DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

DONALD OYAMA, Appellant,

vs.

DEPARTMENT OF AVIATION,
and the City and County of Denver, a municipal corporation, Agency.

The hearing in this appeal was held on May 6, 2013 before Hearing Officer Valerie McNaughton. Appellant was present and represented himself. Assistant City Attorney Franklin Nachman represented the Agency in these proceedings. Sherry Grams, Leonard Spomer and Michael Wright testified for the Agency, and Appellant testified on his own behalf. Having considered the evidence and arguments of the parties, the Hearing Officer makes the following findings of fact and conclusions of law, and enters the following order.

I. STATEMENT OF THE APPEAL

Appellant Donald Oyama appeals his three-day suspension imposed on Feb. 25, 2013 by the Denver Department of Aviation (Agency). The parties stipulated to Agency exhibits 2 - 5 and Appellant's exhibits B - D, G - I, K and S. Exhibit 6 was admitted by order dated May 2, 2013, and Exhibits 1-104 to 105 were admitted at the hearing.

II. ISSUES FOR HEARING

The issues in this appeal are as follows:

1) Did the Agency establish by a preponderance of the evidence that Appellant's conduct justified discipline under the Career Service Rules (CSR); and

2) Did the Agency establish that a three-day suspension was within the range of penalties that could be imposed by a reasonable administrator for the violations established by the evidence?

III. FINDINGS OF FACT

Appellant Donald Oyama is an Information Technology (IT) Communications Technician assigned to the Department of Aviation's Radio Shop. Appellant's duties include programming and maintaining radios issued to contractors who work throughout the airport facilities. All contract workers must carry these secure handheld radios while on the airfield in order to coordinate their movements with airport operations.
In January 2013, ISS Janitorial Services was selected as the airport's custodial company by Airport Infrastructure Management (AIM). The contract required ISS to purchase 40 radios for their employees, and have them programmed for use at DIA. AIM Assistant Director Sherry Grams notified IT Supervisor Leonard Spomer that the radios would be delivered to the Radio Shop for programming. On the morning of Jan. 15th, ISS informed Ms. Grams that it may have trouble getting all 40 radios in service on time, since the Radio Shop was requiring delivery of one old radio for every new radio to be programmed. Ms. Grams called Mr. Spomer to ask him about this, since he supervises the Radio Shop. That afternoon, Mr. Spomer went from his office in Concourse A to the Radio Shop to speak to Appellant, who was the technician assigned to the job.

Appellant was getting ready to leave for the day, as it was 15 minutes before his shift ended. Mr. Spomer saw the radios at his workbench and asked him the status of the ISS job. Appellant replied, "I'm working on it." Mr. Spomer explained that he got a call about it, and needed to know where Appellant was on the job. Appellant asked him if there was a problem, and inquired, "Who called?" Mr. Spomer responded that it was not important who called, he just needed the status. Appellant conveyed that he did not believe Mr. Spomer had received a call about the work. [Spomer, 9:55 am.] Appellant told him that he was working with Larry Pennington of ISS to get the radios ready for them. Mr. Spomer asked him if another technician, Chandler Jones, could do some of the work. Appellant replied that he had already started on the radios. When Mr. Spomer asked him again if Mr. Jones could help, Appellant stated he did not have time to review what he had done so far with Mr. Jones. Mr. Spomer, sensing that Appellant was getting upset, told him to "Just go home." [Exhs. 4-3, 5-2.] After Appellant left, Mr. Spomer instructed Mr. Jones to prepare a list for Appellant of the asset and ID numbers for the 23 radios at Appellant's workbench. Mr. Jones did so. [Exh. F.]

The next day, Mr. Spomer arrived at the Radio Shop at 6 am, and found the list of radio numbers prepared by Mr. Jones. He said good morning to Appellant, who did not reply. Mr. Spomer set down the list in front of Appellant, and said sarcastically, "Here are the asset numbers and the IDs of the old radios. Thank you for being a team player." [Exh. 4-3: Spomer, 10:03 am.] Mr. Spomer then returned to his office in Concourse A. Directly after that, Appellant logged into the computer cost-tracking database Maximo, saw that the work order was still assigned to him, and entered a note that the work had been reassigned to Mr. Jones. He then moved the radios to Mr. Jones' workbench. Appellant thought about contacting Mr. Spomer about his actions, but did not do so. [Appellant, 1:16 pm; Exh. 4-3.]

Later that morning, Mr. Spomer checked Maximo for the progress on the ISS job. He saw that Appellant had entered a note that the job had been reassigned to Mr. Jones. Mr. Spomer saw lead technician Darryl Smith and asked him if Appellant was working on the radios. Mr. Smith told him that Appellant had moved the radios to Mr. Jones' workbench. Since Mr. Jones was not due back at work until 11 am that day, Mr. Spomer returned to the shop at 9 am, saw Appellant in the bay area, and asked him what was going on. Appellant replied in a raised voice that Mr. Spomer had reassigned the work to Mr. Jones, and that he didn't want to talk to him. When Mr. Spomer said that he had only asked Mr. Jones to assist him, Appellant angrily

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1 Appellant confirmed in his pre-disciplinary response that he told John from ISS that he would need an old radio for each new radio programmed because he assigns the old radios' ID numbers to the new radios he programs. When John expressed concern about taking usable old radios out of service during the programming process, Appellant told him he could bring in five to six at a time to minimize the down time. [Exh. 4-1; see also Appellant, 1:12 pm.]
responded, "[y]ou're a liar." Since there were other workers within earshot, Mr. Spomer asked Appellant to go with him to the more private work area, and closed the door behind them.

When they were alone, Mr. Spomer asked Appellant where he got the information that Mr. Spomer had reassigned the work to Mr. Jones. Appellant replied that Mr. Spomer had told him that as he was leaving the night before. Mr. Spomer denied it. Appellant told him he was not going to document things in the future because it would just be used against him. Mr. Spomer responded that that would be a failure to do his job, for which he could be written up. Appellant shot back, "You are easily the worst supervisor I have ever worked for." He added in a loud voice, "I'm getting pissed! I don't want to fucking talk to you. Just leave me the fuck alone." [Appellant, 1:15, 1:25; Exh. 4-4.] Mr. Spomer told him he was still expected to finish the work. Appellant then "gritted [his] teeth", went to Mr. Jones' workbench, moved the radios back to his own bench, added the serial numbers to Mr. Jones' list, and completed programming the radios by 10 am. [Appellant, 1:07 pm; Exh. 4-4.]

The following day, Ms. Grams forwarded to Mr. Spomer an email from ISS that indicated that the one-for-one radio swaps was still a concern. Mr. Spomer responded to the email by informing Ms. Grams that the Radio Shop could do the programming, refuting the assumption that it required an old radio for every new one to be programmed. [Exh. 6.] When ISS officials later showed a copy of this email to Appellant, he wondered if the "1 for 1 plan" referenced by Ms. Grams could have been the source of the misunderstanding that led to Mr. Spomer's Jan. 15th visit to the shop. Appellant called Mr. Spomer and learned that the ISS radios were to be treated as replacement radios, not additional radios. With that information, Appellant "went ahead and proceeded to handle [the remaining] radios as replacement", requiring old radios for every new one programmed. [Exh. 4-5.] Thus, it appears that the issue was never resolved.

On Feb. 4, 2013, Appellant was served with a pre-disciplinary letter based on the above incident. The letter asserted that Appellant's behavior constituted neglect of duty, failure to comply with orders, failure to meet performance standards and failure to maintain satisfactory work relationships, in violation of CSR §§ 16-60 A, J, K and O. [Exh. 3.]

On Feb. 11, 2013, Chief Technology Officer Michael Wright held the pre-disciplinary meeting, along with Senior HR Professional Janice Hathaway. Appellant attended without a representative, and presented a 15-page statement and attachments in response to the allegations made in the pre-disciplinary letter. [Exh. 4.] Appellant explained that he had talked to John at ISS about the work that afternoon, and that John had expressed reluctance to take old radios out of service in order to get new ones programmed. In response, Appellant offered to program a few at a time. [Appellant, 12:43 pm; Exh. 4-1.] Appellant admitted being frustrated by Mr. Spomer's refusal to tell him who had called him about the radios, explaining that he "really wanted to know what the misunderstanding was about." [Exh. 4-3.] He also admitted becoming more frustrated when Mr. Spomer gave him Mr. Jones' list the next morning, and sarcastically thanked him for being a "team player," Appellant told Mr. Wright and Ms. Hathaway that he then moved the radios to Mr. Jones' bench and noted in Maximo that the work had been reassigned to Mr. Jones. Appellant also admitted that he used profanity and called Mr. Spomer the worst supervisor he had ever worked for in their conversation later that day. [Exh. 4-4.]

After consulting with Mr. Spomer, Mr. Wright made the disciplinary decision. Mr. Wright noted that Appellant admitted using profanity, but did not otherwise take responsibility for his actions. [Wright, 11:30 am.] Mr. Spomer believed Appellant failed to demonstrate teamwork
and respect for him during this incident, in violation of his performance standards, and that their working relationship was harmed by Appellant's conduct.

Mr. Wright considered Appellant's work record and absence of previous discipline, but concluded that Appellant's behavior, including telling his supervisor to get out of his work area, could not be tolerated. He eliminated two of the four rule violations, and imposed a three-day suspension for failing to meet performance standards and failure to maintain satisfactory work relationships. [Exh. 5.] Absent the use of profanity to his supervisor, Mr. Wright may have imposed a lesser penalty. He also considered a five-day suspension, but determined that three days would be sufficient to send a clear message regarding the work culture he seeks to endorse.

IV. ANALYSIS

The Agency bears the burden to establish the asserted violations of the Career Service Rules by a preponderance of the evidence, and that a three-day suspension was within the range of discipline that can be imposed under the circumstances. In re Roberts, 40-10, 9 (11/15/2010); see also Department of Institutions v. Kinchen, 886 P.2d 700, 707 (1994), citing Colo. Const. art. XII, § 13(8).

A. VIOLATION OF DISCIPLINARY RULES

1. Failure to meet established standards of performance under CSR § 16-60 K.

In order to prove an employee violated this rule, an agency must prove that it established a performance standard, it clearly communicated that standard to the employee, and the employee failed to meet that standard. In re Rodriguez, CSA 12-10, 9, 10 (10/22/10).

The Agency cited the STARS values of teamwork and respect for self and others in support of this violation. [Exh. 5-1.] Broad, general statements in job specifications are not enforceable as specific performance standards under this rule. See In re Gutierrez, CSA 65-11A (CSB 4/14/13). The Agency also asserted at hearing that Appellant had received a below expectations rating for failing to prepare a preventive maintenance document for cross-training. [Exhs. 1-104, 1-105.] However, the disciplinary letter does not give Appellant notice of that charge. In addition, Mr. Spomer testified that he gave everyone that same rating in that duty, since no one on the Radio Shop team prepared the cross-training document. [Spomer, 10:49 am.] The Agency therefore failed to establish a violation of this rule.

2. Failure to maintain satisfactory work relationships under CSR § 16-60 Q.

A violation of this rule is proven by conduct that an employee knew or reasonably should have known would be harmful to other employees or the public, or which would have a significant impact on his working relationship with any of them. In re Rodriguez, CSA 12-10, 18 (10/22/10), citing In re Burghardt. CSB 81-07, 2 (8/28/08).

The Agency alleges that Appellant failed to maintain a satisfactory work relationship with his supervisor, Mr. Spomer. Appellant does not dispute that he transferred his assignment to another employee without his supervisor's permission, and noted that reassignment in Maximo. Appellant took the unreasonable position that Mr. Spomer had reassigned the work to Mr. Jones, based on the fact that Mr. Spomer asked Appellant if Mr. Jones could assist him.
[Appellant, 1:14 pm.] Appellant maintained that position despite the observable facts: the radios were still at his bench the next morning. Mr. Spomer gave him the list of radio numbers, and Maximo showed that the work was still assigned to him. Appellant knew Mr. Jones was not due in for several hours, and that the contractor needed the radios before they could begin work. The fact that Appellant thought about calling Mr. Spomer but did not do so indicates that he knew his actions were not in conformity with his work assignment.

Appellant also admits that he later told his supervisor, "You are easily the worst supervisor I have ever worked for. I'm getting pissed! I don't want to fucking talk to you. Just leave me the fuck alone." Finally, the Agency asserts that Appellant called Mr. Spomer a liar, and implied that he had never received a call about the ISS job.

As a result of this conduct, Mr. Spomer observed that their relationship became "very tumultuous." [Spomer, 10:19 am.] For his part, Appellant believes Mr. Spomer was disrespectful and condescending when he refused to answer his question about the customer's call. "It was important to me if I was handling the work wrong." [Appellant, 12:42 pm.] Appellant admits that he lost trust in Mr. Spomer as a result of Mr. Spomer's refusal to tell him who made the call, and that he initially doubted there had been such a call. He now concedes that Mr. Spomer did receive an inquiry about the work. [Appellant, 1:27 pm.]

Appellant was not always clear about what he said or did not say to Mr. Spomer. At one point during his testimony, Appellant admitted that he did not tell Mr. Spomer when he expected to have the radios done, or whether he told the customer he would have them ready at a specific time. [Appellant, 1:00 pm.] He later stated that he did tell Mr. Spomer when they would be done. [Appellant, 1:27 pm.] This inconsistency leads me to credit the testimony of Mr. Spomer where there are conflicts in their versions of the events.

Mr. Spomer created some of the confusion surrounding this incident when he refused to communicate the customer's issue to Appellant, leaving Appellant with the impression that it was the time frame rather than the one-for-one swap that was the real concern. Specifically, Mr. Spomer asked Appellant about the status of the job rather than sharing ISS's dissatisfaction over the requirement to turn in old radios before the new ones could be programmed. As a result, this part of the misunderstanding continued until the work was completed. Mr. Spomer made the situation worse by his admittedly sarcastic comment the next morning thanking Appellant for "being a team player". He noted at hearing that he "shouldn't have said that." [Spomer, 10:30 am.] In response, Appellant immediately moved the radios to Mr. Jones' bench, and noted a fictitious "reassignment" in the Maximo database.

Both parties to the incident acknowledge that a simple misunderstanding got out of hand because of their communication missteps, and both blame the other person. Mr. Spomer offered that if Appellant had only told him that he had spoken to the customer, the matter would have ended there. [Spomer, 10:08 am.] Appellant stated that if Mr. Spomer had informed him of the nature of the problem, he would have explained the situation and the incident would not have escalated. [Appellant, 12:43 pm.]

While it is true that Mr. Spomer's refusal to answer Appellant's question allowed the misunderstanding to continue, that was not the cause of the damage done to the supervisor/subordinate relationship. The evidence revealed that Appellant's frustration led to his taking several actions that were not conducive to a positive working relationship. Those actions included refusing to return his supervisor's greeting the next day, declining to finish the work
assigned, making an intentionally inaccurate entry into Maximo, and moving the radios to a co-worker’s bench.

Later that day, Appellant’s continued resentment toward Mr. Spomer threatened to affect other employees in the Radio Shop. Both recognized the fact that the tone of their conversation was becoming inappropriate for the common work area, and moved to a private room. After Mr. Spomer confronted him about the Maximo entry, Appellant engaged in profanity, insulted Mr. Spomer’s supervisory skills, and told him to “just leave me the fuck alone.” A reasonable person in Appellant’s position would know that this conduct would have a significant negative impact on his working relationship with his supervisor, and it had that effect here. Thus, it was Appellant’s own inappropriate actions and not the underlying miscommunications that caused the real damage to his working relationship with his supervisor, in violation of this rule.

B. DEGREE OF PENALTY

As found above, the Agency established that Appellant failed to maintain a satisfactory work relationship with his supervisor, in violation of Career Service Rule § 16-600. The Agency originally charged Appellant with four rule violations, but eliminated two of them after the pre-disciplinary meeting. Although only one of the charged violations was proven at hearing, the conduct was sufficiently egregious to warrant more than minimal discipline under the principles governing progressive discipline, given the serious and continuing harm it caused to his relationship with his supervisor.

It is not in dispute that Appellant is an able and hard-working employee who has had no previous discipline over his eleven-year employment history with the City. The evidence made it clear that Appellant sincerely sought to do the work correctly, and was deeply frustrated by his supervisor’s unwillingness to communicate details of the customer call. Appellant argues in mitigation that Mr. Spomer caused this incident by withholding information he needed to do his job. On the contrary, Appellant is responsible for his reactions, including the removal of the radios from his bench, the inaccurate Maximo entry, and his angry words to his supervisor. The fact that his supervisor did not answer his original request for more information does not justify the level of disrespectful behavior in which Appellant indulged. At hearing, Appellant admitted most of the Agency’s allegations, and stated he regrets only the profanity. Under those circumstances, it is clear that the three-day suspension was within the range of discipline a reasonable administrator could impose in order to impress upon Appellant the seriousness of the misconduct and achieve a change in behavior. CSR §§ 16-20, 16-50.

Order

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered that the Agency’s disciplinary action imposed on Feb. 25, 2013 is AFFIRMED.

Dated this 4th day of June, 2013.

Valerie McNaughton
Career Service Hearing Officer