

**DECISION AFFIRMING TEMPORARY REDUCTION IN PAY**

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**MARIE MAESTAS**, Appellant,

v.

**DENVER PARKS AND RECREATION**,  
and the City and County of Denver, a municipal corporation, Agency.

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**I. INTRODUCTION**

Appellant Marie Maestas (Appellant) appeals the Denver Parks and Recreation's (Agency) March 21, 2019 temporary reduction in pay on her, for alleged violations of Career Service Rules (CSR) 16-28 A., M., and N.<sup>1</sup> On June 13, 2018, Hearing Officer Federico C. Alvarez conducted a hearing to determine the propriety of the Agency's discipline. Assistant City Attorney Richard A. Stubbs represented the Agency and representative Cheryl Hutchison represented the Appellant. The Agency's exhibits 1 through 11 were admitted into evidence. Deputy Director John Martinez and Senior Recreation Supervisor Anthony Hernandez testified for the Agency. The Appellant did not present testimony.

**II. ISSUES**

This appeal presents two issues, whether:

A. Appellant violated CSRs 16-28 A., M., and N.; and

B. Appellant's temporary reduction in pay, if she violated the aforementioned CSRs, conformed to CSR 16-41's Purpose of discipline.

**III. FINDINGS**

On June 1, 1989, the City and County of Denver hired Appellant and, since September 1, 1998, she has been an Agency Aquatics Coordinator in its Recreation Division. In later March 2018, the Agency transferred Appellant from the Rude Recreation Center, a larger facility, to the La Familia Recreation Center (Center.) Appellant managed the Center's swimming pool. She supervised a staff of lifeguards, including three adult on-call employees, and about eight other employees, students as young as 15 years of age. One of Appellant's duties was to compose the Center's weekly Aquatics schedule for her staff.

At the relevant times herein, Mr. Hernandez, was the Center's supervisor and he supervised Appellant. He was promoted to a recreation center supervisor in March 2018 and had no extensive knowledge in maintaining pools. During his supervision of Appellant, he experienced different work attendance issues with her, some of which are the basis for this Agency discipline of her. It subsequently assigned him to the Atzlan Recreation Center, effective March 2019. Mr. Hernandez detailed the Agency's allegations against Appellant at the hearing.

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<sup>1</sup> At the hearing, the Agency withdrew its allegation that Appellant violated CSR 16-28 R.

Appellant had three no call, no shows at work on January 24, 25, and 29, 2019. The weekly schedule, which Appellant herself created, showed she was supposed to work on these three days. (Ex. 7). Pursuant to prior Agency directives, on January 25, 2019, Appellant was to send the schedule to the staff and to Mr. Hernandez for the next week, that began Monday, January 28. Appellant did not distribute the schedule until January 30, 2019. So, during the delay, the Center's lifeguards lacked her confirmation of their schedules, and the staff at the front desk could not confirm the pool schedule for the Center's customers who asked about it.

Appellant did not testify at the hearing. However, she and Ms. Hutchison made recorded statements at her March 6, 2019 contemplation of discipline meeting, denying any neglect of duty or negligence by her. (Ex. 11). Appellant and Ms. Hutchison addressed the January dates as follows. For January 24, 2019, Appellant conceded that she did not come into work or notify her supervisor of her upcoming absence. She explained that she chose to take this day off, to which she was entitled since she had worked on the Monday, January 21 Martin Luther King holiday. She stated that she had advised the head life guard that she would not come in on this day. For January 25, 2019, Appellant conceded that she forgot she had agreed to work the 10:00 a.m. shift of another life guard, which began with the opening of the pool. She advised Mr. Hernandez of her absence at 12:00 p.m., two hours after rather than two hours before the shift began. She conceded that staff, herself included, were to notify their supervisor two hours in advance of any absence, to allow the supervisor time to arrange coverage for the shift. (*Id.*, 14:38 to 15:00). For January 29, 2019, Appellant conceded that she did not come in to work or advise her supervisor of her absence in advance. She stated that she overslept due to working extremely long hours the previous day and when she finally awoke, her short shift was almost over. So, she did not notify Mr. Hernandez of her absence but stated the pool opened on time.

Mr. Hernandez also testified that the Agency staff were to advise their supervisor of any absences in advance, the custom being two hours prior. He testified Appellant advised him of her absence this day in response to his own 12:06 p.m. text to her, asking when she would start. (Ex. 5). He had also texted her on January 24 asking about her absence, but she did not respond. (*Id.*)

The Agency had alleged that Appellant's failure to send out the schedule on January 25, 2019 caused the staff to open the pool late that day, which the evidence did not establish.

On December 21, 2018, Mr. Hernandez, Senior Recreation Supervisor had issued to Appellant a Written Reprimand. (Ex. 3). In it, he reprimanded Appellant for misconduct including that she: (1) on June 4, 2018, missed a staff meeting; (2) on June 8, 2018, missed an aquatics staff meeting; (3) missed 20 Kronos time punches from September 17 to December 17, 2018; and (4) failed to work the second part of a split shift on December 4, 2018, generating customer complaints. Mr. Hernandez also described having counseled Appellant repeatedly about correcting her attendance issues throughout the dates described above. He specifically indicated, "Going forward I expect you to fulfill your schedule as assigned. Deviations in your schedule must be requested by you and approved by me in advance." *Id.*, at 2.

In a July 18, 2018 email to Appellant, Mr. Hernandez had memorialized for her the topics covered in his July 16 counseling meeting with her. (Ex. 2-2). It included:

The following items will be expected moving forward:

Communicate your weekly schedule to me each Friday for the next week to reflect 40 hrs ...

Send copy of the weekly Guard schedule to Layla<sup>2</sup> [sic] each Friday for the next week.

On March 6, 2019, Appellant and Ms. Hutchison met with James Salinas, Director; Mr. Hernandez; and Amy Lowell, Employee Relations Partner, for a contemplation of discipline meeting. Appellant made the statements described above. In determining Appellant's discipline, the Agency also took into consideration her history including her December 2018 Written Reprimand and persistent attendance issues. After considering the totality of the circumstances, on March 21, 2019, the Agency reduced her pay 15% for two pay periods.

## IV. ANALYSIS

### A. Jurisdiction and Review

Jurisdiction is proper under CSR §19-20 A.1.b., as Appellant appeals a temporary reduction in pay. The Hearing Officer reviews the Agency's findings *de novo*. CSR 19-55 A.

### B. Burden and Standard of Proof

The Agency retains the burden of proof throughout the case, by a preponderance of the evidence, to prove each violation 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.

#### 1. Authority

The Agency alleged Appellant violated the following sections of CSR 16-28, which state:

- A. Neglect of duty or carelessness in performance of duties and responsibilities. ...
- M. Unauthorized absence from work; or abuse of paid time off, sick leave, or other types of leave; or violation of any rules relating to any forms of leave.
- N. Unauthorized deviation from scheduled shift including reporting to work after the scheduled start time of the shift, leaving work before the end time of the shift, or working unauthorized overtime.

#### 2. Appellant's Argument

Appellant described several reasons for her three absences from work, none of which specifically excused them or her failure to distribute a timely schedule. They included that: by notifying the head life guard on January 24 of her upcoming absence, she effectively notified the Center; on January 25, another employee at the Center could have opened the pool timely rather than waiting for the second scheduled guard to arrive; on January 29, she overslept due to working long hours the prior day and she also had a medical appointment; she did not send out the schedule on Friday, January 25 as she waited to confirm the availability of a guard; and her distribution of the schedule on Wednesday, January 30 was effective as her three adult guards had regular schedules anyway.

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<sup>2</sup> The Agency's Prehearing Statement identifies Leyla Sandoval as the Center's Recreation Coordinator.

### 3. Specific Rules

#### a. 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 Appellant failed to perform a known duty or performed it in a substandard fashion. [In re Gomez](#), CSA 02-12 (5/14/12) citing [In re Abbey](#), CSA 99-09, 6 (8/9/10).

The Agency alleged that Appellant violated this Rule with her January 24, 25, and 29, 2019 absences, her failure to notify Mr. Hernandez in advance of them, and her failure to issue a timely schedule on January 25, 2019. Since Appellant created the schedule, she knew that she was scheduled to work on these days on which she failed to appear. In the contemplation of discipline meeting, she acknowledged she was required to give her supervisor two hours advance notice of an absence. She also acknowledged that she delayed finalizing the schedule to confirm a guard's availability. Still, this delay had not affected Appellant's scheduled work day of January 29, which was already known to her. The undisputed facts are that Appellant did not appear for work as scheduled on January 24, 25, and 29, 2019, give her supervisor advance notice of her absences, or issue a timely schedule on January 25. Hence, the Agency proved by a preponderance of the evidence that Appellant violated CSR 16-28 A.

#### b. CSR 16-28 M. Unauthorized absence from work.

A violation of this rule is established by an absence that is unauthorized under a departmental or Career Service Rule. [In re Leslie](#), CSA 10-11, 15 (12/5/11), citing [In re Dessureau](#), CSA 59-07, 8 (1/16/08). Since this rule is intended to prevent patterns of absenteeism and leave abuse, the Agency may consider all unauthorized absences in determining whether there has been a violation of this disciplinary rule. *Id.*

The Agency also alleged that Appellant violated this Rule with her January 24, 25, and 29, 2019 absences and her failure to notify Mr. Hernandez in advance of them. Since Appellant created the schedule, she knew that she was scheduled to work on these days on which she failed to appear. In the Agency's Written Reprimand issued to Appellant less than 40 days earlier, it had directed her that "Going forward I expect you to fulfill your schedule as assigned. Deviations in your schedule must be requested by you and approved by me in advance." The undisputed facts are that Appellant did not appear for work as scheduled on January 24, 25, and 29, 2019, or get advance approval from her supervisor for a schedule change. Hence, the Agency proved by a preponderance of the evidence that Appellant violated CSR 16-28 M.

#### c. CSR 16- 28 N. Unauthorized deviation from scheduled shift

The Agency also alleged that Appellant violated this Rule with her January 24, 25, and 29, 2019 absences and her failure to notify Mr. Hernandez in advance of them. By its language, which is limiting, this Rule contemplates that an employee will appear at and will work but deviate from the schedule. The deviation could include, "reporting to work after the scheduled start time ..., leaving work before the end time ... or working unauthorized overtime." This Rule appears to be intended to supplement but not overlap with CSR 16-28 M. The undisputed facts are that on January 24, 25, and 29, 2019, Appellant did not appear for work as scheduled, not that she appeared but deviated from the schedule. Hence, the Agency failed to prove by a preponderance of the evidence that Appellant violated CSR 16-28 N.

## V. DEGREE OF DISCIPLINE

CSR 16-41 Purpose of discipline, states:

The purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of discipline depends on the gravity of the offense. 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 shall impose the type and amount of discipline he or she believes is needed to correct the situation and achieve the desired behavior or performance.

The Agency's discipline of Appellant is reasonable and should be upheld if it is within the range of penalties available to a reasonable and prudent administrator. [In re Economakos](#), *supra* at 2; CSR 16-41.

Appellant argues that the Agency disciplined her excessively, given that she is a 30-year employee with only the December 21, 2018 Written Reprimand in her record.

### A. Seriousness of the violations.

Appellant's violative actions constituted serious misconduct. In the December 21, 2018 Written Reprimand, the Agency disciplined her for attendance issues, after counseling her for months that she was to honor her work schedule. Simply put, Appellant was to work as scheduled, or get advance permission for schedule changes. This requirement was not onerous for her, as she could meet it through text communication with Mr. Hernandez. The Agency would accommodate her issues - court appearances, injury, medical appointments, and schedule substitutions. Appellant also served as a role model her supervisory position, so she had a higher duty to observe the Agency policies. Yet, despite receiving the Reprimand, Appellant violated the CSRs multiple times the next month, hindering the Agency's operations.

### B. Past Record

Appellant's 2017 and 2018 performance reviews were successful, although her 2018 review described some performance issues, including on deadlines. (Ex. 1; Ex. 4, pp. 4-2, 4-5). She had not received prior discipline in approximately 29 years of service. On December 21, 2018, the Agency issued her a Written Reprimand for her attendance issues into mid-December 2018.

### C. Potential for correcting behavior.

Appellant admitted her three no call, no show violations at her pre-disciplinary meeting, but nevertheless claimed she did not engage in negligent behavior. She made several excuses for her misconduct, none of which excused it. Appellant did not present any evidence that she is capable of or committed to reform hence, her ability to reform is questionable.<sup>3</sup>

## VI. CONCLUSION AND ORDER

Through her misconduct, Appellant became an unreliable, ineffective, and time-consuming employee. Her argument appeared to be that she was in a transition mode since she was transferred to this Center from the larger Rude Center in March 2018. She argued that she functioned fine in her prior assignment and under a former supervisor. Evidently Appellant

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<sup>3</sup> Mr. Martinez testified the Agency has issued Appellant a new notice of contemplation of discipline, alleging similar violations. However, the Agency has not concluded the procedure on this notice, so Hearing Officer does not consider it for any reason.

tried to force the Center, through her misconduct, to accord her more independence and less oversight. Instead, through the proven charges against her, she became a repetitive violator of the CSRS. Her failure to take meaningful responsibility for her violations, their similar nature, their proximity, and her questionable commitment to reform justified the Agency's progressive discipline of her to get her attention. Mr. Martinez testified that the Agency so intended as it concluded it could coach her out of her misconduct. Hence, the Agency's temporary reduction in pay, of 15% for two pay periods, was within the range of alternatives available to a reasonable administrator.

Accordingly, the Hearing Officer AFFIRMS the Agency's March 21, 2019 temporary reduction in pay on Appellant.

DONE June 17, 2019.



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Federico C. Alvarez  
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](http://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](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.