

DECISION AFFIRMING DISMISSAL

NATACHA HAGER, Appellant,

v.

DENVER POLICE DEPARTMENT,
and
the City and County of Denver, a municipal corporation, Agency.

I. INTRODUCTION

This is an appeal of Appellant's dismissal from employment with the Denver Police Department (hereinafter DPD or Agency) on December 28, 2018, 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 April 25 and May 15, 2019. Appellant was represented by Christopher Lujan, Esq., of Empower P.C. The Agency was represented by Kristin George and Katherine Brown, Assistant City Attorneys. Agency exhibits 1-11, 13-18, 25, and 27-29 were admitted. Appellant's exhibits A-J were admitted. The following witnesses testified for the Agency: Lt. John Macdonald; Sgt. Michael Vogler; Lt. Hans Levens; Ms. Amy Lee; and Chief Paul Pazen. The Appellant testified on her own behalf, and presented witnesses Ms. Lisa Garcia and Ms. Leti Lopez.

II. ISSUES

This appeal presents two overarching issues:

- A. whether Appellant violated those Career Service Rules specified below and, if so:
- B. whether discipline was within the range of alternatives available to a reasonable administrator.

III. FINDINGS

Colorado requires its police departments to maintain Peace Officer Standards and Training (POST) certification, which includes 24 hours of continuing education annually for each officer. The failure to document completed training may result in the de-certification of the entire department, so accurate tracking of officers' completed training is vital to maintaining POST certification.

The Appellant, Natacha Hager, was a Staff Assistant in the DPD's Training Academy. One of her primary duties was to enter completed POST-certified training into the Agency's learning management systems.

October 5, 2018 was the Agency's deadline to complete mandatory cybersecurity training. [Exh. 22]. That day, Hager sent an email to her supervisors stating 100% of officers completed that training. [Exh. 28]. When Chief Pazen received the training report, he knew it was inaccurate because he had not yet taken the training. [Pazen testimony; Exh 1-5].

One week later, when asked about the inaccurate report, Hager told her supervisors Lt. Leven took the training on behalf of Pazen; however, Leven took the training only under his own training profile for himself and for no one else. [Exh. 5-2; Levens testimony].

An ensuing investigation revealed Hager made 229 entries for completed training on October 5. [Exh. 3; Exh. 6, Vogler testimony]. Those entries included officers who could not have taken training, such as two officers who were on military leave, another who was absent on family medical leave, and another who attempted to take the training but found it was already entered as completed. Hager made 178 of those entries on October 5 within 29 minutes.

The investigation also revealed other falsehoods. Hager made no entries whatsoever since the beginning of 2018 although she told her supervisors at each of their weekly meetings, from August until the beginning of October, that she was making good progress in entering those records.

Hager was placed on investigatory leave on October 12, 2018. The Agency served a letter in contemplation of discipline on December 3, 2018. The Agency convened a pre-disciplinary meeting on December 11, 2018 which Hager attended with her attorney-at-law. Her employment was terminated on December 27, 2018.¹ This appeal followed timely on January 8, 2019.

IV. ANALYSIS

A. Jurisdiction and Review

Jurisdiction is proper under CSR §19-20 A.1., as a direct appeal of a dismissal. I review the Agency's findings *de novo*. CSR 19-55 A.

B. Burden and Standard of Proof

The Agency retains the burden of persuasion, throughout the case, to prove each violation by a preponderance of the evidence and that the degree of discipline was within the range of penalties available to a reasonable administrator. Adkins v. Div. of Youth Serv's, Dept. of Institutions, 720 P.2d 626, 628 (Colo. App. 1986); In re Economakos, CSB 28-13A (3/24/14); CSR 19-55 A.

C. Career Service Rule Violations.

The Agency alleged Hager violated the following Career Service Rules.

1. CSR 16-28 A. Neglect of duty or carelessness in performance of duties and responsibilities.

To sustain a violation under CSR 16-28 A, the Agency must establish that Hager failed to perform a known duty or performed it in substandard fashion. In re Gomez, CSA 02-12 (5/14/12)

¹ The stipulation was to 12/27, and the notice of discipline was dated 12/27, but was effective 12/28.

citing [In re Abbey](#), CSA 99-09, 6 (8/9/10). Hager acknowledged one of her principal duties was to report training completed by the Agency's sworn officers. Her admission that she reported Chief Pazen and Sgt. Carter completed their training, when they had not, established violations under this rule. Her stated justifications, for reasons stated below, were unconvincing.

2. CSR 16-28 D. Any act of dishonesty, which may include, but is not limited to lying, or improperly altering or falsifying records...

Dishonesty is established by a knowing misrepresentation within the employment context. [In re Marez](#), CSA 58-16, 3 (1/26/17), citing [In re Rodriguez](#), CSA 12-10, 7 (10/22/10).

During weekly meetings with her supervisors for two months, and in an email, Hager claimed she was making good progress in entering completed training and that on October 5, 2018, 100% of officers completed their mandatory training. [Exh. 28; Exh. 5; Macdonald testimony; Exh. 11; Vogler testimony]. Hager claimed the incorrect entries were mistakes and not dishonest. The following circumstances established those "mistakes" were intentional.

Hager alleged she was confused about using PoliceOne, lacked adequate training, and did not know whether she entered training for officers other than Pazen and Carter on October 5, 2018. Despite her allegation, the records reveal she gave credit to approximately 285 [Exh. A-4] employees for Cybersecurity training between September 17 and October 5, including 190 on October 5. Those entries are time-stamped and Hager's unique login identification documented her as the person who entered those trainings as completed. [Exh. 1; Vogler testimony]. Hager had no alternate explanation for how her unique login appeared with those entries, although she suggested her supervisor was responsible.² Hager's acknowledgment that she intentionally entered Pazen and Carter's training as completed in PoliceOne belies her claim that she was unsure how to use that system accurately.

In addition, Hager understood and successfully used PoliceOne previously. [See, e.g. Exh. 20, Exh. 29; Vogler testimony]. The 3-step process to make those entries is not complicated, as demonstrated by Vogler during hearing, [see also Exh. 25], and Hager never complained to Vogler that she had any issue with how to enter completed training into the system.³ Vogler demonstrated and credibly testified (and it seems evident) that Hager had only to check the boxes next to multiple names in order to credit all of those offers simultaneously for their training. [Vogler testimony; Macdonald testimony]. This seems unlikely to be the kind of mistake that would be confusing even to a lay person, let alone an experienced user of a software system such as Hager, who stated she "had been running that program since September 2013 essentially by myself." [Exh. 27 at 2:43]. Finally, even assuming Hager intentionally entered training completions only for Pazen and Carter, her acknowledgment that she told her supervisors 100% of officers completed training, knowing Pazen and Carter had not completed theirs, establishes the "intent" component of her dishonesty. [In re Steckman](#), CSB 30-15A, 4 (1/19/17).

² With respect to the credibility of this accusation, it is noteworthy that Hager did not mention this exculpatory explanation during the investigation into her wrongdoing, nor during her pre-disciplinary meeting which was convened precisely for the opportunity to present exonerating information.

³ To be clear, Hager testified she complained that she needed help with the volume of data to upload, [Hager testimony], but not that the process was too complex.

Next, Hager alleged Pazen's Chief of Staff, Lt. Levens, took Pazen's training on his behalf. Levens denied the allegation. His credibility was unchallenged, while that of Hager was suspect. [See p. 4 below at V. C.]. By a preponderance of the evidence, Hager's statement that Levens took Pazen's training establishes a separate dishonesty in violation of CSR 16-28 D.⁴

Third, Hager claimed she entered cybersecurity training as completed by Pazen as merely continuing the practice of past administrations. [Hager testimony]. MacDonald confirmed he spoke with Hager about possible actions of prior administrations. However, he made that statement only after Hager improperly entered Pazen's training; Hager acknowledged the source of her knowledge about this past practice was from a civilian co-worker⁵ with no authority to authorize Hager to enter training that was not completed; and Hager acknowledged she did not obtain permission from any supervisor or Pazen to make such an entry on his behalf. Consequently, Macdonald's statement to Hager could not have caused or justified that violation.

Finally, MacDonald met weekly with Hager from mid-August 2018 for updates on uploading training from CityU and PoliceOne to the state database. MacDonald claimed Hager "sat in my office with Sgt. Vogler and lied to me about the status of her work product." [Exh 11; Macdonald testimony]. Hager claimed she was confused by the PoliceOne system and was unsure whether she entered training for any officers on October 5, 2018 other than Pazen. Hager's past accuracy in making PoliceOne entries and her acknowledgment that she purposefully entered Pazen's cybersecurity training as complete in PoliceOne belie her befuddlement. This, and the three paragraphs above, establish Hager knowingly made four misstatements to supervisors and in reports, in violation of CSR 16-28 D. None of Appellant's claims, below, justify those dishonesties.

3. CSR 16- 28 F... failing to do assigned work which the employee is capable of performing.

A violation of the second part of this rule is established by; (1) proof of an assigned duty which (2) the employee is capable of performing, but (3) which the employee fails to perform. [In re Mounjim](#), CSA 87-07, 7 (7/10/08), *aff'd In re Mounjim*, CSB 87-07 (1/8/09). Macdonald testified Hager violated the second part of this rule, failure to do assigned work the employee is capable of performing. As noted previously, one of Hager's principle responsibilities was entering completed training into one of the Agency's Learning Management Systems. Hager did not dispute that she failed to make any entries of completed training from DenverLearns since the beginning of 2018. [Exh. 2; Vogler testimony; see also Exh. 11]. During that period other users of the system were able to make entries. [Exh 2-4; see also Macdonald testimony].

Macdonald acknowledged there was some confusion over the dual tracking systems of PoliceOne and DenverLearns; however, Hager never asked for any assistance or training. Instead she told Macdonald "I got this," indicating she was able and successful in performing that duty. Finally, as noted above, Hager's duty of assigning training credit is a simple process, not subject to confusion especially for someone as experienced as Hager. [Exh. 25; Vogler testimony]. This violation is established by a preponderance of the evidence.

⁴ This dishonesty is particularly disturbing as, unchallenged, it could well have cost Levens his promotion or even his job. See below re Degree of Discipline.

⁵ Hager specifically referred to Leti Lopez who, when she testified, was not asked about such practices of past administrations, although she was called specifically for that reason. [see hearing audio, ACA objection to Leti Lopez testimony on 5/15/19 at 11:37:06].

4. CSR 16-28 G.1. Failing to meet established standards of performance including either qualitative or quantitative standards.

A violation of this rule is established by evidence of (1) an established standard; (2) clear communication of that standard; and (3) employee's failure to meet the standard. [In re Schofield](#), CSA 8-17, 8 (10/9/17); see also [In re Mounjim](#), CSB 87-07A, 3-5 (1/8/09). Hager did not dispute that one of her fundamental responsibilities since 2016 was uploading completed training from various training platforms to the state database so that training could be certified as POST-compliant. Macdonald testified Hager violated this rule by her failure to upload training. Hager acknowledged she inaccurately credited training that, in fact, had not been completed. She also failed to perform any uploading for 2018 until at least September. [Macdonald testimony; Exh. 11]. Hager failed to rebut these allegations. For those reasons, this violation is established by a preponderance of the evidence.

5. CSR 16-28 T. Conduct which is or could foreseeably:

- 1. Be prejudicial to the good order and effectiveness of the department or agency;**
- 2. Bring disrepute on or compromises the integrity of the City; or**
- 3. Be unbecoming of a City employee.**

A violation under this rule is established by conduct which negatively impacts the effectiveness of the department or agency, conduct which may foreseeably cause harm greater than would reasonably be expected to result, or by conduct which creates a credible threat to the careers of co-workers. [In re Koonce](#), CSA 34-17, 7 (12/22/17), *aff'd on other grounds* [In re Koonce](#), CSB 34-17A (6/21/18); [In re Marez](#), CSA 58-16, 8 (1/27/17); [In re Burdett](#), CSA 28-17, 5 (2/13/18). Macdonald testified the charge of conduct unbecoming was established when Hager's falsely entered officers POST training. Those false entries could well have jeopardized the Agency's POST certification. [Macdonald testimony]. Hager claimed no actual harm was demonstrated; however actual harm is no longer required under this rule [*contrast, e.g. In re Marez*, CSA 58-16, 8 (1/26/17), *with In re Jones*, CSB 88-09A (9/29/10)(decided under previous CSR 16-60 Z)]. A certain degree of speculation ("could foreseeably") is called for under the current rule, albeit, not unfettered. See, e.g. [In re Koonce](#), CSA 34-17, 7 (12/22/17), *aff'd on other grounds*, [In re Koonce](#), CSB 34-17A (6/21/18). There was credible evidence concerning the critical importance of POST certification, and the very real possibility that, had the Agency not made a proactive effort to avert the damage done by Hager's false reporting, the Agency could well have been sanctioned. Those factors establish a violation of this rule.

D. Appellant Claims.

Hager made the following claims, although it was unclear whether she considered they negated her behavior, justified it, or should mitigate the penalty.

During her pre-disciplinary meeting, Hager alleged her supervisor asked her on a date on two occasions which made her uncomfortable. At hearing, Hager alleged, and Macdonald acknowledged, he is friendly with Hager's immediate supervisor. This appears to comprise the underlying basis for Hager's claim of retaliation. Two witnesses called by Hager did not witness the supervisor asking Hager on dates, but confirmed Hager told them; that supervisor was not the decision-maker in this case; Hager presented no evidence that the decision-maker,

Macdonald, had any reason to retaliate against her;⁶ Hager did not report the incidents; and the supervisor denied the allegations. Even assuming the veracity of harassment/retaliation claim, it is not apparent, and not credible, that the supervisor's improper conduct could justify Hager's false entry of completed training on behalf of other officers.

Next, Hager alleged she was "extremely overworked" in making entries, that she asked Vogler repeatedly for assistance and that she asked two technician and a sergeant to witness those conversations because Vogler "deviates from the truth." [Exh. 27 at 3:22]. No witness testified to that exchange. Vogler denied the allegations, and Hager acknowledged she did not tell Vogler's supervisor, Lt. Macdonald, that she needed help and was overworked, [Hager testimony]. When Macdonald asked Hager about her workload in September 2018 and Hager then said she needed help with data entry, Macdonald quickly staffed a volunteer to help.

Hager also alleged she complained to Macdonald about the same supervisor openly talking negatively about her at a meeting. Hager alleged the supervisor said, "watch it, she may put a pencil in your throat." Here also, assuming the allegation to be true, Hager failed to establish causation between the statement and her wrongful entry of completed training. Moreover, she acknowledged Macdonald offered to move her work station after the comment and she declined. Finally, those allegations are unrelated to, and do not justify, Hager's telling her second-level supervisor MacDonald each week that she was successfully uploading completed training when she did not, nor did it justify telling MacDonald that Lt. Levens instructed her to enter Pazen's training when he did not.

Finally, Hager claimed she was confused by the PoliceOne system and that she was inadequately trained in its use. First, Hager claimed she was unaware of the capacity, within PoliceOne, to "batch enter" multiple officers to credit training at the same time. I find this unlikely, as the Hager successfully used that system previously; entering training is a simple 3-step process [Vogler testimony; Exh. 25];⁷ it requires a single mouse click to make multiple entries, as shown by Vogler's in-court demonstration; Hager testified she needed help with the volume of entries, not with understanding how to make them [Hager cross-exam]; and other than testifying she did not know how multiple batch entries appeared under her name, [Hager testimony],⁸ Hager did not rebut the Agency's detailed report showing she made multiple batch entries in a two-hour period on October 5, 2018. [Macdonald testimony; Exh. 5; Exh. 1-2 through 1-7; see also 1-8 through 1-20; Exh. 2; Exh. 3].

Hager never indicated she was confused by the system to her supervisors.⁹ She did not ask for assistance. To the contrary, when asked by Macdonald if she would like assistance, Hager answered "don't worry about this, boss. I got this." [Macdonald testimony]. In addition, the Agency used PoliceOne since 2015, and Vogler testified credibly that he was not confused about entering completed training properly. The day before Cybersecurity training was due, Hager sent a reminder to the supervisors of those who were not yet in compliance, stating she

⁶ That Macdonald was friendly with Hager's immediate supervisor is insufficient to establish a retaliatory motive.

⁷ The volunteer who assisted Hager did not evidently find the process complex.

⁸ Hager accused Vogler of "manipulating the data," but did not offer evidence how Vogler could have substituted Hager's ID for his, Hager never offered this critical information before hearing, Vogler denied the accusation, and Hager did not call as a witness the person she claimed told her about Vogler's manipulation of data.

⁹ To be more accurate, Hager did not complain about needing assistance at times relevant to this appeal. Macdonald acknowledged that "early on" Hager found the transition to PoliceOne difficult, but declined assistance when he asked and always reported she had it under control thereafter.

would be conducting “another audit next week,” indicating she had a good understanding of the process. In short, none of Hager’s allegations rebutted the Agency’s allegations of wrongdoing.

V. DEGREE OF DISCIPLINE

The degree of discipline selected by the Agency is reasonable if it is within the range of penalties available to a reasonable and prudent administrator, and conforms to the tenets of discipline under the Career Service Rules. Those tenets include the severity of the violations, the employee’s past record, and the employee’s acknowledgment of wrongdoing and willingness to reform. CSR 16-41.

A. Seriousness of the violations.

The Agency made it clear that it brooks no dishonesty by its employees. [Pazen testimony; Macdonald testimony]. Hager’s dishonesty could have cost Lt. Levens significant discipline, and could have jeopardized the Agency’s POST certification. These are grave consequences.

Appellant’s closing statement referred to “many police officers” who were found to be dishonest, yet not dismissed. Appellant gave no specifics, and the disciplinary systems for police officers versus Career Service employees are substantially different.¹⁰

B. Past Record

Hager’s work reviews were highly complimentary. [Exhs. G-J]. She had no history of dishonesty. Unfortunately, these positive factors can and must cede to the severity of Hager’s violations and her failure to take responsibility, as determined next.

C. Potential for correcting behavior.

Hager did not directly deny the allegations against her; however, she cited: (1) being overworked; (2) that her supervisor misrepresented the truth and made her uncomfortable; (3) that her supervisor was “more of a hinderance to the program and the directives” of the Agency;¹¹ (4) problems with the PoliceOne and DenverLearns program; (5) that she simply forgot she entered Pazen’s training as complete; (6) and that she was told it was customary to enter training for the chiefs even though they had not completed it in order for them not to look bad.¹² Despite Hager’s allegations, she refused assistance,¹³ and acknowledged that, instead of complaining to upper management, she “numerous times vent[ed] to co-workers,” about her supervisor.¹⁴ Hager also complained she was being held to a stricter standard than sworn

¹⁰ See In re Ford, CSB 48-14A, 3-4 (12/17/15); see also In re Romero, CSB 28-16A, 2 (6/15/17).

¹¹ Hager specifically cited the use-of-force training as an example of being overworked and having issues with the DenverLearns program; yet she acknowledged the task of uploading completed training for that class was given to someone else. [Exh. 27 at 4:41].

¹² Macdonald acknowledged he had a discussion with Hager about that topic, and heard rumors about the practice of substituted training, but he did not talk with Hager about it until after she entered Pazen’s training as complete when it was not, and he never approved the practice. [Macdonald testimony].

¹³ Since Hager did not present any independent verification of this claim, there was no basis to weigh her allegations as more credible than that of her supervisor’s equally plausible denials. Macdonald acknowledged Hager told him her immediate supervisor said, “don’t make Natacha mad or she’ll stab you in the neck with a pencil.” He addressed it with the supervisor who acknowledged the inappropriate comment, but Macdonald denied that Hager mentioned any of the other allegedly-inappropriate remarks. [Macdonald testimony].

¹⁴ Ironically, in the next sentence, Hager declared “I would never do anything to shame this department.” [Exh. 27 at 6:20-6:34]. Then she insisted officers manipulate training records by taking training for other officers “all the time.” [Exh. 27 at 24:21-24:41]. In the next sentence she claimed her discipline was in retaliation for calling out Vogler, [Exh. 27 at 25:00], again without explaining how Vogler’s wrongdoing explained or justified her dishonesty.

personnel,¹⁵ and otherwise failed to take responsibility for her conduct and minimized the potential for its severe consequences.

At her pre-disciplinary meeting Hager said she “absolutely” took responsibility for wrongdoing, but every other statement before and after that acknowledgment denied responsibility.¹⁶ If Hager fell on her sword, she immediately removed it and wielded it at others. The Agency had reason to be concerned about Hager’s capacity and willingness to reform. As stated by Macdonald, “there were some discussions about whether we could move her to a different job, and it all boiled down to... with the Police Department, maintaining truthfulness and trust is very important for our organization.” [Macdonald testimony].

As a separate matter concerning Appellant’s credibility, I note the following from Appellant’s testimony at hearing. Less than one minute after Hager swore under penalty of perjury that everything she said would be the entire truth [Hager testimony at 8:48:15], she gave a manifestly false answer. Hager’s attorney asked if she had any prior discipline, to which she answered, “it was a dress code violation.” [Hager cross-exam at 8:49:09].

At the beginning of cross-examination Hager acknowledged she remained under oath. [Hager cross-exam at 9:46:04]. Then the following exchange ensued.

Q: So you recognize this document?

A: Yes I do.

Q: And when you talk about the written reprimand you received for the dress code violation, that’s what you’re referring to?

A: Yes ma’am, I am.

Q: Would you point out to me where it says there is a dress code violation?

A: It’s not in the letter.

Q: In fact, if you look at the bottom of page four, it says “during work hours on July 18th, 2013, you posted an inappropriate, unprofessional, and lewd photograph of your DDHS co-worker with comments on Facebook. The photograph was of a co-worker in the work area who placed a beverage container down the front of her blouse in an area between her breasts where she appeared to be sipping on the container through a straw. You posted the inappropriate comments ‘multi-tasking at best,’ and ‘we are committed to processing our cases, hahaha.’ That’s not a dress code violation, is it?

A: when it was pointed out to me, because where the cup was placed, that what she was wearing was inappropriate.

Q: But you made it sound like YOU violated the dress code. You didn’t violate the dress code, right?

A: No Ma’am, I did not.

Q: You were actually disciplined for posting a picture that was inappropriate?

A: By the agency’s standards, yes.

...

Q: You testified two minutes ago that you recalled that your agency found that you took responsibility for the dress code violation, but in fact that’s not the case, is it?

A: No ma’am.

[Hager cross-exam].

¹⁵ [Exh. 27 at 24:02]. The facts do not bear out this allegation, since the Career Service appeal decisions are replete with the termination of sworn officers who were found to have lied.

¹⁶ For example, after stating she “absolutely” knew what she did was wrong, her next statement was that she was held to a different standard than sworn officers, [Exh 27 at 23:55-24:18], an allegation that is as much incorrect as it is evasive of taking responsibility.

Hager's written reprimand was entirely unrelated to a dress code violation. Considering the Agency's main concern was Appellant's honesty, this intentional mischaracterization of her prior discipline, under oath, casts doubt on Hager's credibility.

Ironically, if Hager admitted the nature of her prior discipline, it likely would have had no effect on this case. The charges underlying the written reprimand were minor, the charges were unrelated to those in the present case, and the incident occurred six years ago. Instead, Hager's dishonesty about that minor incident became relevant to the charges in this case, [CSR 16-42 A.2., 3.], and undermined her attorney's considerable efforts to rehabilitate her.

Hager's mendacity under oath vindicated the Agency's finding that Hager's highly-couched acceptance of responsibility was not credible. Given the seriousness of the proven charges against her, Hager's failure to take meaningful responsibility for those violations, and her lack of credibility, termination of Hager's employment was within the range of alternatives available to a reasonable administrator.

VI. ORDER

The Agency's termination of the Appellant's employment on December 27, 2018, is AFFIRMED.

DONE May 22, 2019.



Bruce Plotkin
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this final order, in accordance with the requirements and limitations of CSR § 21-20 et seq., within fourteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of delivery, below. See Career Service Rules at www.denvergov.org/csa. All petitions for review must be filed with the:

Career Service Board

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

Career Service Hearing Office

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

AND opposing parties or their representatives, if any.