

9/5/08

**HEARING OFFICER, CAREER SERVICE BOARD  
CITY AND COUNTY OF DENVER, COLORADO**  
Appeal No. 39-08

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**DECISION**

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**IN THE MATTER OF THE APPEAL OF:  
ARTHUR J. GALINDO, Appellant**

vs.

**DENVER HEALTH AND HOSPITAL AUTHORITY,  
and the City and County of Denver, a municipal corporation, Agency.**

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The hearing in this appeal was held on July 15 and 22, 2008 before Hearing Officer Valerie McNaughton. Appellant Arthur J. Galindo appeared and represented himself. The Agency was represented by Susan M. Stamm, Esq., and its advisory witness was Robert Christian. Having considered the evidence and arguments of the parties, the Hearing Officer makes the following findings of fact, conclusions of law and enters the following order:

**I. STATEMENT OF THE CASE**

Appellant Arthur J. Galindo held the position of Stock Clerk with the Denver Health and Hospital Authority (Agency) on the date of his termination, May 8, 2008. Appellant filed a timely appeal of the action on May 21, 2008 pursuant to the jurisdiction provided in the Career Service Rules (CSR) § 19-10 A. 1. a. The appeal also alleged that the termination was discriminatory on the basis of his race and national origin. Appellant voluntarily withdrew those claims on the second day of the hearing, July 22, 2008.

Agency's Exhibits 1 – 20, 23 – 28, 30 – 32, and 34 – 37. Appellant's Exhibit D was also admitted.

**II. ISSUES**

The following are the remaining issues in this appeal:

1. Did the Agency prove by a preponderance of the evidence that Appellant's conduct violated the cited Career Service Rules, and
2. Was termination within the range of discipline that could be imposed by a reasonable administrator for the violations proven by the Agency?

### III. FINDINGS OF FACT

Appellant has been an Agency employee since 1983. His job duties include the processing and delivery of packages to numerous buildings located on the campus of the Denver Health Medical Center, which covers several city blocks in central Denver. [Exh. 32.] On April 24, 2008, he was notified that discipline was being considered based on the following allegations:

1. On March 4, 2008, Appellant removed a co-worker's wedding ring from the sink in the employee break room.

2. At 8:50 a.m. on April 16, 2008, during his work shift, Appellant left the hospital campus by bus with Agency property, his Vocera pager, and did not return until 9:40 a.m.

3. On April 18, 2008, Appellant abandoned his delivery cart and left work at 9:50 a.m. without permission, returning at 10:34. That same day, he returned from lunch an hour late. [Exh. 2.]

The Agency's property policy requires an employee to turn over all found property to the Cash Handling Department for handling and disposition in keeping with state law regarding unclaimed property. [Exh. 15.] Its policy on breaks allows a maximum 15-minute break during any four-hour work period when permitted by the supervisor. [Exhs. 16, 18.] Breaks must be taken at the work station absent permission of the supervisor, and non-exempt employees are paid only for time actually worked. [Exh. 19.] "Leaving the premises during scheduled work time without supervisory approval is considered job abandonment and may result in termination." [Exh. 17.] The Distribution Services department has the same policies on breaks. [Exh. 37-3.]

#### 1. Co-worker's missing ring

At 8:19 a.m. on March 24, 2008, Stock Clerk Harold Madrid was in the employee break area located in the basement of the hospital warehouse. The sink is located in a small cabinet. Standing in a row to the right of the cabinet is a four-foot high locker, a four-foot long table, and a six-foot tall cabinet. The tall cabinet blocks the view of the table, locker and sink from the security camera located on the east wall across the room. [Exh. 35, drawing of Mr. Madrid.] The security video for that time shows that Mr. Madrid bent over out of view several feet behind the tall cabinet, then emerged rubbing his hands and arms.<sup>11</sup> [Exh.

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<sup>11</sup> While at the sink, the camera angle shows more of Mr. Madrid's body than is shown of others later on who are standing at the table, partially blocked by the tall cabinet.

20, 8:19 a.m.] Mr. Madrid testified that he removed his wedding ring before he washed his hands at the sink and applied lotion. He then left the area.

The security camera tape next showed activity at 8:28 a.m., when Appellant entered the basement break area near the sink and leaned over for about five seconds. He left by elevator a few seconds later. At 8:38 a.m., Appellant came back. He reached into the area behind the tall cabinet and leaned in for a few seconds. Appellant straightened up, leaned back in, and stretched his left arm out briefly. Mr. Madrid emerged from the elevator at 8:39, and Appellant turned his head to look at him. They both left the area two minutes later. Appellant entered the basement two more times, at 10:02 and 10:29 a.m., and bent over the sink area on both occasions. [Exh. 20.]

At 9:40 a.m., a food service worker in a shower cap sat down at the table and brought out his food. Another employee sat on a pallet near the opposite wall and they conversed for a few minutes. Neither approached the back area by the sink. Other employees came and went in the foreground, several feet away from the sink where the ring was left.

At 12:02 p.m., Mr. Madrid hurried into the basement and searched the area for two minutes. He was joined by Appellant and then fellow employee Danny Medina and Ron Vigil, who all continued the search for another fifteen minutes. [Exh. 20.] Appellant told Mr. Madrid that he would ask the two food service workers he had seen in the area earlier if they noticed the ring. Two days later, Mr. Madrid saw the workers and asked them if Appellant had asked them about his ring. "They both told me they had not been asked this by Art." [Exh. 28 d-1.]

As a part of the Agency effort to locate the ring for Mr. Madrid, the security videotape was viewed separately by both Agency Head of Security Larry Whitted and Steward Layhe, Senior Applications Analyst. Both concluded that Appellant was the only one who went to the sink area after Mr. Madrid left his ring there. [Exh. 26; testimony of Whitted and Layhe.] During Mr. Whitted's interview of Appellant about the missing ring, Appellant told him he knew about the ring, but had never been back in the area where it was lost before he helped to look for it. When Mr. Whitted stated that the security tape showed him in the area putting something in his right front pocket, Appellant said it was probably sugar. When asked if there was a coffee pot in the area, Appellant did not reply. Mr. Whitted later visited the break area and saw no coffee pot or sugar there. He also showed the video to Scott Hoyle from the Agency's legal department and Mr. Pettigrew. In his statement, Mr. Whitted noted that it was "determined by all that [Appellant] was clearly the only individual in this area the whole time." [Exh. 26.]

At the pre-disciplinary meeting, Appellant stated that he goes to the area where the ring was lost every morning to hang up his coat, make coffee and get sugar. Appellant added at that meeting and in his testimony that he is left-

handed, and so would not put anything in his right pants pocket. [Exh. 28-7.] Appellant testified that he did not see or take the ring, and would have returned it if he had, since Mr. Madrid is his friend and he considers a wedding ring sacred. Appellant also testified that it would not be theft if the owner forgot a ring, and another picked it up.

## 2. April 16<sup>th</sup> absence from the workplace

At 8:35 a.m. on April 16, 2008, Mr. Layhe and Applications Analyst Douglas Faraday were on their way to Starbucks on their morning break when they observed Appellant walk around the north side of 655 Broadway and stand at the bus stop in front of the building. Observing that Appellant had no packages with him, and knowing that Appellant's work assignment was several blocks away, they stood across the street at the corner of 6<sup>th</sup> and Broadway and watched Appellant for ten minutes. Because traffic on Broadway was light, they had a clear view of Appellant. At 8:50 a.m., they saw him get on the "0" bus heading south on Broadway. [Exh. 34, Layhe's sketch of area.] Mr. Faraday next saw Appellant coming from the front entrance at 9:40 a.m., again without packages, and head to the main hospital through the tunnels. [Exh. 28 b-6; testimony of Faraday.]

Mr. Layhe immediately called Division Director Phil Pettigrew on his cell phone, who then informed Appellant's supervisor Robert Christian that Appellant had been seen boarding a bus during work hours. Mr. Christian stated that Appellant had not asked his permission to leave. At about 9 a.m., Mr. Christian called Appellant on his agency-issued pager, known as the Vocera. Appellant did not answer the call, and Mr. Christian left him a voice mail asking him to call as soon as he receives the message. Appellant did not return the call until 9:45 a.m. Mr. Pettigrew saw that as an indication that Appellant left campus, as otherwise he would have returned the call within a few minutes. [Testimony of Christian, Pettigrew; Exh. 28 b-1.]

Later that morning, at the request of Mr. Pettigrew, Mr. Layhe reviewed the security videos of all cameras covering entrances to the work area building. He observed that Appellant left at 8:27 a.m. with a full pallet, and did not reappear until 9:42, at which time he was pulling an empty pallet jack. [Exhs. 28 a-1; testimony of Layhe.]

Mr. Pettigrew waited until the end of the day to give Appellant the opportunity to make up the time or properly record it as time not worked. After he noted that Appellant claimed eight hours of work from 7:03 a.m. to 3:27 p.m. for the day, Mr. Pettigrew met with Appellant and Susan Graul from the Human Resources department to ask for his explanation of the absence. Appellant denied he got on the bus. He admitted he was at the 655 Broadway bus stop, but said he was smoking at that location because he was in the area to verify pickup of packages he delivered to that building the previous day. Mr. Christian

later informed Mr. Pettigrew that 655 is not a delivery location for stock clerks, and that there is no reason for stock clerks to verify deliveries, since they are electronically confirmed at the time of delivery. [Exhs. 23, 30; testimony of Pettigrew.]

When questioned about his absence at the pre-disciplinary meeting, Appellant stated that he did not get on the bus, and that he sometimes circles the campus when he takes smoking breaks. He told Mr. Pettigrew that he may have used the bus stop near 655 Broadway rather than a closer smoking area because he sometimes goes back to see whether the previous days' package deliveries appeared on the scanner, which would confirm that they were picked up. [Exh. 28-6; testimony of Appellant.] At hearing, Appellant stated again that he was smoking at the bus stop on April 16<sup>th</sup>, but did not get on the bus, and returned his supervisor's page within fifteen minutes.

Mr. Christian testified that couriers perform the delivery service to 655 Broadway and all other outlying buildings. Stock clerks, including Appellant, deliver to all other buildings. Dispatch Supervisor Henry L. Jackson confirmed through his testimony that couriers drive vans to deliver to 655 Broadway and other outlying buildings. He stated that he would know if any stock clerk made a delivery to that building, and he had not requested any such delivery at that time. The smoking area closest to the division's work area is at Pavilion D, and 655 Broadway is five blocks from that area. [Exh. 32; testimony of Layhe.] The Analysis of Confirmation record indicates that deliveries are electronically confirmed on the date and time of delivery, and stock clerks are not instructed to re-visit the site of previous days' deliveries to physically confirm pick-up of a package. [Exh. 23, 30; testimony of Christian.] Both Mr. Layhe and Mr. Faraday testified that Appellant was not smoking when they saw him standing at the bus stop.

Appellant and all witnesses who addressed the subject agreed that a call to a Vocera unit can be delayed a few minutes at most if the receiving unit is in an elevator, tunnel or between buildings on campus, where transmission is imperfect. [Testimony of Appellant, Christian, Madrid, Pettigrew.] Appellant's time records showed that on April 16<sup>th</sup> he clocked in at 7:03 a.m. and out at 3:27 p.m., with a half-hour lunch, and that he was paid for an eight-hour work shift. [Exh. 25-2, 25-3; testimony of Pettigrew.]

### 3. April 18<sup>th</sup> absences

On April 18<sup>th</sup>, at about 9 a.m., Mr. Madrid saw Appellant on the phone in the basement warehouse, and overheard him say, "Are you home, bro? I will be right there." [Exh. 28 d-2; testimony of Madrid.] Appellant made four deliveries in Pavilion A from 9:49 to 9:56 a.m. [Exh. 23-1.]

At about 9:50 a.m., Mr. Layhe saw Appellant leave Pavilion A's Emergency Department building, and walk toward Broadway. [Exh. 32-2.] As Mr. Layhe entered Pavilion A, he observed an empty cart by the elevators. The cart was in the same place at 10:15 when Mr. Layhe next returned to the area. [Exh. 28 b-3.] April 18<sup>th</sup> was a payday, and Mr. Layhe knew it was Appellant's practice to walk to the bank with his check on paydays. Mr. Layhe suspected Appellant left work to cash his paycheck, and so he took a picture of the cart. [Exh. 24.] He then phoned Mr. Pettigrew to inform him of what he had seen. Since this appeared to be the same behavior exhibited a few days earlier, Mr. Pettigrew asked Mr. Layhe to let him know when Appellant returns. Mr. Layhe confirmed Appellant's return at 10:34 a.m. by review of the security camera tapes. [Testimony of Layhe, Pettigrew.] Since Appellant left his cart behind in Pavilion A, it is clear that he was not out making deliveries.

Mr. Madrid observed Appellant's cart by the Pavilion A elevators just after he saw Appellant on the phone. At 10:42 a.m., after Mr. Madrid finished his Pavilion A deliveries, he saw that the cart was still there. [Exh. 23-2; testimony of Madrid.] Mr. Madrid testified that April 18<sup>th</sup> was a Friday, usually their busiest day for deliveries, and on that day they were also backed up in receiving at the dock. He did not see Appellant again until 12:30, when he arrived at the receiving dock. [Exh. 28 d-2.]

After delivering packages to Pavilions D and E, Appellant left for lunch at about 11:00 a.m. with the permission of his supervisor. He called Mr. Christian at 11:40 to inform him he would be late. Appellant returned from lunch at about 12:30 p.m. His next delivery occurred at 12:44 p.m. [Exhs. 23-1, 28 b-5; 28 d-2; testimony of Christian, Madrid.]

The electronic delivery confirmation record show that Appellant delivered no packages from about 10:00 and 11:00 am, and from 11:01 to 12:44 p.m. [Exh. 23-1.] The time records indicate that Appellant clocked in at 6:59 a.m. and out at 2:40 p.m., with a half-hour for lunch. He was paid for 7 ¼ hours on that day, which included the two hours he was not at the workplace or at lunch, from 10 a.m. to 10:55, and again from 11:30 to 12:30 p.m. [Exhs. 23-1, 25-3; testimony of Madrid and Lahye.]

At the time of these attendance issue, the investigation into the theft of the ring was still ongoing. Mr. Pettigrew decided to interview Appellant's co-workers to get some idea of his work conduct and attendance, and to determine if the current issues represented a pattern of behavior or anomalies. All eight of those interviewed reported that Appellant was absent for long periods on a frequent basis. Two stated he would take long lunch periods. He was "elusive", "lazy," and "not dependable". He was known to turn in his equipment and stop working well before he clocked out at a remote building. Three reported threats or run-ins with Appellant. One of his previous supervisors stated he had poor productivity. The other stated he was "frequently reminded that he couldn't leave campus for

breaks and lunches" [and] [n]eeded to punch in and out because he couldn't be trusted." Mr. Christian, his current supervisor, stated Appellant took advantage of him, and as a result he "lost all trust in Art." [Exh. 27.]

### Penalty

On April 24, 2008, after completion of the investigation into the theft incident, Mr. Pettigrew sent Appellant a notice of contemplation of discipline based on allegations of misconduct arising from all three of the above incidents. Noted therein was Appellant's 23-year disciplinary history of four verbal reprimands for attendance issues, and four suspensions, including a 60-day suspension, for misconduct including theft, threatening behavior, absenteeism, violation of regulations and failure to comply with supervisor's instructions. [Exh. 2.]

At the pre-disciplinary meeting, Appellant denied taking the ring or leaving campus on the days in question. He stated he makes a run around the campus every morning to double-check his route, and that everyone smokes at the bus stop. [Exh. 28-4.] He told Mr. Pettigrew that he informed Mr. Christian he was running late coming back from lunch on April 18<sup>th</sup> because his mother was here for a cancer test. [Exh 28-7.]

After reviewing the facts relevant to the asserted misconduct and Appellant's response, Mr. Pettigrew concluded that Appellant had taken Mr. Madrid's ring and then denied it during the internal investigation. He also found that Appellant was absent from the workplace without permission from 8:50 to 9:45 a.m. on April 16, 2008, and for almost two hours on April 18, 2008. In making the decision to terminate, he considered Appellant's lengthy disciplinary history for absences and other issues, including a previous theft. He determined that the three incidents were part of a pattern of violating the Agency's rules on attendance and theft, including falsification of his time card, and that Appellant's supervisor had previously counseled Appellant about the rules and the consequences of any further violations. He ultimately concluded that there was no less serious discipline than termination that would improve Appellant's behavior, and dismissed Appellant effective May 8, 2008.

Appellant testified that he should have been advised by his supervisor if there were problems with his performance. He expressed his belief that Mr. Christian was the best supervisor he ever had, and that they could have worked out any problems. Appellant believes he was targeted for discharge because the Agency has a bias against city employees.

Mr. Christian testified that his supervisory style is relaxed and based on his trust in his employees to perform their work. He allows smoking breaks and lunch at any time, but employees are instructed that they must notify him before leaving the campus. They must work their assigned hours, and not exceed their

allowed lunch time or breaks without permission. Stock clerks may take breaks if they have completed their deliveries, but must always be reachable so that newly arriving packages can be delivered. Appellant was not a team player, and his productivity was "minimal." Appellant's hours were 7:30 a.m. to 3:30 p.m., but he often made no deliveries after 2:00 p.m. [Exh. 30] Mr. Christian testified that he has been a city employee himself for over thirty-seven years, and feels no bias against fellow city employees. [Testimony of Christian.]

#### IV. ANALYSIS

##### 1. Discipline under the Career Service Rules

In an appeal of a disciplinary action, the Agency has the burden to prove the action was taken in conformity with Rule 16 of the Career Service Rules, and that the degree of discipline was reasonably related to the seriousness of the offense, taking into consideration the employee's past record. CSR § § 16-20.

##### a) Neglect of duty

The Agency contends that Appellant's actions constituted neglect of duty in violation of CSR § 16-60 A. Neglect of duty requires proof that an employee has an important work duty and failed to perform it, resulting in significant potential or actual harm. In re Sienkiewicz, CSA 10-08, 15 (7/14/08).

The Agency established that Appellant had an important work duty to be available to deliver packages during his work hours. Appellant left the campus by bus on April 16<sup>th</sup> at 8:50 a.m., and did not reappear until 9:45 a.m. During that time, he failed to return his supervisor's page for forty-five minutes, and was therefore unavailable to perform his duties. Appellant left his cart unattended, and took his Agency-issued equipment, the Vocera, with him off campus, out of range to receive messages from his supervisor. Appellant's absence caused a loss of productivity in the operation of the unit, and required the involvement of the Division Director and unit supervisor to investigate his location.

Appellant denied that he left campus, but admitted he did not return his supervisor's message for fifteen minutes. He presented no adequate rebuttal of the credible eyewitness testimony of Mr. Layhe and Mr. Faraday, or the corroborating testimony of Division Director Pettigrew and supervisor Christian. Their testimony established that Appellant was absent from the workplace for about forty-five minutes, and that he claimed that time as work hours.

On April 18<sup>th</sup>, Appellant again absented himself for almost two hours and reported the time as work hours. Appellant responded that he may have been in the bathroom or reading the paper if he had "down time." The Agency rebutted that evidence by testimony that the absences took place on the unit's busiest day, a Friday, and that he was overheard on the phone stating, "Are you there,

bro? I will be right there.” He left the building at about 9:50 a.m., and did not reappear until about 11:00 a.m. Appellant did not deny that he was an hour late returning from lunch on that day, or that he claimed both periods on his time card as work time. He did not repeat his claim at the pre-disciplinary meeting that his long lunch was caused by his mother’s cancer test. In addition, Appellant did not make a claim for leave for that time, but rather reported it as work time. This absence too caused an increase in the workload for other employees, and disrupted package receipt and deliveries for two periods during a busy Friday.

The Agency also contends that Appellant had an important work duty to turn in found property to the Agency custodian. Appellant denies that he found Mr. Madrid’s ring. The Agency’s security video rebuts that evidence. Appellant was the only one who approached the location where the ring was left between 8:20 a.m., the time it was placed on the sink, until 12:02 p.m., when a thorough search determined that the ring had been removed from the sink. In addition, the video shows Appellant bending over the sink and moving his arms in a manner suggestive of placing an object in his pocket.

During the internal investigation, Appellant initially denied ever having been at the area near the sink. After learning there was a video, he stated that he may have put sugar in his pocket. At the pre-disciplinary hearing, Appellant admitted that “he goes there every morning – hangs coat & makes coffee – gets sugar packet.” [Exh. 28-7.] At hearing, Appellant argued that it would not be a theft if someone merely found something that another misplaced, but agreed that it would not be appropriate for anyone to take a found item and put it in their pocket. Appellant also claimed that he was being targeted for discipline for being a city employee.

The evidence supports a conclusion that Appellant neglected his duty to be at the workplace and available for work on April 16<sup>th</sup> and 18<sup>th</sup>, and that he neglected to perform his obligation to return found property to either its rightful owner, who was known to him, or to the Agency custodian. Appellant failed to present any evidence that Mr. Pettigrew had any bias against Appellant based on his status as a Career Service or city employee. Mr. Pettigrew noted that one-third of his 87 employees, including Mr. Christian, are city employees.

b) Carelessness

The Agency also contends Appellant was careless based on the three incidents alleged. This rule requires proof that an employee performed an important duty poorly, rather than neglecting to perform it at all. In re Hill, CSA 14-07, 6 (6/8/07). Instead, the evidence established that Appellant failed to be at work to perform his duties on two occasions, and that he failed to turn over found property to its owner. While all three are violations of other rules, they do not establish that Appellant performed his duties without the requisite care. Therefore, the Agency did not prove carelessness in violation of CSR § 16-60 B.

c) Theft and dishonesty

The Agency alleged that Appellant stole his co-worker's ring, in violation of CSR § 16-60 C.2, and that he lied to his superiors with respect to its internal investigation into that theft, which was part of a disciplinary action, contrary to § 16-60 E.3.

Appellant denied that he saw or took the ring. I have found that Appellant's denial is not credible based both on the evidence of the security video, and his earlier untrue statements during the initial questioning by Mr. Whitted. At the pre-disciplinary meeting, Appellant directly contradicted those statements by admitting he goes to the area every morning. The Agency proved that Appellant removed the ring during his work shift, and that he never returned it to its owner. Therefore, the Agency established that Appellant violated § 16-60 C.2 by stealing property of another person while on duty.

Next, the Agency presented evidence that Appellant lied to the official investigating the theft. Appellant first denied that he had been back at the sink area, or that he had ever been back there. Since the sink is in the employee break area, and Appellant had been an employee since 1985, the denial was not believable. Appellant amended his statement to allow he may have been back there to get sugar once he was informed there was a video of the time and place in question. At the pre-disciplinary meeting, Appellant admitted that he goes to this area every day to hang up his coat and make coffee. However, those statements likewise were not credible, since there is no coffee pot or related supplies stored in the area. Appellant maintained his denial that he found or kept the ring throughout the hearing.

Lying during an official investigation into a disciplinary matter violates this rule for obvious reasons. Misleading or untrue statements undermine the efforts of an agency to determine the truth in the investigation, and weaken the trust needed between the agency and its employees.

I conclude that the Agency proved Appellant violated § 16-60 E.3 by his untrue statements to Mr. Whitted during the investigation into the theft of the wedding ring.

d) Failing to comply with supervisor's orders

The Agency asserts that Appellant failed to comply with his supervisor's orders not to leave campus during work hours without permission, to restrict his breaks to 15 minutes, and limit his lunch to a half hour. Appellant contends that he did not leave the medical center campus, and that he was performing his duties or on "down time" at the relevant times on April 16<sup>th</sup> and 18<sup>th</sup>.

The Agency presented the testimony of Mr. Layhe and Mr. Faraday, who state that they observed Appellant for several minutes waiting at a bus stop, and saw his shadow walk down the bus aisle after the "O" route bus stopped in front of Appellant. They state that Appellant was not at the stop after the bus pulled away. Appellant claims they may have assumed he got on the bus, but he may actually have walked through the parking lot south of 655 after finishing his cigarette. [Exh. 34.] The Agency rebutted that contention by evidence that the two men were able to observe Appellant from across the street for about ten minutes, and they did not see him smoking. Other evidence also strongly placed in doubt Appellant's version of events, which was that he walked five blocks, passing several smoking areas, so that he could circle the campus to confirm the past day's deliveries to 655, a building not serviced by stock clerks. It is further noted that next-day confirmation of deliveries was not a part of Appellant's job, as confirmations are done electronically at the time of delivery.

I find that the Agency proved by a preponderance of the evidence that Appellant left campus on April 16<sup>th</sup>, extended his lunch on April 18<sup>th</sup>, and took extended breaks on both April 16<sup>th</sup> and 18<sup>th</sup>, in violation of his supervisor's orders, and CSR § 16-60 J.

e) Failing to observe departmental regulations

The Agency next charges Appellant with violating its policies regarding found property and attendance. Appellant denies he violated any of those policies.

The Agency's policy on found property requires an employee to turn over all found property to the Cash Handling Department for handling in accordance with policy and state law. [Exh. 15-1, 15-3.] The Agency established that Appellant found the ring on March 24, 2008, and neither restored it to its owner nor placed it in the possession of the Agency custodian pursuant to this policy. It could be argued that from the time Appellant found the ring at the sink at 8:30 a.m. until about noon that day, he was unaware of its rightful owner. However, Appellant was obligated to give the ring, undeniably a valuable piece of property, to the Agency's designated custodian for lost property as soon as he found it. Therefore, Appellant was in violation of this Agency rule.

The break policy requires supervisory permission to take a maximum 15-minute break during any four-hour work period. [Exhs. 16, 18.] Lunches are limited to one-half to one hour. [Exh. 17-3.] Mr. Christian set lunch breaks for his stock clerks at a maximum of one-half hour. Breaks must be taken at the work station absent permission of the supervisor. [Exh. 19.] "Leaving the premises during scheduled work time without supervisory approval is considered job abandonment and may result in termination." [Exh. 17.] The Distribution Services department has the same policies on breaks. [Exh. 37-3.]

Mr. Christian testified that he did not require the stock clerks to ask his permission to take breaks or lunch, preferring to allow his employees to take them whenever their workload allowed. However, he insisted that breaks must be restricted to fifteen minutes per four-hour work period, and that lunch was a maximum of one-half hour, consistent with Distribution Services policy. The Agency proved that Appellant was unavailable to work, and thus on an impermissibly extended break, on the mornings of April 16<sup>th</sup> and 18<sup>th</sup>. On April 16<sup>th</sup>, he left the premises without permission, in violation of Employee Principles and Practices #4-122. [Exh. 17.] On April 18<sup>th</sup>, he extended his lunch by an additional hour, in violation of Distribution Services rules. [Exh. 17-3, § IV. B.] Appellant's explanations of his absences were unconvincing, as found above, given the weight and credibility of the Agency's eyewitness, circumstantial and documentary evidence to the contrary.

The Agency proved that Appellant violated both its policies on found property and breaks by his actions on March 24<sup>th</sup>, April 16<sup>th</sup>, and April 18<sup>th</sup>, 2008.

f) Unauthorized absences

The Agency supported this allegation by evidence that Appellant was absent without permission on April 16<sup>th</sup> and 18<sup>th</sup>. As found above, the Agency established that Appellant was not at work or on campus for forty-five minutes on April 16<sup>th</sup>. He was absent for a total of two hours on April 18<sup>th</sup>, having left the campus to visit a friend or brother at his home in the morning, and having delayed his return from lunch by an hour later that day. The Agency presented the testimony of eyewitnesses Layhe, Faraday and Madrid, Appellant's time records, and Appellant's failure to return his supervisor's call for forty-five minutes. As additional support, the Agency presented the results of the director's interviews with eight co-workers and supervisors, all of whom verified that Appellant was often missing from the workplace for long periods. His supervisor and others observed that he was often gone for a half hour to an hour on paydays to cash his check. They also noted it was his practice to turn in his equipment and thus stop working well before clocking out on most days. Appellant presented no rebuttal of the Agency's convincing evidence.

I find that Appellant violated CSR § 16-60 S. prohibiting unauthorized absences on both April 16<sup>th</sup> and 18<sup>th</sup>, 2008.

g) Conduct violating city rules, charter, municipal code

The Agency presented no evidence that Appellant violated any rule or provision of the City Charter or Municipal code, and therefore I find that this allegation was not proven.

h) Conduct prejudicial to good order and effectiveness of city

Likewise, the Agency presented no evidence or argument that Appellant's conduct was prejudicial to the good order and effectiveness of the Agency, or that it brought disrepute on or compromised the integrity of the City and County of Denver. I find that this allegation was not proven.

2. Appropriateness of Penalty

The final issue is whether dismissal was an appropriate penalty given all the facts, including the nature of the proven misconduct and Appellant's work and disciplinary history.

The Agency performed a thorough investigation into the allegations of theft and absenteeism, including a review of Appellant's time records, interviews with eyewitnesses and co-workers, investigation into Appellant's claims made during the initial interview and pre-disciplinary meeting, and review of his performance and disciplinary records. Based thereon, Mr. Pettigrew concluded that Appellant's conduct established a continuation of a long-standing pattern of behavior of ignoring the Agency's rules. He also concluded that no lesser punishment would have the desired effect of improving Appellant's workplace conduct. Appellant's supervisor Mr. Christian agreed that dismissal was appropriate, despite their previous positive relationship, and Appellant's expressed opinion that Mr. Christian was the best supervisor he ever had. Appellant failed to present any credible evidence that his termination was rooted in bias against city employees rather than the underlying facts supporting discipline.

Appellant's continued denial of any wrongdoing renders it unlikely that a fifth suspension would correct the same inappropriate behavior for which Appellant had received previous reprimands and suspensions over the course of his twenty-three years of employment. I find that termination was reasonably related to the seriousness of the offenses, and that the Agency properly considered Appellant's past employment and disciplinary records under CSR § 16-20.

Order

Based on the foregoing findings of fact and conclusions of law, it is determined that the Agency's action dated May 8, 2008 is AFFIRMED.

Done this 5<sup>th</sup> day of September, 2008.

  
Valerie McNaughton  
Career Service Hearing Officer