had produced.  

11 There is no evidence or testimony clearly establishing when all this occurred. However, in the absence of some documentation or allegation from Appellant indicating otherwise, the hearing officer is left to presume that it occurred within the relevant timeframe.

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America was terminated at the end of 2002. Ms. Chapman testified this was the final resolution of this matter.

55. Early in 2002, the City decided to upgrade the PeopleSoft application from the 7.3 version to the newer 8.0 version. Ms. Chapman testified that when she circulated her strategic plan for this conversion, there were many elements of the benefits program of which Appellant had no knowledge, such as the cafeteria plan and medical savings accounts. Ms. Chapman testified that Appellant had no idea what should be in a wellness program. Ms. Chapman testified she asked Appellant to review a “white paper” on these issues and give her feedback, and Appellant never responded.12

56. Appellant did not recall receiving this particular white paper or any request to respond. She testified she received lots of documents on white paper. When asked what a white paper is, Appellant randomly chose sheet of paper lying on the witness stand, held it up, and indicated that it was a document printed on white paper. She offered no other explanation as to her understanding of the term.

57. Ms. Chapman testified that there was an incident in or around May of 2002 where Appellant came to her and asked about the status of the residency requirement in response to a phone inquiry from an employee. Ms. Chapman testified the requirement that Denver City employees reside within the City and County of Denver was repealed in November of 2001. This development was widely circulated and known among Benefits staff. However, Appellant asked if the residency requirement had been overturned and what kind of broadcast was sent out to employees. Appellant further asked her for a copy of the broadcast so she could send it to this employee.

58. Appellant contends that she was merely passing on the employee’s request for the broadcast on this issue.

59. Administrative Support Assistant IV Paulette Washington had worked in Benefits for approximately a year and a half at the time of the hearing in this case. She testified that Appellant had done all her training. She testified that Appellant is competent, knowledgeable in benefits principles and practices, reliable and works as a team player. Ms. Washington testified that whenever she had a question or a problem she did not know how to handle, she approached Appellant for guidance or turned the problem over to her. Ms. Washington testified that Appellant was pleasant to work with and that they had a good working relationship. She testified that Appellant gave the Payroll technicians a new procedure for assuring newborns get enrolled during a Payroll meeting, but that to her knowledge, they do not follow it for unknown reasons. Ms. Washington had no knowledge of a written policy on this topic.

12 See, footnote 11, above.
60. Ms. Abeyta-Martinez testified that Appellant came to her with programming problems, which she would in turn go into the program and repair. Ms. Abeyta-Martinez testified she did not have any problems understanding Appellant’s articulation of the problems.

61. Ms. Chapman testified that from May 1 to July 31, 2002 she received four or five complaints about Appellant not timely responding to customer complaints or requests. Ms. Chapman testified she received a complaint from CIGNA during the relevant rating period about its inability to achieve resolution of the split contract issue with Appellant.

62. Ms. Chapman assessed Appellant’s communications with vendors to be very important in her job functions. Ms. Chapman had asked Appellant to have regular monthly meetings with vendors such as CIGNA, Kaiser, Delta Dental, Denver Health, and the like. However, according to Ms. Chapman, Appellant generally would meet with a vendor only when an issue or problem arose, and vendor representatives frequently complained that Appellant was rude or would not get back to them.

63. Ms. Britton testified that she worked with Appellant on a daily basis from the time of her hire until Appellant’s termination in September of 2002. She testified she had an opportunity to observe Appellant’s interactions with other coworkers and vendors. When asked if she observed anything unprofessional in the manner Appellant communicated, Ms. Britton testified, “Oh yes, yes.” Ms. Britton observed Appellant’s communications skills as “scattered,” and that Appellant has a “hard time bringing together various parts of what she wants to say into an understandable sentence.” Ms. Britton testified she had a difficult time understanding and communicating with Appellant. Ms. Britton testified that while Appellant never used profanity, if another benefits employee did not understand Appellant’s directions, Appellant would just repeat the same instructions over and over in an increasingly loud tone of voice. Then if the employee still did not understand, Appellant would typically state something to the effect of “What is it you don’t understand?” or “What is it you want?” Ms. Britton testified that Appellant was “just very, very cold” when she said these things.

64. Appellant raised her voice with Ms. Britton as well. Ms. Britton testified that the atmosphere between her and Appellant was very tense because Appellant was “constantly looking over my shoulder” waiting for Ms. Britton to make any mistakes she could then report to Ms. Chapman.

65. Ms. Britton testified that Appellant did not hide the fact that she did not have a good relationship certain employees, including Ms. Britton, Ms. Chapman, and Personnel Analyst Evon Lopez. Ms. Britton testified she shared a wall with Appellant’s office and could hear virtually everything that went on. Ms. Britton has overheard discussions with Ms. Chapman in which Appellant would not do what Ms. Chapman told her to do. She witnessed Appellant being argumentative and insubordinate with Ms. Chapman. Ms. Britton testified there was “always,” “constantly” conflict between Ms. Chapman and Appellant. She testified that Appellant would always challenge Ms. Chapman on virtually any topic or suggestion, including when the whole staff was present. Ms. Britton testified this was a “thing” between them. She testified that whereas Ms. Chapman does not raise her voice, these interactions would “get heated” because Appellant would raise her voice. Ms. Britton testified that all these descriptions applied to the period between May 1 and July 31, 2002.
66. Ms. Chapman asked Appellant, Ms. Lopez and Ms. Britton to work together on their personal conflicts. The three had a meeting to discuss options for working out their personal conflicts. Appellant felt the meeting went well. Ms. Britton thought it went poorly. Ms. Lopez did not testify. Both women approached Ms. Chapman, reported that they felt the meeting was unproductive, and asked that they not be required to meet again with Appellant in the future. When Appellant learned of this, she indicated to Ms. Chapman that they were being uncooperative and that Ms. Chapman should discipline them. \(^{13}\)

67. Ms. Chapman reported that such conflicts between Appellant and other employees were a common occurrence. Ms. Chapman testified that Appellant’s behavior was “frequently adversarial” and that Appellant would deny she needed to make any kinds of improvement when Ms. Chapman suggested this to her.

68. On June 26, 2002 four payroll clerks\(^{14}\) (revealed at the time of the hearing as Charlene Hoffman, Pat Donavan, Debbie Gokey and Linda Fuji) sent an anonymous written complaint to Ms. Chapman and Mr. Yearby (Exhibit 15). This letter indicates that during the previous 1 ½ years or longer, the quality of Appellant’s work performance was making it difficult for them to perform their payroll clerk functions in an accurate manner. Some of these problems included Appellant’s communications that have been inaccurate, incomplete or confusing, requiring several e-mail communications for them to feel comfortable with what was needed, confusion and frustration after monthly staff meetings with Appellant, problems with not receiving employee information during open enrollment, confirmation of insurance benefits sent to the wrong department, and uncertainty that information is correct due to numerous changes made by Appellant. The authors of the June 26 memo point out that employees may suffer adverse ramifications when Payroll is not adequately informed, and stated they generally feel the need to “tread lightly” around Appellant in order to do the job. None of the authors of this letter testified, and it is the only evidence of its contents.

69. Ms. Chapman testified that Marsha Cunningham, who was not one of the authors, handed this letter to her. Ms. Cunningham told Ms. Chapman she could disclose the identity of one of the authors if Ms. Chapman wanted to discuss the letter.

70. Appellant testified she knew nothing of this complaint until it was mentioned in the July 31, 2002 PEPR (see, Exhibit 11, p. 4, #7). Ms. Chapman testified she “generally” discussed this issue with Appellant but did not give Appellant a copy of the document because of its anonymity, and because it was the end of July before she had the chance to discuss the allegations with the authors of the letter.

71. In approximately June of 2002, Mr. Yearby expressed the expectation that Benefits should be able to do open enrollment independent of any assistance from ASPEN by this time. Appellant indicated to Ms. Chapman that she was capable of setting up the necessary tables.

\(^{13}\) See, footnote 11, above.

\(^{14}\) There are between 50 and 75 Payroll clerks with whom Appellant interacted regularly.
and assuming responsibility for full implementation of PeopleSoft administration in the
open-enrollment process.15

72. On July 17, 2002 Jody Smith sent an e-mail to Ms. Abeyta-Martinez requesting that she
assist in “refresher training” for the Benefits staff for open enrollment. Ms. Abeyta-Martinez
in turn sent an e-mail to Mr. Yearby, expressing reservations about Benefits’ ability to handle
open enrollment completely independently of ASPEN, because the staff did not have
comprehensive training in the tables set-ups. She reminded Mr. Yearby that she had to re-
enter the data during open enrollment the previous year. She further reiterated that Appellant
joined the ASPEN Project late in the process, was not involved with program design, and had
been denied previous requests to be more involved in the open-enrollment process. (Exhibit
19.)

73. Ms. Chapman adjudged Appellant’s ability to train others in utilization of the PeopleSoft
system to be very important. Given the length of her exposure to the PeopleSoft system, Ms.
Chapman expected Appellant to be able to conduct such training. However, Ms. Chapman
testified that Appellant was not capable of training employees on the implementation of
tables, and frequently asked others to correct errors that Appellant should have been working
on herself.

74. Appellant contends she could have led open enrollment for 2003 with some additional
training, and that she did provide a list of training she requested in order to prepare for open
enrollment. However, Appellant did not offer such a list and did not tender any evidence
tending to suggest she sought additional training in PeopleSoft. The Agency admitted during
the hearing that PeopleSoft Training in version 7.3 was no longer available during this rating
period. However, Appellant did not demonstrate that she sought and was refused training
from Ms. Abeyta-Martinez, who appears proficient in the existing PeopleSoft system, or
anyone else at ASPEN during the rating period in question or otherwise.

75. On July 31, 2002 Appellant received a PEPR with an overall rating of “Below Expectations”
(Exhibit 11). Appellant’s PEP Plan prepared in June of 2000 (Exhibit 18) was attached to
this PEPR as well. The duty items listed in the PEP Plan are the same as those in the PEPR.
The duty items included in this PEPR and the ratings thereon are set forth below in the
Discussion section.

Chapman denied Appellant’s step-one grievance on August 9, 2002.

77. On August 12, 2002 the Agency sent Appellant a contemplation of disciplinary action letter
(Exhibit 7). This letter referenced Appellant’s three “Below Expectations” PEPRs and her
prior written reprimands of November 30, 2000 and July 20, 2001. The letter cited CSR 16-

15 Ms. Chapman contends that Appellant subsequently sent an e-mail to Mr. Yearby stating that Benefits could not
execute open enrollment without assistance from ASPEN, and that Mr. Yearby referred this e-mail on to Ms.
Chapmen with his concerns that CSA still required assistance by ASPEN after three years. However, it appears that
the original e-mail actually came from Ms. Abeyta-Martinez, not Appellant.
78. Meanwhile, Appellant filed a step-two grievance of her third “Below Expectations” PEPR on August 12, 2002. At some point around August 18, 2002 Appellant was placed on medical leave. CSA Director Jim Yearby attempted to arrange a meeting with Appellant to discuss her step-two grievance, but because of Appellant’s medical unavailability, was unable to do so. On August 20, 2002 he sent her a constructive denial of her step-two grievance (Exhibit 6).

79. A predisciplinary meeting was held on August 20, 2002. The Agency subsequently sent Appellant a termination letter on September 3, 2002 (Exhibit 8).

80. Meanwhile, Appellant timely filed an appeal of her step-two grievance denial on August 28, 2002 (Exhibit 1).

81. Appellant subsequently timely filed an appeal of her termination on September 10, 2002 (Exhibit 2).

82. Mr. Yearby testified that the philosophy of the PEPR system is to state performance expectations and ratings. The purpose of the 90-day review period in the event of a “Below Expectations” PEPR is to notify the employee of a problem area(s) of performance and a reasonable period of time to improve performance in those areas. The question is what performance is specifically stated as needing improvement in a given PEPR. This program presumes some consistency in the job expectations and areas being rated.

DISCUSSION


The Agency’s decision to terminate Appellant is based on the fact that she received three consecutive “Below Expectations” PEPRs. Since the third of these is also under appeal in this case and the fate of that PEPR might affect the outcome of the termination, the hearing officer must first determine whether Appellant’s overall rating of “Below Expectations” in that PEPR was arbitrary, capricious, and without rational basis or foundation. The Discussion therefore begins with an examination of the individual items in Appellant’s July 31, 2002 PEPR (see, Exhibit 11) which were rated as “Below Expectations.”

Item 1: “Serves as functional lead for designing and implementing PeopleSoft Benefits Program.”

Under “Expected Accomplishments” in Appellant’s PEP (Exhibit 18, p. 1), the item reads:

Must have comprehensive understanding of PeopleSoft system. Determines the appropriate procedures for implementing and linking various programs.

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The Agency sets forth the following justifications for Appellant's "Below Expectations" rating in this category: her continued problems with the off-cycle DERP interface, her failure to implement the contractual changes to the Standard Life Insurance contract, delays caused by Appellant's inability to prepare STAT requests, and her difficulty in explaining the needed changes to the developers. The Agency further cites Appellant's failure to respond to Ms. Chapman's request to review and provide feedback on a white paper which addressed benefits strategies for a PeopleSoft upgrade, Appellant's inconsistent claims of being able or unable to assume full responsibility for the employment of the PeopleSoft Benefits module, and concerns about Appellant's inability to execute open enrollment independently.

This item is one of the most complex questions of the case. The hearing officer finds many of these complaints problematic. Particularly troubling is much of Ms. Abeyta-Martinez' testimony, which implies that in order to achieve independence from ASPEN, an individual must have high-level working knowledge and experience with the entire benefits module, including the tables set-ups, which Appellant and others at CSA have never had. The totality of evidence in this case tends to suggest that the customized implementation of PeopleSoft particular to any enterprise, including the City and County of Denver, requires familiarity with the specialized applications developed to suit that particular enterprise before the users can run higher-level production projects such as open-enrollment.

For similar reasons the hearing officer has serious reservations about holding Appellant completely accountable for her failures in the off-cycle DERP area, given that ASPEN's Human Resources Director herself testified that this error in the DERP tables dates back to their inception, and that they eventually had to approach the original developer for assistance. Ms. Britton's testimony that this issue remained unresolved until approximately a week before the hearing further supports that Appellant was not solely responsible for the prolonged lack of resolution here.

However, finding some aspects of the Agency's allegations problematic does not mean the rating of this item is arbitrary, capricious, and without rational basis or foundation. While Appellant clearly could not solve the DERP problem by herself, it is clear that she had known this problem existed from the beginning. Yet she has not shown why she did not attempt to initiate any kind of STAT request to resolve this problem until approximately May of 2002, when Ms. Abeyta-Martinez went on family leave. While the Agency did not rate her on this issue prior to that, this was apparently because Appellant repeatedly responded to Ms. Chapman's questions about the status of the project by telling her "it's being worked on." Appellant failed to rebut this assertion, and yet she proffered no evidence tending to show the project was, in fact, being worked on. While Appellant asserts the DERP STAT did not get properly submitted because of errors in her own STAT application, there is no explanation for why she made no attempt to initiate work on the project prior to that by calling in a request. Finally, Appellant did not call Mr. Passerelli or anyone else from ASPEN to prove the delay was beyond her control.

In addition, while Appellant alleges that Standard Life told her not to make any changes to the software until the contract was signed, she proffered no evidence in support of this assertion. Appellant did not offer a copy of the contract indicating when it was signed, or otherwise establish that it had not been, during the hearing. The hearing officer further finds
Appellant’s testimony that she submitted a STAT report on the contract changes in April of 2002 inconsistent with her assertions that the delay was related to the execution of the new contract, which she asserted was during the latter half of 2002.

There is also some evidence tending to support the Agency’s other complaints in this arena. The hearing officer is persuaded that Mr. Passerelli and Ms. Lopez both requested assistance from somebody else because they were having difficulties getting sufficient information from Appellant. As an expert admittedly trained in the City’s benefits programs, which is a separate issue from her knowledge in PeopleSoft, Appellant should have been proficient enough in these programs to communicate the Agency’s needs herself. Further, Appellant did not refute her failure to analyze and respond to the “white paper.”

Finally, this job responsibility is rated as Priority I, and is clearly central to Appellant’s duties. Appellant has been on notice since the beginning that this was the case. Therefore, even under the circumstances as Appellant pleads them, it was her affirmative duty to actively and aggressively pursue becoming accomplished in the City’s PeopleSoft application, and to prove that she had done so. While the hearing officer finds Appellant’s assertions that she is in need of further training persuasive, it was Appellant’s affirmative burden to prove her case. She nonetheless failed to provide any documentation evidencing any specific requests for such training, what type of training she was requesting and from whom, and therefore whether her requests, had they been granted, would have addressed the problems complained of.

In short, the Agency’s allegations regarding Appellant’s inability to achieve independence from ASPEN, particularly for purposes of open enrollment, are unpersuasive, and in fact appear disingenuous under the circumstances of ASPEN’s history. However, other allegations under this item concern Appellant’s knowledge in benefits programs, and her ability analyze problems, formulate solutions, and relay that information effectively to ASPEN and others. Such responsibilities, which are independent of her technical software proficiency, are clearly at the core of Appellant’s position. Appellant has failed to offer much critical evidence to demonstrate by a preponderance that a reasonable person, considering all the evidence, would fairly and honestly be compelled to conclude that Appellant met expectations in this job responsibility. Therefore, Appellant failed to meet her burden of proof that the Agency’s rating of this item is arbitrary, capricious and without rational basis or foundation. This rating is sustained.

Item 3: “Develops written procedures for various benefits.”

Under “Expected Accomplishments” in Appellant’s PEP (Exhibit 18, p. 1), the description for this item elucidates:

Written procedures must be comprehensive and simple to follow. Procedures for each benefit function should be completed by 12/31/2000.

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16 Items 2, 4, 10 and 14, not rated by the Agency in the July 31, 2002 PEPR, were not considered by the Agency and have been omitted from this analysis.

17 While this date is clearly antiquated and irrelevant, Appellant does not dispute that the continued update of the policy manual was her responsibility.
The Agency has submitted credible evidence supporting various alleged instances in which it requested that Appellant generate written policies and procedures; namely, those concerning newborn enrollment, and the correct use of social security numbers in CIGNA contract split.

It was Appellant’s burden to affirmatively rebut these charges. Appellant asserted during the hearing that she generated these written procedures for the manual, yet she failed to compel production of, request, or otherwise attempt to produce either the e-mails containing the updates, or the manual to which she claims she added written policies on these issues. She therefore failed to show that the Agency’s rating of “Below Expectations” is arbitrary, capricious, and without rational basis or foundation.

**Item 5: Analyzes and resolves problems related to employee benefits.**

Under “Expected Accomplishments” in Appellant’s PEP (Exhibit 18, p. 2), the description for this item states:

Works closely with carriers to insure eligibility issues are resolved in a timely manner. Mediates disputes regarding coverage issues.

In this item, the Agency complains of Appellant’s alleged failure to resolve the Law America situation independent of intervention by Ms. Chapman. The PEPR alleges that Ms. Chapman had to “continually provide guidance on what steps should be taken.” The PEPR further discusses lack of resolution of the newborn enrollment issue, and Appellant’s failure to respond to a situation where an employee was erroneously enrolled in Kaiser but lived outside the service area.

The hearing officer frankly found the Agency’s explanation of its complaints arising from the Law America situation vague and lacking in credibility. Clearly, the problem arose when Law America stopped making payments to the local law firms, and by the Agency’s own testimony the problem was only finally resolved when the contract with Law America recently expired and was not renewed. Appellant stated she did call Law America and, after having trouble getting them to respond, she was told they had solved the problem. There was no allegation that the problem continued. Ms. Chapman was vague and offered no explanation whatsoever concerning what Appellant did not do correctly. The hearing officer was left with no understanding of what other possible resolution could have been achieved other than letting the contract expire without renewing it.

The hearing officer is further left wanting for a clear explanation of the issue regarding an employee who was erroneously enrolled in Kaiser despite that he was outside the service area. Appellant was apparently expected to come up with some procedure to prevent this from happening in the future. Appellant testified that this was an isolated incident. Ms. Chapman testified that Appellant addressed the issue. Once again, the hearing officer was left with no conception of how Appellant failed in any way.
Finally, Appellant offered credible testimony by Ms. Washington that Appellant met with the Payroll staff to inform them of the pre-birth enrollment preparation procedures. Ms. Chapman admitted that Appellant contacted Payroll on this issue.

The hearing officer concludes that the complaints against Appellant in this item are so vague, obscure and inconsequential as to lead to a conclusion that, when examining only the justifications for this rating as they are set forth in the PEPR, a reasonable person would conclude that the rating is arbitrary, capricious, and without rational basis or foundation. 18

**Item 6: Demonstrates comprehensive understanding of the principles and practices of benefits.**

Appellant’s PEP (Exhibit 18, p. 2) states as follows in relevant part concerning this item:

Must understand all benefits provided by the city. Suggests service and process improvements...

The Agency complains in this rating that it has “asked for suggestions regarding benefits, and you either give no response, or you provide only one answer without considering all the implications.” While the PEPR sets forth no specific examples under this category, during her testimony, Ms. Chapman clarified that she was referring to a discussion which occurred at some point during the relevant time frame about a strategic plan for Benefits, during which Ms. Chapman asked Appellant for her input on cafeteria plans, and medical and savings benefits. Ms. Chapman testified that Appellant was unfamiliar with these benefits.

Appellant did not deny this accusation, or otherwise offer any evidence to rebut it. She therefore failed to show the rating of this job responsibility as “Below Expectations” was arbitrary, capricious, and without rational basis or foundation.

**Item 7: Customer Service.**

Appellant’s PEP (Exhibit 18, p. 2) describes this job responsibility as follows:

Responds to customers in a timely and accurate manner. Phone calls and e-mails are responded to within 24 hours, unless out of the office. Insures that calls and messages are forwarded and all mail is handled during prescheduled absences.

The Agency set forth in Appellant’s PEPR that “a few employees have indicated that they have tried to contact you and that you have not responded.” The Agency further references ASPEN’s request for another person to assist with the DERP interface and Standard Life problems, the anonymous letter sent to Mr. Yearby by several Payroll clerks, Appellant’s conflict with other employees, her criticism of a presentation she had begun to prepare which was later

18 It is not clear, however, why the Agency did not include any of its complaints about Appellant’s inability to effectively address the changes in the Standard Life and DERP interface changes in this category. Had it done so, the hearing officer might have reached a different conclusion regarding this Item.
taken over by Ms. Britton, and her failure to hold regular meetings with vendors, instead waiting until a crisis necessitates communication.

Appellant contends the allegation of her untimely responses is false and that she has made a specific, concerted effort to respond promptly to all inquiries since this issue was first brought to her attention.

The hearing officer finds several of the Agency’s complaints under this item unpersuasive. First of all, the vague allegation that “a few employees” were unable to reach Appellant is not supported by any specific incidents. Appellant cannot be expected to prove a negative by calling every employee with whom she communicated during the relevant period to testify that Appellant did respond in a timely fashion. Either the justifications for ratings set forth in the PEPR must be self-explanatory, or the Agency must provide some evidence of such allegations, or else they will be disregarded. The hearing officer is similarly unpersuaded by the complaint that Appellant has had conflicts with other employees, as this appears irrelevant to the issue of customer service. The same can be said of Appellant’s criticism of another employee’s presentation.

However, the hearing officer finds the documented complaint of several Payroll technicians persuasive. The Agency offered testimony that Payroll is considered a “customer” of the Benefits Unit. Appellant did not deny this, and failed to seek discovery on the issue or otherwise rebut this complaint. Finally, the hearing officer is persuaded that Appellant’s failure to conduct regular meetings with vendors is a legitimate concern that has gone unrebutted by Appellant.

Therefore, there is some evidence tending to support the Agency’s rating of Appellant’s performance as “Below Expectations” in the area of customer service. In light of this evidence, the hearing officer concludes the rating is not arbitrary, capricious, and without rational basis or foundation.

**Item 9: Communication.**\(^{19}\)

Appellant’s PEP (Exhibit 18, p. 2) describes her communications responsibilities as follows:

Maintains effective communication with all internal and external customers. Keeps supervisor informed of relevant business issues concerning CSA. Attends weekly meetings with supervisor, and prepares weekly status reports.

The commentary under this responsibility in Appellant’s July 31, 2002 PEPR vaguely references its request that Appellant “investigate and provide analysis of two problems” which Appellant allegedly failed to provide. The commentary provides no explanation of this statement and the reader is left to speculate as to what the Agency is referencing. This item further vaguely references a complaint from another employee requesting assistance with a flex cash issue, and there is no explanation in the evidence why Appellant should be responsible for such an issue.

\(^{19}\)Job Responsibilities numbers 8 and 13 were rated as “Meets Expectations” and are not included in this analysis.
However, the Agency does set forth more specific examples of the basis for its rating in this category. It references a letter Ms. Chapman asked Appellant to prepare for her signature, which contained grammatical and spelling errors, to which Appellant offered no rebuttal. It further sets forth that Ms. Chapman frequently needs to seek clarification from Appellant, and sometimes others, on the issues set forth in Appellant’s issues log. The explanation alleges that on occasion customers have also come to Ms. Chapman and others seeking clarification of Appellant’s communications, which are often vague and difficult to follow. The PEPR sets forth the examples of the DERP and Standard Life programming complications, which led the developers to request additional assistance from another Benefits employee. Finally, the explanation references Appellant’s ongoing conflicts with other employees. The testimony of both Ms. Chapman and Ms. Britton tends to suggest that Appellant was generally rude and insubordinate in her behavior toward Ms. Chapman.

Appellant has failed to effectively rebut nearly all of these allegations. The hearing officer therefore concludes that Appellant has not shown the Agency’s rating of this item is arbitrary, capricious, and without rational basis or foundation.

**Item 11: Training.**

This responsibility (Exhibit 18, p. 3) reads as follows in relevant part:

As assigned, attends training sessions on benefits, or other human resources topics...

The complaints set forth in this item of Appellant’s PEPR allege that Appellant has received more training “than the rest of the staff combined.” The evidence does not support this assertion, particularly where the nuts and bolts of the City’s customized PeopleSoft applications are concerned. However, the explanation further states that while Appellant presented a training calendar to prepare for open enrollment, she did not provide times or sources for the training requested. When Ms. Abeyta-Martinez (one of Appellant’s suggested sources after meeting with Ms. Chapman on this issue) went on extended leave and was unavailable to train Appellant, she failed to seek alternatives, inform the Agency of the lack thereof, or otherwise follow through. This item further complains of Appellant’s inability to apply training she has received (referencing writing training Appellant received but has apparently not been able to apply).

Once again, it was Appellant’s burden to provide sufficient evidence to show that a reasonable person would be compelled to rate her otherwise in this category. Yet Appellant failed to proffer a list of requested training, or to otherwise rebut these allegations. In the absence of such evidence, the hearing officer does not find the explanation for this rating arbitrary, capricious, and without rational basis or foundation.

**Item 12: Increases proficiency in technology related to benefits administration.**

The description set forth in the PEP (Exhibit 18, p. 3) for this last item rated “Below Expectations” in Appellant’s PEPR reads as follows in relevant part:
Through the course of the rating period, employee will be expected to increase knowledge and skill in the use of Windows NT and the PeopleSoft system...

Among the Agency’s many complaints under this item (several of which have already been enumerated and discussed above under other categories), the explanation includes an allegation that Laura Abeyta-Martinez stated that Appellant was incapable of independently executing open enrollment. However, the evidence suggests that it is the Benefits Unit in general that is not capable of performing this function because nobody there, including Appellant (as well as Ms. Chapman by her own testimony), has ever had the necessary training or exposure in tables construction. It appears to the hearing officer that every time somebody knowledgeable in tables construction comes into Benefits, they end up at ASPEN, during which assignment they are considered somewhat “off limits” in the pursuit of agency independence. The hearing officer concludes that the record does not support this allegation against Appellant.

However, allegations already established in Items 1 and 11 (above) establish that Appellant has not demonstrated she has otherwise actively pursued improvement in this area. For the same reasons as set forth under those categories above, the hearing officer concludes that Appellant has not shown the Agency’s “Below Expectations” rating of this responsibility is arbitrary or capricious, and without rational basis or foundation.

The above analysis results in the following conclusions:

<table>
<thead>
<tr>
<th>ITEM:</th>
<th>PRIORITY LEVEL:</th>
<th>RATING:</th>
<th>RESULT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>I</td>
<td>Below Expectations</td>
<td>Sustained</td>
</tr>
<tr>
<td>2.</td>
<td>I</td>
<td>Not Rated</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>II</td>
<td>Below Expectations</td>
<td>Sustained</td>
</tr>
<tr>
<td>4.</td>
<td>I</td>
<td>Not Rated</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>III</td>
<td>Below Expectations</td>
<td>Overturned</td>
</tr>
<tr>
<td>6.</td>
<td>II</td>
<td>Below Expectations</td>
<td>Sustained</td>
</tr>
<tr>
<td>7.</td>
<td>I</td>
<td>Below Expectations</td>
<td>Sustained</td>
</tr>
<tr>
<td>8.</td>
<td>II</td>
<td>Meets Expectations</td>
<td>Sustained</td>
</tr>
<tr>
<td>9.</td>
<td>II</td>
<td>Below Expectations</td>
<td>Sustained</td>
</tr>
<tr>
<td>10.</td>
<td>III</td>
<td>Not Rated</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>II</td>
<td>Below Expectations</td>
<td>Sustained</td>
</tr>
<tr>
<td>12.</td>
<td>II</td>
<td>Below Expectations</td>
<td>Sustained</td>
</tr>
<tr>
<td>13.</td>
<td>I</td>
<td>Meets Expectations</td>
<td></td>
</tr>
</tbody>
</table>

In short, Appellant generally contends that many of the Agency’s explanations for its allegations against Appellant are vague and difficult to follow. The hearing officer agrees in part with this allegation. The Agency’s lack of precision in its description of Appellant’s performance failures also lends some credibility to Appellant’s assertion that she was given unclear, inconsistent directions and in some measure was set up for failure.

However, Appellant bears the burden of proving that a reasonable person, considering the totality of the evidence, would fairly and honestly be compelled to reach a conclusion that Appellant’s overall performance for the relevant time period should have been rated other than
"Below Expectations." Appellant has not made such a showing in this case. Many of the projects the Agency alleges were deficient, by their very nature, required documentation. Appellant asserts that she satisfactorily completed these projects, yet has provided none of the documentation to prove her point. She asserts that the developers found her participation in the ASPEN Project valuable, but failed to call them as witnesses. Appellant had a right to subpoena these individuals and to compel the production of documentation in the Agency’s possession in order to demonstrate her burden. Such things were Appellant’s burden if she wanted to prove by a preponderance of the evidence that there was no rational basis or foundation for the Agency’s ratings. Yet despite that burden, she failed to take these affirmative evidentiary steps.

Thus, most of the “Below Expectations” ratings, including those for the two Priority I duties, have been sustained. Appellant’s PEP contains five rated Priority I duty items. Therefore, the hearing officer concludes that the rating of “Below Expectations” on two of these, in addition to several items of lower priority, represents a failure to meet expectations with respect to a significant portion of Appellant’s expected accomplishments. A reasonable person, considering all the evidence, would not be compelled to reach a different conclusion. For these reasons, Appellant’s overall rating in the July 31, 2002 PEPR of “Below Expectations” itself is not arbitrary, capricious, and without rational basis or foundation. It must therefore be sustained.

2. Severity of the discipline: a comparative analysis of each item consistently rated “Below Expectations” in the three consecutive PEPRs issued to Appellant.

In light of the hearing officer’s analysis of what is required to create a presumption that termination is within the range of reasonable alternatives based on three “Below Expectations” PEPRs (set forth above under section 2 b. of “Preliminary Matters”) the hearing officer must now determine whether the performance problems rated as “Below Expectations” in all three PEPRs are the same or sufficiently similar to determine that Appellant was put on notice of the behaviors and performance problems needing improvement. The following is a comparative analysis of the Agency’s ratings of Appellant’s job responsibilities in the three PEPRs at issue:

<table>
<thead>
<tr>
<th>PRIORITY</th>
<th>JOB RESPONSIBILITIES</th>
<th>Jan 16, 2002</th>
<th>April 26, 2002</th>
<th>July 31, 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>1. Serves as functional lead for designing and implementing People-Soft Benefits Program</td>
<td>Below Expectations</td>
<td>Below Expectations</td>
<td>Below Expectations (sustained)</td>
</tr>
<tr>
<td>I</td>
<td>2. Provides oversight to benefits staff</td>
<td>Below Expectations</td>
<td>No Rating (eliminated)</td>
<td>No Rating</td>
</tr>
<tr>
<td>II</td>
<td>3. Develops written procedures for various benefits</td>
<td>No Rating</td>
<td>No Rating</td>
<td>Below Expectations (sustained)</td>
</tr>
<tr>
<td>I</td>
<td>4. Prepares billings for carriers, submits to auditor’s office for payment</td>
<td>Below Expectations</td>
<td>No Rating (reassigned)</td>
<td>No Rating</td>
</tr>
</tbody>
</table>

20 Only three of these have been rated. The other two were not rated and have been disregarded. Therefore, of the Priority I items upon which Appellant was rated, she failed to meet expectations on the majority of them.
<table>
<thead>
<tr>
<th>III</th>
<th>5. Analyzes and resolves problems related to employee benefits</th>
<th>Meets Expectations</th>
<th>Meets Expectations</th>
<th>Below Expectations (overturned)</th>
</tr>
</thead>
<tbody>
<tr>
<td>II</td>
<td>6. Demonstrates comprehensive understanding of the principles and practices of benefits</td>
<td>Meets Expectations</td>
<td>Below Expectations</td>
<td>Below Expectations (sustained)</td>
</tr>
<tr>
<td>I</td>
<td>7. Customer Services</td>
<td>Below Expectations</td>
<td>Below Expectations</td>
<td>Below Expectations (sustained)</td>
</tr>
<tr>
<td>II</td>
<td>8. Provides training to payroll technicians and department representatives</td>
<td>Meets Expectations</td>
<td>Below Expectations</td>
<td>Meets Expectations</td>
</tr>
<tr>
<td>II</td>
<td>9. Communication</td>
<td>Below Expectations</td>
<td>Below Expectations</td>
<td>Below Expectations (sustained)</td>
</tr>
<tr>
<td>II</td>
<td>10. Reviews benefit programs effectiveness and recommends improvements</td>
<td>No Rating</td>
<td>No Rating</td>
<td>No Rating</td>
</tr>
<tr>
<td>II</td>
<td>11. Training</td>
<td>Below Expectations</td>
<td>Below Expectations</td>
<td>Below Expectations (sustained)</td>
</tr>
<tr>
<td>II</td>
<td>12. Increases proficiency in technology to increase accessibility of benefits information</td>
<td>Below Expectations</td>
<td>Meets Expectations</td>
<td>Below Expectations (sustained)</td>
</tr>
<tr>
<td>I</td>
<td>13. Confidentiality</td>
<td>Meets Expectations</td>
<td>Meets Expectations</td>
<td>Meets Expectations</td>
</tr>
<tr>
<td>III</td>
<td>14. Agency contribution</td>
<td>(not included)</td>
<td>(not included)</td>
<td>(not included)</td>
</tr>
</tbody>
</table>

Since it is the items consistently rated "Below Expectations" upon which the appropriate severity of discipline rests, several of the ratings are not relevant to this portion of the analysis. Items 2, 4, 10 and 14 were neither rated nor factored in Appellant's PEPRs. They have therefore been eliminated from the overall PEPR ratings. Item 3 was not rated in either of the first two PEPRs. Items 8 and 13 were rated "Meets Expectations" in the PEPR currently under review. Finally, Items 5 and 6 were rated "Meets Expectations" in one or both of the first two PEPRs. All these items have thus been disregarded in determining the severity of discipline in this case.

The remaining categories, consistently rated "Below Expectations" in all three PEPRs are in Items 1, 7, 9 and 11. Recalling that since the first two PEPRs were not appealed and their contents must therefore be taken as fact, the following is a brief overview of the issues raised...
under these items in each of the three “Below Expectations” PEPRs. For each item, a conclusion is then set forth concerning whether the issues raised therein are sufficiently similar to have put Appellant on notice of a need for improvement in the areas for three consecutive rating periods.

ITEM 1: Serves as functional lead for designing and implementing PeopleSoft Benefits Programs

a. January 16, 2002 PEPR (Exhibit 9, p. 2)

The issues raised by the Agency in this explanation include Appellant’s stated inability to handle open enrollment for the year 2002, despite that Appellant was involved in the process for the years 2000 and 2001. Problems and delays left the team in a position of having to work in a crisis mode. The Agency complained of having to rely too heavily on ASPEN. This explanation further alleges that Appellant was “involved in implementing the Benefit Programs in the PeopleSoft system.”22 It finally sets forth that Appellant must become more proactive in establishing independence from ASPEN, and explaining the business needs of Benefits to the developers for implementation in PeopleSoft.

b. April 26, 2002 PEPR (Exhibit 10 p. 2)

The explanation appearing under this item references Appellant’s reluctance concerning her role in entering and maintaining tables in PeopleSoft. It states that Appellant supported Laura Abeyta-Martinez’ suggestions that certain functions should remain the responsibility of ASPEN, despite the CSA’s goal of becoming independent from ASPEN, and remained resistive until Director Jim Yearby personally confirmed that CSA policy was to become independent. In addition, when Pat Rzezsut revoked Benefits’ access to the Human Resource panels, Ms. Chapman asked Appellant to look into allegations that there had been “problems” inserting rows. Appellant’s responses were vague and inadequate, and included Appellant confronting Ms. Rzezsut. It was also noted that this problem brought to the Agency’s attention that there were “several records that were pending for up to nine months.”

c. July 31, 2002 PEPR (Exhibit 11 p. 2)

This rating focuses on Appellant’s continued problems with the off-cycle DERP interface, the Standard Life Insurance contract, delays caused by Appellant’s STAT request complications, and her difficulty in explaining the needed changes to the developers. The Agency also reiterates concerns about Appellant’s inability to execute open enrollment independently.

Regarding Appellant’s inability to enter and maintain tables in PeopleSoft, and to run open enrollment completely independent of ASPEN, the hearing officer has found that holding Appellant accountable for her inability to do this to be arbitrary and capricious given her late

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22 The record in this case simply does not support this assertion. It is clear that the system was already designed when Appellant arrived at ASPEN. However, the hearing officer must take Appellants’ prior PEPR ratings, which were not appealed, as fact. This analysis reviews the substance of the prior ratings only for the purpose of determining consistency with the PEPR presently under appeal.
arrival at ASPEN, and her earlier complications with training in the City’s applications of PeopleSoft. In addition, there were no open enrollment activities during this period. Open enrollment was already completed and it is inappropriate to continue rating Appellant on it.

Furthermore, there are substantial differences between the three ratings under this item. However, while many of the specific problems complained of under Item 1 in the first two PEPRs are not identical to those complained of in the PEPR under appeal, common to all three ratings of this item is Appellant’s duty of explaining the business needs of Benefits to ASPEN, her failure to do so for extended periods of time, and the inadequacy of her explanations when she did undertake this duty. The hearing officer finds these complaints sufficiently similar for Appellant to have been put on notice that she needed to pursue greater proficiency and in this duty.

ITEM 7: Customer Service.

a. January 16, 2002 PEPR (Exhibit 9 p. 3)

The Agency first asserts that it “continues” to receive complaints about Appellant not responding to messages, failing to answer the phone when she is in the office, being “unclear” and “abrupt,” and growing defensive when confronted about these facts. The Agency sets forth that it received approximately five complaints during the previous year (2001).

b. April 26, 2002 PEPR (Exhibit 10 p. 3)

The Agency alleges “[t]here continues (sic) to be comments about you not returning calls timely...” that it has received reports of Appellant taking three days to respond, and being rude to and inconsistent with customers.

c. July 31, 2002 PEPR (Exhibit 11 p. 4)

There are two complaints appearing under this item of the PEPR under appeal that were not disregarded as arbitrary: Appellant’s failure to hold regular meetings with vendors, and the anonymous complaint from the Payroll technicians concerning Appellant’s inability to communicate clearly. Their complaints were that Appellant’s communications to Payroll during staff meetings are “inaccurate, incomplete, and confusing,” that they must engage in several rounds of e-mails to understand procedures, and that telephone requests languish with no response.

Appellant complains that she did not receive any notice of the complaints from Payroll until they appeared in her July 31, 2002 PEPR. However, complaints of unsatisfactory customer service had already been brought to Appellant’s attention in both her prior PEPRs. In addition, Appellant’s manner of presentation when dealing with customers has been consistently described as “rude,” “unclear,” “defensive,” “confusing,” and the like. The hearing officer finds the complaints set forth in the prior PEPRs sufficiently similar to those that have not been disregarded in the present one, for Appellant to have been put on notice that she needed to improve her customer service habits.
ITEM 9: Communication.

a. January 16, 2002 PEPR (Exhibit 9 p. 4)

The Agency complains of Appellant being defensive, unwilling to take direction, short, vague and disengaged. She frequently indicates there are problems and issues that need to be discussed but does not specify the problems and issues. This item also alleges that Appellant had sent some written documents outside the Agency which were difficult to understand and contained spelling and grammatical errors.

b. April 26, 2002 PEPR (Exhibit 10 p. 4)

Under Item 9 in this PEPR the Agency sets forth that Appellant came into Ms. Chapman’s office and threw documents on her desk, and refused to attend several bi-monthly meetings requested by Ms. Chapman to facilitate communication. Appellant refused to respond when Ms. Chapman said “good morning” to her, and accused Ms. Chapman of being incompetent in benefits administration.

c. July 31, 2002 PEPR (Exhibit 11 p. 5)

The complaints under this item in the current PEPR that have been sustained include the Agency’s allegation that Appellant prepared a letter for Ms. Chapman’s signature which again contained spelling and grammatical errors despite a recent writing workshop. Another substantiated issue is Appellant’s ongoing conflicts with other employees, including her incessant insubordination toward Ms. Chapman. The hearing officer further found the testimony of Ms. Britton persuasive concerning her personal experiences and observations of Appellant’s unprofessional communication habits and difficulties.

The hearing officer finds these items sufficiently consistent with the prior complaints to have put Appellant on notice that these communication problems needed improvement. Furthermore, Appellant’s relationships with Ms. Chapman and other co-workers were addressed twice before in Appellant’s November 30, 2000 and July 24, 2001 written reprimands.

ITEM 11: Training.

a. January 16, 2002 PEPR (Exhibit 9 p. 4)

In this PEPR the Agency sets forth under Item 11 that Appellant complains of inadequate training, but then makes no training requests that have been denied. It further sets forth that Appellant would request training assistance from Ms. Abeyta-Martinez, and then would let Ms. Abeyta-Martinez fix the problem at issue instead of fixing it herself. When Ms. Chapman sent Appellant information about PeopleSoft training on the Internet, Appellant failed to follow through on the training. Appellant also declined training in Windows, but then continued to have problems with basic Windows functions.
b. April 26, 2002 PEPR (Exhibit 10 p. 5)

Ms. Chapman requested a training plan and Appellant turned in flyers and eleven budget item requests for the training. Ms. Chapman interpreted this as Appellant not taking the assignment seriously.

c. July 31, 2002 PEPR (Exhibit 11 p. 6)

The Agency complained that while Appellant presented a training calendar to prepare for open enrollment, she did not provide times or sources for the training requested. Appellant failed to follow through on alternatives when Ms. Abeyta-Martinez went on extended leave and was unavailable to train her.

While the hearing officer finds the Agency’s complaints in the April 26, 2002 PEPR vague and somewhat confusing, the record generally supports consistency in Appellant’s failure to address her training needs in a complete and consistent manner. She finds that Appellant was sufficiently notified that she needed to provide complete, relevant training plans to the Agency, and aggressively pursue such a training schedule.

Thus, the hearing officer concludes that Appellant has been consistently put on notice of the same or similar performance areas needing improvement under all four of the above items. The hearing officer further concludes that these items, which include two Priority I Job Responsibilities, in addition to two Priority II Job Responsibilities, represent a significant portion of Appellant’s expected accomplishments. Based on the analysis of the governing regulations, three such similar PEPR’s are sufficient to create a presumption that termination is within the range of reasonable alternatives available to the Agency.

CONCLUSIONS OF LAW

1. Appellant has shown by a preponderance of the evidence that the rating of Item 5 as “Below Expectations” in the PEPR currently under appeal was arbitrary, capricious, and without rational basis or foundation.

2. Items 1 and 7 (Priority I job responsibilities) and 3, 6, 9, 11 and 12 (Priority II job responsibilities) of the PEPR currently under appeal are all sustained at ratings of “Below Expectations.” These items represent a significant portion of Appellant’s expected accomplishments. The PEPR under appeal is therefore sustained at an overall rating of “Below Expectations.”

3. The performance areas discussed and consistently rated as “Below Expectations” in items 1, 7, 9 and 11 of all three PEPRs are sufficiently consistent to have put Appellant on notice in both prior PEPRs that the same or similar performance areas were in need of improvement.

4. The items consistently rated as “Below Expectations” in the three PEPRs, including two Priority I items (out of a total of five Priority I items, three on which Appellant was rated) in addition to two Priority II items, represent a sufficiently significant portion of the employee’s
expected accomplishments to lead to a conclusion that termination is presumed to be “within the range of reasonable alternatives” under CSR 16-50 A. 19).

DECISION AND ORDER

Based on the Findings and Conclusions set forth above, the Agency’s decision to issue discipline Appellant a “Below Expectations” PEPR shall be AFFIRMED. The Agency’s decision to terminate Appellant is AFFIRMED.

This case is hereby DISMISSED.

Dated this 27th day of January, 2003.

Joanna Lee Kaye
Hearing Officer for the Career Service Board