

**DECISION AFFIRMING INVOLUNTARY DEMOTION**

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**DANIELLE GARCIA**, Appellant,

v.

**FACILITIES MANAGEMENT, DEPARTMENT OF GENERAL SERVICES,**  
and the City and County of Denver, a municipal corporation, Agency.

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**I. INTRODUCTION**

The Appellant appeals her demotion for alleged violations of specified Career Service Rules, and Agency regulations. A hearing concerning this appeal was conducted by Bruce A. Plotkin, Hearing Officer, on September 25, 2017. The Agency was represented by Natalia Ballinger, Assistant City Attorney, while the Appellant was represented by her representative Regina Garcia.<sup>1</sup> Agency exhibits 1-3, and 5-18 were admitted.<sup>2</sup> Appellant's exhibits A through F-2 were admitted. The following witnesses testified for the Agency: Leroy Lemos, Kevin O'Neil, Yvonne Chavez and James Williamson. The Appellant testified on her own behalf during her case-in-chief, and presented testimony from Daniel Cooks.

**II. ISSUES**

The following issues were presented for appeal:

A. whether the Appellant violated any of the following Career Service Rules (CSRs): 16-29 A, G.1, I, L, R, or T.<sup>3</sup>

B. if the Appellant violated any of the cited CSRs, whether the Agency's decision to demote her conformed to the purposes of discipline under CSR 16-41.

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<sup>1</sup> The Career Service Rules permit representation by a non-attorney representative. [CSR 19-40 B.3.]. An inquiry conducted before hearing satisfied me that the representative was sufficiently qualified to represent the Appellant with respect to the claims and defenses in this appeal.

<sup>2</sup> The Agency had also proffered exhibit numbers 19 and 20, but withdrew them at hearing.

<sup>3</sup> During hearing, Appellant's representative conceded Appellant violated CSR 16-29 A, G.1, I, R, and T, and contested only CSR 16-29 L (Discrimination or harassment based on a disability), and also contested the degree of discipline. Appellant independently affirmed that her conduct violated the aforementioned rules. Thus, the Analysis section of this Decision addresses only those facts, arguments, and conclusions regarding disability discrimination or harassment. However, I expanded the Findings section beyond what is necessary under the remaining contested rule violation, in order to provide context for the Degree of Discipline section, and to provide the factual basis for the conceded violations.

### III. FINDINGS

The Appellant, Danielle Garcia, has been employed in the Agency for twelve years. Before her demotion, her classification was Utility Worker. Her duties included janitorial, maintenance, snow removal, grounds maintenance, and setting up and taking down the equipment for public events throughout the City. This last duty placed her in frequent contact with public officials and other members of the public. For that reason, Utility Workers are extensively trained in, and are held to, a high standard of behavior. The Agency's emphasis on this requirement is well-documented in its handbook, by written and verbal reminders, in its work duties (PEP) standards, and by ongoing training in how to counter hostile interactions. Garcia acknowledged she was trained in "Respectful Workplace" in 2013 and again in 2014. [Garcia cross-exam]. She also acknowledged she completed a course in 2016 titled "Customer Service Confrontation and Conflict." [Garcia cross-exam].

Garcia received a written reprimand and ongoing counselling for her past inappropriate attitude, outbursts, and hostility. While she has documented difficulty with self-control, Garcia otherwise performs her duties with a high degree of diligence and acumen as noted in her many complimentary work reviews (PEPRs)<sup>4</sup> [Exh C-1 through C-3; 6; 7] and commendations. [Exh D-1 through D-4].

On March 17, 2017, Garcia was a passenger in a City truck driven by her co-worker and friend Daniel Cooks. They drove to a Department of Human Services building to make a delivery. The building is frequented by the disabled. When they arrived, the only spaces available were reserved for the disabled. Although they had been counselled not to park in reserved/disabled spaces, Cooks parked in one of them.<sup>5</sup>

V.H., who had recent foot surgery and possessed a temporary handicap placard, pulled into the still-full parking lot and noticed the City truck parked in a restricted/disabled space. Hoping the City workers would exit shortly, she waited behind the truck. When Cooks and Garcia returned, a heated altercation ensued between Garcia and V.H. Garcia raised her middle finger at V.H. V.H. took a picture of the act. [Exh. 2].

V.H.'s complaint quickly went up through the chain of command. Garcia complied with the Agency's request for her statement of the incident, in which Garcia admitted flipping off V.H. [Exh. 8].

The Agency served Garcia with a letter in contemplation of discipline on May 8, 2017, and convened a pre-disciplinary meeting on May 16, 2017, attended by Garcia and her representative. The Agency served Garcia with its notice of "Involuntary

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<sup>4</sup> PEPR=Performance Enhancement Program Report

<sup>5</sup> Cooks protested he parked only partially in the reserved/disabled space, a distinction that is irrelevant. The Agency's notice of discipline appears to have charged Garcia with some unspecified violation for her role in parking a City vehicle in a reserved/disabled space, but the connection was unclear, particularly as she was a passenger, not the driver. The Agency provided no meaningful link between the wrongful parking and Garcia, so no violation was established.

Demotion Disciplinary Action” on June 2, 2017. This appeal followed by timely filing on June 15, 2017.

#### IV. ANALYSIS

##### A. Jurisdiction and Review

Jurisdiction is proper under CSR §19-10 A.1.c., as the direct appeal of an involuntary demotion. I am required to conduct a *de novo* review, meaning to consider all the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

##### B. Burden and Standard of Proof

The Agency retains the burden of persuasion, throughout the case, to prove Garcia violated CSR 16-29 L, and to prove its decision to demote Garcia complied with CSR 16-41. The standard by which the agency must prove its claims is by a preponderance of the evidence.

**C. <sup>6</sup> CSR 16-29 L. Discrimination or harassment as defined in this Rule 16.<sup>7</sup> This includes making derogatory statements based on... disability. [CSR 16-22 B.1.] This prohibited conduct need not rise to the level of a violation of any relevant state or federal law before an employee may be disciplined and the imposition of such discipline does not constitute an admission that the City violated any law.**

The Agency's claim under this rule is entirely based upon a portion of V.H.'s complaint in which she claimed, during her altercation with Garcia, Garcia said “Fxxk this stupid bxtch, it's not my fault she has a fxxking disability. I ain't the one here begging for free services and assistance, I have a job.” [Exh. 1-18; Williamson testimony].

Garcia denied having made any of those statements. Cooks claimed not to have heard any of the exchange. [Cooks testimony and cross-exam]. Incongruously, he recollected that he was tempted to respond to V.H. but refrained. “She started going on her little rant... I could have retaliated and said some things back to her but...”, making it puzzling how he could respond to V.H. if he did not hear what she said.

In considering credibility, Garcia was not charged with dishonesty and none was proven. V.H. did not testify, and was, therefore, not subject to cross-examination; her hearsay statements were not sworn; despite the able efforts of the Agency's attorney in closing argument, it remains unknown how disinterested she was; and most importantly, there was no corroboration for V.H.'s hearsay statement. See industrial

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<sup>6</sup> I remind readers that while this section normally lists all violations alleged in an agency's notice of discipline, there remained only one violation to be decided after hearing, thus accounting for the discrepancy, above, listing of all violations which were alleged at the beginning of hearing.

<sup>7</sup> CSR 16-22 *et seq.*

Claims Appeals Office v. Flower Stop Marketing Corp., 782 P.2d 13, 18 (Colo. 1989).  
Cook's selective recollection did not assist either side.

In sum, there were insufficient indicia of reliability to accede to the Agency's request to adopt V.H.'s version of her interaction with Garcia. Consequently, the Agency failed to prove Garcia uttered the above-referenced statement by a preponderance of the evidence. As there was no other basis for a violation under this rule, the Agency failed to prove Garcia violated CSR 16-29 L. by a preponderance of the evidence.

By her acknowledgement, Garcia raised her middle finger at V.H. She also acknowledged that action constitutes a violation of CSR 16-29 A, G.1, I, R, and T. Those violations are established by admission.

## **V. DEGREE OF DISCIPLINE**

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-41 to consider the severity of the offense, an employee's past record, and the penalty most likely to achieve compliance with the rules. CSR 16-41.

### **A. Severity of the proven offenses**

Ultimately, all City employees are employed to serve the citizens of Denver. Some agencies' employees have more contact with the public than others, and the employees of the Facilities Management Division, as stated by its Director, James Williamson, have a high degree of public contact. Consequently, the Agency is justified in emphasizing and requiring its employees to maintain courtesy and respect regardless of the actions of any particular member of the public, and regardless of the personal circumstances of an employee. The Agency's employee handbook, extensive training and repeated reminders, [Exh. 9; 10; 11; Chavez testimony; Williamson testimony] are testaments to the Agency's determination to require civility from its employees. Garcia's actions violated that core tenet and reflected poorly on the Agency and the City.

### **B. Past Record**

The Agency readily acknowledged Garcia excels at being on time and carrying out her assignments. She has received commendations from outside customers. [D-1 through D-3]. At the same time, Garcia's inexcusable<sup>8</sup> actions toward a member of the public were not, as she claimed, a unique response to a combination of fatigue and provocation, but the continuation of a pattern of explosive outbursts, followed by denial of any wrongdoing, including:

1. 1/30/14 Verbal Reprimand by supervisor Chavez for two witnessed incidents of confrontation with a co-worker, Raul Caballero, one of which caused a security

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<sup>8</sup> See below under "Likelihood of Reform" regarding Garcia's claimed excuses for her actions.

supervisor to come out of her office to inquire if she needed to intervene. [Exh. 3]. Garcia denied any fault, instead claiming, in a different incident, that Caballero was at fault. [Garcia testimony].

2. In Garcia's 2016 PEPR, following Garcia's loud, foul, and public displeasure over the location to meet during a fire drill, Chavez' suggested ways for Garcia to improve her public responses. Immediately following the suggestions, Garcia blamed her supervisor, writing her responsive comment "cuz she had us in the sun at a fire drill [illegible] all were in the shade where we usually go, so she blew up on me." [Exh. C-3, p. 3; n. 7 below].

3. 8/16/16 Counselling by supervisor O'Neil after Garcia asked her supervisor Chavez "why she was such a bitch!" [Exh. 5]. At hearing, Garcia complained vehemently about her dislike for Chavez as a poor supervisor, while failing to deny she denigrated and swore at Chavez. Chavez testified she thinks Garcia is a good employee even while, in essence, demurring that Garcia frequently was abusive toward her.<sup>9</sup>

It was apparent Chavez failed to equate Garcia's intolerable behavior with performance deficiency, by giving overall high work review ratings to Garcia, even recommending her for promotion to supervisor, while minimizing Garcia's outrageous behaviors in her PEPRs and at hearing.

In addition, Garcia's annual performance reviews (PEPRs) demonstrate an unbroken pattern of intolerance and poor behavior. For example:

1. 2013. In supervisor comments, Chavez wrote "I will provide Danielle with more coaching to ensure she understands the importance of getting along with her co-workers." [Exh. 6-3].

2. 2014. Chavez rated Garcia's overall performance as "exceeds expectation" even while pleading with Garcia to be nicer to co-workers and to her. "Please remember that everyone does not work as efficient as you so please have [patience] when dealing with your co-workers and your supervisor." [Exh. C-1, p.3].

3. 2015. Chavez praised Garcia because she "has come a long [way] from a couple of years past." This praise was short-lived and was significantly tempered by her comments the next year as follows.

4. 2016. Chavez wrote [Category: Respectful Workplace] "Danielle has had an issue with this category every year to some degree if not with her supervisor, then with one of her co-workers. The use of [foul] words [is] not acceptable at work. Danielle need[s] to defuse the situation or she need[s] to walk [a]way from the situation. Other

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<sup>9</sup> For example, in un rebutted testimony, Chavez was asked "Did she [Garcia] say anything toward you that you would consider inappropriate?" Chavez answered "she did a lot of times." Also un rebutted was Garcia's out-of-proportion response to a disagreement over where to meet during a fire drill. Garcia did not deny she yelled at Chavez "this is fucking bullshit, I don't know why we have to do this shit," and when Chavez directed Garcia to go to the office to talk about it instead of continuing a loud, public tirade, Garcia told her "I'll think of something to snitch you out about." [Chavez testimony].

people hear what's going on around them and they (clients) should not be subject to a utility worker's vocal dissatisfaction with something that the employee feels is not right. This should be dealt with in private."

Garcia denied she has an ongoing problem with her behavior. She attributed that claim as nothing more than false accusations by one co-worker, Raul Caballero, and one supervisor, Chavez, accusing both of the same abusive conduct with which she was charged in this appeal. However, Garcia provided no evidence she ever complained to a supervisor about her co-worker, no evidence she filed a grievance about Chavez, and no evidence she filed a grievance about her 2016 PEPR rating. If Chavez behaved as badly as Garcia claimed, ("she has no respect for employees") [Garcia testimony], it was surprising she did not file a complaint, given her outspokenness.

Finally, regarding Garcia's claim of mitigation in the parking lot standoff at the center of this appeal, she alleged (1) V.H. started the confrontation, yelled obscenities at her and flipped her off first; (2) she and Cooks were doing the work of five, as other co-workers were out sick or otherwise absent, resulting in their being under much stress; and (3) she (Garcia) was justified in responding in-kind to V.H. because V.H.'s conduct pushed Garcia beyond her tolerance. "A person can only take so much." [Garcia cross-exam].

### **C. Likelihood of Reform**

Garcia felt fully justified in raising her middle finger during and after the incident, including at hearing. Garcia's statement in response to the incident defended her actions by blaming V.H. "[S]he went off on me yelling n screaming nasty words such as a bitch and a cunt then flipped us off so I raised my finger back to her... she really got to me with all the words she was yelling that made me react to flip her back off." [Exh. A].

Garcia's written denial, and continued insistence, through hearing, that her inappropriate behavior did not originate from her, but only as a justified reaction. She continued, even through hearing, to blame her supervisor for her own outbursts and a co-worker for her own hostile reactions. Thus, she stated "taking responsibility" leaves serious questions, as noted by Williamson, about her willingness to reform.

For reasons stated above, the Agency's decision to demote Garcia complied with the purposes of discipline. The penalty was within the range of alternatives available to a reasonable and prudent administrator. See In re Economakos, CSB 28-13, 2 (3/7/14), citing Adkins v. Division of Youth Services, Dept. of Institutions, 720 P.2d 626, 628 (Colo. App., 1986).

## VI. ORDER

The Agency's demotion of Garcia, to the classification of Custodian, on June 2, 2017, is AFFIRMED.

DONE October 4, 2017.



Bruce A. Plotkin  
Hearing Officer  
Career Service Board

### NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this decision, in accordance with the requirements of CSR § 19-60 et seq., within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the decision's certificate of delivery. See Career Service Rules at [www.denvergov.org/csa](http://www.denvergov.org/csa). **All petitions for review must be filed with the following:**

#### **Career Service Board**

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

#### **Career Service Hearing Office**

201 W. Colfax, Dept. 412, 1st Floor  
Denver, CO 80202  
FAX: 720-913-5995  
EMAIL: [CSAHearings@denvergov.org](mailto:CSAHearings@denvergov.org).

**AND opposing parties or their representatives, if any.**